

GENERAL LAWS
OF THE
STATE OF IDAHO



PASSED BY
THE FIRST REGULAR SESSION OF THE
FIFTY-FOURTH IDAHO LEGISLATURE

Convened January 6, 1997
House Adjourned March 18, 1997
Senate Adjourned March 19, 1997

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

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SECRETARY OF STATE

PETE T. CENARRUSA
Secretary of State
Boise, Idaho

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CHAPTER 1
(H.B. No. 101)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE STATE EMERGENCY RESPONSE COMMISSION FOR FISCAL YEAR 1997; 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 2, Chapter 266, Laws of 1996, there is hereby appropriated to the Executive Office of the Governor 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, 1996, through June 30, 1997:

STATE EMERGENCY RESPONSE COMMISSION:

FOR:

Trustee and Benefit Payments	\$9,500
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FROM:

General Fund	\$9,500
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SECTION 2. The State Controller shall make a cash transfer of \$9,500 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, 1997.

CHAPTER 2
(H.B. No. 104)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 1997; 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 280, Laws of 1996, there is hereby appropriated to the Department of Parks and Recreation 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, 1996, through June 30, 1997:

RECREATION RESOURCES:

FROM:

Parks and Recreation Registration Fund	\$480,000
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FOR:

Trustee and Benefit Payments

\$480,000

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, 1997.

CHAPTER 3
(H.B. No. 107)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DIVISION OF FINANCIAL MANAGEMENT FOR FISCAL YEAR 1997; 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 277, Laws of 1996, there is hereby appropriated to the Office of the Governor for the Division of Financial Management 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, 1996, through June 30, 1997:

FINANCIAL MANAGEMENT:

FOR:

Trustee and Benefit Payments

\$7,700

FROM:

General Fund

\$7,700

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 7, 1997.

CHAPTER 4
(H.B. No. 108)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 1997; 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 280, Laws of 1996, there is hereby appropriated to the Department of Parks and Recreation the following amount to be expended for the designated program according to the designated standard classifi-

cation from the listed fund for the period July 1, 1996, through June 30, 1997:

ADMINISTRATION:

FROM:

Parks and Recreation Registration Fund \$16,100

FOR:

Operating Expenditures \$16,100

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 7, 1997.

CHAPTER 5
(S.B. No. 1008)

AN ACT

APPROPRIATING ADDITIONAL MONEYS FOR THE IDAHO STATE HISTORICAL SOCIETY FOR FISCAL YEAR 1997; 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 293, Laws of 1996, there is hereby appropriated to the State Board of Education for the Idaho State Historical Society 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, 1996, through June 30, 1997:

A. HISTORICAL PRESERVATION AND EDUCATION:

FROM:

General Fund \$7,200

FOR:

Personnel Costs \$7,200

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 February 7, 1997.

CHAPTER 6
(S.B. No. 1014)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 1997; 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 273, Laws of 1996, 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, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR LUMP SUM	TOTAL
FOR:				
A. FOREST RESOURCES MANAGEMENT:				
FROM:				
General Fund	\$32,000	\$13,000		\$ 45,000
FOR:				
B. FOREST AND RANGE FIRE PROTECTION:				
FROM:				
General Fund			\$2,500,000	\$2,500,000
Fire Suppression Deficiency Fund			<u>1,100,000</u>	<u>1,100,000</u>
TOTAL			<u>\$3,600,000</u>	<u>\$3,600,000</u>
GRAND TOTAL	\$32,000	\$13,000	\$3,600,000	\$3,645,000

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 \$45,000 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 \$2,500,000 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 7, 1997.

CHAPTER 7
(S.B. No. 1015)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF ENVIRONMENTAL QUALITY FOR FISCAL YEAR 1997; 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 128, Laws of 1996, there is hereby appropriated to the Department of Health and Welfare for the Division of Environmental Quality the following amount to be expended for the Big Payette Lake Water Quality Council, according to the designated expense class from the listed fund for the period July 1, 1996, through June 30, 1997:

FOR:	
Operating Expenditures	\$50,000
FROM:	
Payette Lake Trust 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 February 7, 1997.

CHAPTER 8
(S.B. No. 1016)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 1997; 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 294, Laws of 1996, there is hereby appropriated to the Department of Agriculture the following amounts to be expended for the Plant Industries Program according to the designated standard classifications from the listed fund for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	\$50,200	\$17,900	\$5,000	\$73,100

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 \$73,100 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 7, 1997.

CHAPTER 9
(S.B. No. 1021)

AN ACT
AMENDING THE APPROPRIATION MADE IN SECTION 1, CHAPTER 180, LAWS OF
1996, TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 1997;
AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 180, Laws of 1996, be, and the
same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Department of
Water Resources the following amounts, to be expended for the desig-
nated 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
	<u>30,400</u>				<u>50,700</u>
Indirect Cost					
Recovery					
Fund	<u>213,000</u>	<u>44,200</u>	<u>16,000</u>		<u>273,200</u>
TOTAL	\$ 960,100	\$ 434,300	\$ 60,600	\$ 414,100	\$ 1,869,100
	<u>961,100</u>				<u>1,870,100</u>
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	<u>95,900</u>	<u>193,500</u>	<u>4,600</u>		<u>294,000</u>
TOTAL	\$1,805,000	\$ 549,900	\$ 50,000	\$ 764,600	\$ 3,169,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
III. ENERGY DIVISION:					
FROM:					
General					
Fund	\$ 132,700	\$ 22,800			\$ 155,500
Petroleum Violation					
Escrow Fund	244,300	1,562,600			1,806,900
	<u>324,300</u>				<u>1,886,900</u>
Federal Grant					
Fund	627,700	585,500			1,213,200
	<u>537,500</u>				<u>1,123,000</u>
Indirect Cost					
Recovery					
Fund	77,800	110,000			187,800
Miscellaneous Revenue					
Fund		20,000			20,000
	<u>10,200</u>				<u>30,200</u>
TOTAL	\$1,082,500	\$2,300,900			\$ 3,383,400
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
	<u>410,300</u>				<u>506,600</u>
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	\$ 4,007,700
	<u>3,173,800</u>				<u>4,102,200</u>
GRAND					
TOTAL	\$8,491,400	\$4,822,200	\$211,100	\$1,800,400	\$15,325,100
	<u>8,506,900</u>				<u>15,340,600</u>

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, 1997.

CHAPTER 10
(S.B. No. 1026)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE STATE INSURANCE FUND FOR FISCAL YEAR 1997; AUTHORIZING ADDITIONAL FULL-TIME EQUIVALENT POSITIONS AND SPECIFYING THE LIMIT 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 1, Chapter 157, Laws of 1996, and Section 1, Chapter 287, Laws of 1996, 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 program according to the designated standard classifications from the listed fund for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
1. WORKER'S COMPENSATION:				
FROM:				
State Insurance Fund	\$223,800	\$ 55,700	\$ 75,000	\$354,500

SECTION 2. In addition to the full-time equivalent positions previously authorized for fiscal year 1997, the State Insurance Fund is authorized fourteen (14) full-time equivalent positions for the program specified in Section 1 of this act in accordance with Section 67-3519, Idaho Code, and no more than two hundred thirteen (213) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997.

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, 1997.

CHAPTER 11
(H.B. No. 66)

AN ACT

RELATING TO GROUND WATER MONITORING; AMENDING SECTION 39-7410, IDAHO CODE, TO PROVIDE AN EXEMPTION TO GROUND WATER MONITORING REQUIREMENTS FOR THOSE MUNICIPAL SOLID WASTE LANDFILLS MEETING SMALL LANDFILL CRITERIA; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 39-7410, Idaho Code, be, and the same is hereby amended to read as follows:

39-7410. GROUND WATER MONITORING DESIGN. (1) Applicability. These requirements apply to MSWLF units except: ~~when suspended upon demonstration in accordance with 40 CFR 258.50 that there is no potential for migration of hazardous constituents from the MSWLF unit to the uppermost aquifer during the active life of the unit and the post-closure care periods when certified by a qualified professional and approved by~~

(a) When the MSWLF unit meets the conditions for exemption in 40 CFR 258.1(f); provided however, that the director: All monitoring programs shall be conducted in a manner consistent with the guidance of relevant portions of appendix F per the "Federal Register" of October 9, 1991. The schedule for compliance as provided by 40 CFR 258.50 shall apply unless an alternative schedule is approved by the director may, at his discretion, require monitoring of a MSWLF unit which meets the conditions for exemption in 40 CFR 258.1(f), if necessary to protect ground water resources. If the director does require ground water monitoring of such MSWLF unit, a method other than the ground water monitoring wells required in this section and in 40 CFR 258.51 through 258.55 may be used to detect a release of contamination from the unit; or

(b) When suspended upon demonstration in accordance with 40 CFR 258.50 that there is no potential for migration of hazardous constituents from the MSWLF unit to the uppermost aquifer during the active life of the unit and the post-closure care periods when certified by a qualified professional and approved by the director.

(2) Ground water monitoring program. All monitoring programs shall be conducted in a manner consistent with the guidance of relevant portions of appendix F per the "Federal Register" of October 9, 1991. The schedule for compliance as provided by 40 CFR 258.50 shall apply unless an alternative schedule is approved by the director.

(a) A ground water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to conform with the requirements of 40 CFR 258.51(a) and (d).

(b) A multiunit ground water monitoring system may be constructed instead of separate ground water monitoring systems for each MSWLF unit as provided in 40 CFR 258.51(b).

(c) Monitoring wells must be cased in a manner that maintains the

integrity of the monitoring well bore hole as provided in 40 CFR 258.51(c). Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water bearing strata, and in accordance with Idaho department of water resources, well construction standards and the monitoring well standards of the national ground water association.

(3) Point of compliance. For each MSWLF unit, the relevant point of compliance shall be set as a function of site and monitoring program design subject to the approval of the director. The relevant point of compliance for purposes of MSWLF unit design, well location and corrective action shall be:

- (a) Located within the flow pathway(s) predicted from the results of the hydrogeologic investigation;
- (b) No more than one hundred fifty (150) meters downgradient from the waste management unit boundary;
- (c) On contiguous property owned, or otherwise subject to possessory rights by the MSWLF owner;
- (d) Shall be identified by the qualified professional on all reports and documents pertaining to analysis of ground water protection measures; and
- (e) Determined in consideration of factors provided in 40 CFR 258.40(d).

(4) Ground water characterization, sampling and analysis requirements.

(a) The ground water monitoring system must include sampling and analysis procedures consistent with 40 CFR 258.53.

(b) Monitoring wells shall be tested for the constituents listed in 40 CFR 258, appendix I, plus temperature, unless otherwise authorized by the director as provided in 40 CFR 258.54.

(c) Background values will be based on an independent sample from each well sampled at three (3) month intervals in a one (1) year period.

(5) Detection monitoring program.

(a) Detection monitoring is required throughout the active life and post-closure care period at MSWLF units as provided in 40 CFR 258.54 at all ground water monitoring wells as defined in 40 CFR 258.51(a)(1) and (a)(2) for constituents listed in 40 CFR 258, appendix I.

(b) Each well shall be monitored on a semiannual basis after background characterization. Alternative constituents and sampling frequency may be approved by the director based upon considerations as defined in 40 CFR 258.54 (a)(2) and (b). Requests for alternative constituents or frequency shall be based on a report certified by a qualified professional.

(c) Each ground water sample event must include a determination of the ground water surface elevation, flow direction and rate.

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, 1997.

CHAPTER 12
(H.B. No. 106)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT
FOR FISCAL YEAR 1997; 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 99, Laws of 1996, and in addition to the appropriation made in Sections 1 and 2, Chapter 356, Laws of 1996, there is hereby appropriated to the Idaho Transportation Department 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 OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FOR:			
A. HIGHWAYS:			
FROM:			
State Highway - Restricted Fund	\$135,400		\$ 135,400
FOR:			
B. CONTRACT CONSTRUCTION AND RIGHT-OF-WAY ACQUISITION:			
FROM:			
State Highway - Restricted Fund		\$ 3,250,300	\$ 3,250,300
State Highway - Dedicated Fund		1,976,400	1,976,400
State Highway - Federal Fund		<u>20,400,000</u>	<u>20,400,000</u>
TOTAL		<u>\$25,626,700</u>	<u>\$25,626,700</u>
GRAND TOTAL	\$135,400	\$25,626,700	\$25,762,100

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 14, 1997.

CHAPTER 13
(S.B. No. 1084)

AN ACT
APPROPRIATING MONEYS TO THE ATTORNEY GENERAL IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 219, LAWS OF 1996; AUTHORIZING

ADDITIONAL 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 1, Chapter 219, Laws of 1996, there is hereby appropriated to the Attorney General 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, 1996, through June 30, 1997:

A. STATE LEGAL SERVICES:

FOR:

Personnel Costs	\$95,000
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FROM:

Consumer Protection Fund	\$95,000
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SECTION 2. In addition to the full-time equivalent positions authorized in Section 3, Chapter 219, Laws of 1996, the Attorney General is authorized two and four-tenths (2.4) full-time equivalent positions for the program specified in Section 1 of this act in accordance with Section 67-3519, Idaho Code, and no more than one hundred sixty-eight and nine-tenths (168.9) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997.

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 17, 1997.

CHAPTER 14
(H.B. No. 2)

AN ACT

RELATING TO THE UNIFORM PRUDENT INVESTOR ACT; REPEALING CHAPTER 5, TITLE 68, IDAHO CODE; AMENDING TITLE 68, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 5, TITLE 68, IDAHO CODE, TO PROVIDE THE PRUDENT INVESTOR RULE, TO PROVIDE THE STANDARD OF CARE, PORTFOLIO STRATEGY, RISK AND RETURN OBJECTIVES, TO PROVIDE FOR DIVERSIFICATION, TO PROVIDE DUTIES AT THE INCEPTION OF A TRUSTEESHIP, TO PROVIDE FOR LOYALTY, TO PROVIDE FOR IMPARTIALITY, TO PROVIDE FOR INVESTMENT COSTS, TO PROVIDE FOR REVIEWING COMPLIANCE, TO PROVIDE FOR DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS, TO PROVIDE FOR LANGUAGE INVOKING THE STANDARD OF THE ACT, TO PROVIDE FOR APPLICATION OF THE ACT TO EXISTING TRUSTS, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE A SHORT TITLE, AND TO PROVIDE FOR APPLICATION OF THE ACT TO GUARDIANS; AND AMENDING SECTIONS 27-408, IDAHO CODE, TO CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING 50-1013A AND 59-1312, IDAHO CODE, TO CORRECT CODE REFERENCES.

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

SECTION 1. That Chapter 5, Title 68, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 68, 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 68, Idaho Code, and to read as follows:

CHAPTER 5
UNIFORM PRUDENT INVESTOR ACT

68-501. PRUDENT INVESTOR RULE. (1) Except as otherwise provided in subsection (2) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this act.

(2) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

68-502. STANDARD OF CARE -- PORTFOLIO STRATEGY -- RISK AND RETURN OBJECTIVES. (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (a) General economic conditions;
 - (b) The possible effect of inflation or deflation;
 - (c) The expected tax consequences of investment decisions or strategies;
 - (d) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
 - (e) The expected total return from income and the appreciation of capital;
 - (f) Other resources of the beneficiaries;
 - (g) Needs for liquidity, regularity of income and preservation or appreciation of capital; and
 - (h) An asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.
- (4) A trustee shall make a reasonable effort to verify facts rel-

evant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment consistent with the standards of this act.

(6) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

68-503. DIVERSIFICATION. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

68-504. DUTIES AT INCEPTION OF TRUSTEESHIP. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this act.

68-505. LOYALTY. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

68-506. IMPARTIALITY. If a trust has two (2) or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

68-507. INVESTMENT COSTS. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

68-508. REVIEWING COMPLIANCE. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

68-509. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS. (1) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with the requirements of subsection (1) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(4) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of the state of Idaho, an agent submits to the jurisdiction of the courts of this state.

68-510. LANGUAGE INVOKING STANDARD OF ACT. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this act: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule" and "prudent investor rule."

68-511. APPLICATION TO EXISTING TRUSTS. This act applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective dates, this act governs only decisions or actions occurring after that date.

68-512. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states enacting it.

68-513. SHORT TITLE. This act may be cited as the "Idaho Uniform Prudent Investor Act."

68-514. GUARDIANS. The provisions of this act shall apply to and govern any bank, trust company, or individual authorized and duly appointed, by a court of competent jurisdiction, to act as a guardian under the laws of the state of Idaho.

SECTION 3. That Section 27-408, Idaho Code, be, and the same is hereby amended to read as follows:

27-408. INSTRUMENT IN WRITING. The trust fund so created shall be evidenced by an instrument in writing, and shall contain in addition to the requirements of section 27-407, Idaho Code, the following provisions:

(a) That there shall be designated a trustee under this act, which shall be any federally insured financial institution located within the state of Idaho, duly authorized to transact a trust business, or the board of directors of the cemetery authority. When the trust fund is in the care of such board of directors as a board of trustees, the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings.

(b) Where the trust is vested in such board of directors as a board of trustees, each of said trustees shall file with the administrator a surety bond in the amount of five thousand dollars (\$5,000), conditioned upon his full and faithful performance of his trust obligations.

(c) As compensation, the trustee, whether it be a financial institution acting in such capacity or the board of directors of a cemetery authority acting as the trustee, shall be entitled to compensation in an amount not exceeding twenty-five dollars (\$25.00) quarterly, or a sum equal to one-half of one percent (1/2%) per annum of the principal of the trust fund, whichever is the greater.

(d) In connection with its investment of the trust fund, the trustee shall be governed by the terms of the Uniform Prudent Man Investment Investor Act, title 68, chapter 5, title 68, Idaho Code, as presently enacted or as may be from time to time amended.

(e) The principal of the trust fund shall remain permanently intact and only the income therefrom shall be expended. The income shall be used exclusively for the care of those portions of the cemetery in which lots have been sold with the provision for perpetual or endowed care. It is the intent of this section that the income of said fund shall be used solely for the care of lots or other burial spaces sold to third persons with the provision for perpetual or endowed care, and the care and embellishment of such other portions of the cemetery as may be desirable to preserve the beauty and dignity of the lots sold.

(f) The initial endowment care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached the sum of one hundred thousand dollars (\$100,000), when it may be withdrawn at the rate of two thousand dollars (\$2,000) from the original fifty thousand dollars (\$50,000) for each additional six thousand dollars (\$6,000) added to the fund, this to continue until the entire original fifty thousand dollars (\$50,000) has been withdrawn by the cemetery authority.

SECTION 4. That Section 50-1013A, Idaho Code, be, and the same is hereby amended to read as follows:

50-1013A. INVESTMENT OF DEPOSITS OF DEFERRED COMPENSATION PLANS. A municipal corporation, in administering a deferred compensation plan, shall be governed by the uniform prudent man-investment investor act, sections chapter 5, title 68-501-through-68-506, Idaho Code.

SECTION 5. That Section 59-1312, Idaho Code, be, and the same is hereby amended to read as follows:

59-1312. SELECTION OF FUNDING AGENT(S) -- INVESTMENT OF ASSETS -- TAX EXEMPTION. (1) The board shall select the funding agent(s) and establish a medium for funding, which may be a self-administration pension trust fund or a group annuity contract, or combination thereof. The contract shall authorize the funding agent(s) to hold and, subject to the provisions of subsections (2) and (3) of this section, to invest moneys for the system and to provide the retirement benefits and death benefits for retired members granted by this chap-

ter.

(2) The board is authorized to select investment managers registered with the Securities and Exchange Commission to invest, reinvest and otherwise manage, subject to the restrictions outlined in subsection (3) of this section, such portions of the assets of the fund as are assigned by the board and are held by a funding agent(s) designated by the board.

(3) The funding agent(s) and investment managers, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing the moneys and properties of the system, shall be governed by the Uniform Prudent Man-investment Investor Act, sections chapter 5, title 68, 501--through-68-506, Idaho Code; provided, however, that the board is hereby authorized and empowered, in its sole discretion, to limit, control and designate the types, kinds and amounts of such investments. The funding agent(s) will not be required to segregate moneys applicable to individual employees or employers, but shall only be responsible for the aggregate of such moneys as are received by it.

(4) All contributions paid to the funding agent(s) shall be construed as being exempt from premium taxes payable pursuant to section 41-402, Idaho Code.

Approved February 19, 1997.

CHAPTER 15
(H.B. No. 24, As Amended)

AN ACT

RELATING TO PESTICIDES; AMENDING SECTION 22-3404, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO COLLECT FEES PRESCRIBED BY RULE FOR PROFESSIONAL APPLICATOR LICENSES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. 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, professional and private applicators. Separate licensing requirements and testing procedures may be utilized for each classification.

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

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

(d) an examination fee will be charged as prescribed by 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

(e) if at any time a licensed 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) Private Applicator -- no person shall act as a private applicator without first obtaining a 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 applicant must pay a license fee as prescribed by rule.

(4) If the director finds an applicant qualified for a 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, regulations and rules, the director shall issue 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.

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

(6) 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.

(7) Exemptions:

(a) The following persons are exempt from subsections (2), (3) and (4) of this section:

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

2. any person using hand-powered equipment to apply pesticides other than restricted-use pesticides 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 professional applicator; and

3. any industry, governmental, University of Idaho research personnel and extension research personnel who apply pesticides other than restricted-use pesticides to experimental plots or to demonstrate the use of pesticides; and

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

(b) Federal, state, and other governmental agencies are exempt from the licensing fees provision of subsections (2) and (3) 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 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 July 1, 1996.

Approved February 19, 1997.

CHAPTER 16
(H.B. No. 44)

AN ACT

RELATING TO AGRICULTURAL QUARANTINES; AMENDING SECTION 22-2001, IDAHO CODE, TO CLARIFY THAT THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE MAY ADOPT QUARANTINES AFTER AN INVESTIGATION OR A HEARING AND TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 22-2002, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 22-2003, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING SECTION 22-2004, IDAHO CODE, TO PROVIDE A CIVIL PENALTY FOR VIOLATION OF LAW; AMENDING SECTION 22-2005, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE; AMENDING CHAPTER 20, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-2006, IDAHO CODE, TO AUTHORIZE THE DIRECTOR TO PROMULGATE RULES; AND AMENDING SECTION 22-2006, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE PROPER NOMENCLATURE.

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

SECTION 1. That Section 22-2001, Idaho Code, be, and the same is hereby amended to read as follows:

22-2001. PROMULGATION OF QUARANTINES. The director of the department of agriculture, by and with the approval of the governor, may, after investigations and or hearings, establish, maintain and enforce such quarantines as he shall deem necessary by virtue of the facts established or determined by such investigations or hearings to protect any and all articles of agriculture or horticulture against infestation or infection by any ~~insect-or-animal~~ pest or ~~plant-disease~~

~~or-noxious-weed~~, new to or not heretofore widely prevalent or distributed within and throughout the state of Idaho, by establishing such quarantine at the boundaries of the state or elsewhere within the state, and said director may make and enforce any and all such rules ~~and-regulations~~ as shall be deemed necessary to prevent the introduction into or the spread within the state of Idaho of any ~~insect-or-animal~~ pest ~~or-plant-disease-or-noxious-weed~~, and to prevent any article which may be liable to carry any ~~insect-or-animal~~ pest ~~or-plant-disease-or-noxious-weed~~, which may be or is liable to be injurious to agriculture or horticulture, or to any agricultural or horticultural pursuit within the state of Idaho, or any part thereof, from passing over any quarantine line established and proclaimed pursuant to this act chapter, and all such articles shall, during the maintenance of such quarantine, be inspected by the director, ~~or-by-his-authorized-agent-or-any-inspector-duly-authorized-by-him~~, and the director, ~~or-his-authorized-agent-or-inspector~~, shall not permit any such article to pass over such quarantine line during the maintenance of such quarantine; ~~rules or-regulations~~, except upon written release signed by said director, or his authorized agent or inspector. Before any quarantine amendment or regulation rule appertaining thereto shall become effective, the same shall be approved by the governor and shall be signed by the governor and filed in the office of the director.

SECTION 2. That Section 22-2002, Idaho Code, be, and the same is hereby amended to read as follows:

22-2002. REVOCATION OF QUARANTINES. The director, by and with the approval of the governor, may, after investigation or hearing, revoke any such quarantine as may have been established pursuant to this act chapter. Before any such revocation of a quarantine shall become effective, the same shall be approved by the governor and shall be signed in duplicate by him, and one (1) copy thereof shall be filed in the office of the secretary of state and the other in the office of the director.

SECTION 3. That Section 22-2003, Idaho Code, be, and the same is hereby amended to read as follows:

22-2003. DEFINITIONS. As used in this chapter:

- (1) "Department" means the Idaho department of agriculture.
- (2) "Director" means the director of the department or his designated agent.
- (3) "Insect-or-animal-pPest" shall mean any form of--animal--life which--is--or--may--be--detrimental--or--injurious--to--plant--life--or--plant products,--including--the--egg,--larvae,--pupa,--or--any--other--immature--stage thereof means any biotic agent (any living agent capable of reproducing itself) or any of the following that is known to cause damage or harm to agriculture or the environment:

(a) Any infectious, transmissible or contagious disease of any plant; or any disorder of any plant which manifests symptoms or behavior which, after investigation or hearing, is found and determined by a duly constituted federal, state or local pest prevention agency, to be characteristic of an infectious,

transmissible or contagious disease.

(b) Any form of animal life.

(c) Any form of plant life.

"Plant-disease" shall mean any fungus, bacteria, slime mold, or other parasitic organism injurious to plant life or plant products, including the spore or any other propagative stage thereof.

"Noxious-weed" shall mean any injurious or intrusive plant, including the seed or any other reproductive or propagative part thereof.

(4) "Person" means any individual, partnership, corporation, company, firm, society, association, organization, government agency or any other entity.

SECTION 4. That Section 22-2004, Idaho Code, be, and the same is hereby amended to read as follows:

22-2004. PENALTIES FOR VIOLATION. (1) Any person, firm, corporation or other organization who violates any provision of this act chapter, or of the rules and regulations made thereunder for carrying out the provisions of said act this chapter, or who fails or refuses to comply with any requirements herein specified, or who wilfully interferes with the department, its agents or employees, in the execution, or on account of the execution of its or their duties under this act chapter, shall be deemed guilty of a misdemeanor.

(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 one thousand dollars (\$1,000) for each offense and shall be liable for reasonable attorney's fees.

(a) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(c) 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.

(d) Any person against whom the department has assessed a civil penalty under the provisions of this section 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.

(e) Moneys collected for violation of a rule shall be remitted to the agricultural department inspection fund.

(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 Section 22-2005, Idaho Code, be, and the same is hereby amended to read as follows:

22-2005. PROSECUTION. If any person, ~~firm, corporation or other organization~~ shall violate any of the provisions of this act chapter or rules promulgated under this chapter, upon complaint thereof by the department ~~of agriculture~~ to the attorney general, setting forth the violations complained of, it shall be the duty of the attorney general to proceed in the name of the state of Idaho against such person, ~~firm, corporation or other organization~~.

SECTION 6. That Chapter 20, 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 22-2006, Idaho Code, and to read as follows:

22-2006. RULEMAKING AUTHORITY. The director is hereby authorized to promulgate rules that may be necessary for the efficient enforcement of quarantines authorized by the provisions of this chapter including, but not limited to: setting of quarantine boundaries; requirements for importing and exporting plant materials; planting; testing; sampling; inspection; compliance verification procedures; and setting of a schedule of fees for services performed by the department in the administration of this chapter. Revenues from these fees shall be deposited to the agricultural department inspection fund created pursuant to section 22-105, Idaho Code.

SECTION 7. That Section 22-2006, Idaho Code, be, and the same is hereby amended to read as follows:

22-2006~~8~~. SEPARABILITY. If any section, subsection, sentence, clause or phrase of this act chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of said act chapter.

Approved February 19, 1997.

CHAPTER 17
(H.B. No. 46)

AN ACT
RELATING TO THE PURE SEED LAW; AMENDING SECTION 22-414, IDAHO CODE, TO DEFINE "BLEND," "MIXTURE," AND "PRODUCER"; AND AMENDING SECTION 22-434, IDAHO CODE, TO PROVIDE THAT IN-STATE PRODUCERS SELLING THEIR OWN CROPS ARE EXEMPT FROM LICENSURE AS A SEED DEALER AND TO MAKE A TECHNICAL CORRECTION.

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) "Blend" means seed consisting of more than one (1) variety of a kind, each in excess of five percent (5%) by weight of the whole.

(4) "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.

(45) "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.

(56) "Director" means the director of the department of agriculture of the state of Idaho.

(67) "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.

(78) "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.

(89) "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.

(910) "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.

(101) "Inert matter" means the collective parts of incomplete plants, seeds, seedlike structures and other nonseed particles present in a lot of seed.

(112) "In-state seed dealer" means any seed dealer with an established plant, warehouse or place of business in the state of Idaho.

(123) "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.

(134) "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.

(145) "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.

(16) "Mixture," "mix," or "mixed" means seed consisting of more than one (1) kind, each in excess of five percent (5%) by weight of the whole.

(157) "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 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.

(168) "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.

(179) "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.

(1820) "Person" shall include any individual, partnership, corporation, company, society or association.

(1921) "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.

(22) "Producer" means any person who is the owner, tenant or operator of land who has an interest in and receives all or part of the proceeds from the sale of seeds produced on that land.

(203) "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.

(214) "Seed dealer" means any person that lets it be known by any means or manner that he has seed offered for sale.

(225) "Stop sale" means an administrative order restraining the sale, use, disposition, and movement of a designated seed lot.

(236) "Tree seed and shrub seed" includes seeds of woody plants commonly known and sold as tree seed and shrub seeds.

(247) "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.

(258) "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.

(269) "Weed seeds" means the seeds of all plants recognized as weeds by the director.

SECTION 2. That Section 22-434, Idaho Code, be, and the same is hereby amended to read as follows:

22-434. SEED DEALERS LICENSE. An in-state seed dealer or an out-of-state seed dealer who sells, distributes, processes or mixes for the use of others any seed, shall obtain a license from the department authorizing him to sell, distribute, process or mix such seed. A dealer shall not be entitled to a license unless he has an established plant, warehouse or place of business.

A separate license shall be required for each place of business from which seed regulated under this chapter is sold. Application for licenses shall be on a form provided by the director. No license shall be issued until the applicant shall have paid the fee provided in the following paragraphs (1), (2) and (3).

(1) Class "A" license shall consist of those in-state dealers who sell seed in packages of eight (8) ounces up to and including five (5) pounds, who shall pay a license fee of fifteen dollars (\$15.00).

(2) Class "B" license shall consist of those in-state dealers who sell seed in packages or bulk of more than five (5) pounds who shall pay a license fee of forty dollars (\$40.00).

(3) Class "C" license shall consist of out-of-state dealers who shall pay a license fee of eighty dollars (\$80.00).

The license fees established in this section are minimums and any future increases shall be as promulgated by the director pursuant to chapter 52, title 67, Idaho Code. Applications shall be renewed no later than July 1 of each year.

Fees so collected shall be paid into the state treasury and credited to the state agricultural inspection account.

In-state pProducers selling their own crop shall be exempt from this section.

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

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

(2) The licensee was guilty of violating any of the provisions of this chapter.

Approved February 19, 1997.

CHAPTER 18
(H.B. No. 69)

AN ACT
RELATING TO PRESCRIPTION DRUGS; AMENDING SECTIONS 37-2724 AND 37-2725,
IDAHO CODE, TO REDUCE THE NUMBER OF COPIES OF PRESCRIPTIONS FOR

SCHEDULE II SUBSTANCES; AND AMENDING SECTION 37-2730, IDAHO CODE, TO REDUCE THE NUMBER OF COPIES OF PRESCRIPTIONS FOR SCHEDULE II SUBSTANCES, TO REQUIRE ELECTRONIC FILING OF PRESCRIPTIONS WITH THE BOARD OF PHARMACY AND TO AUTHORIZE THE BOARD TO REQUIRE OTHER FILINGS BY BOARD RULE.

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

SECTION 1. That Section 37-2724, Idaho Code, be, and the same is hereby amended to read as follows:

37-2724. USE IN HOSPITAL -- FORM OF ORDER -- RECORD -- NURSING HOME, EXTENDED CARE FACILITY. An order for schedule II substance for use by a patient in a county or licensed hospital, or in a licensed nursing home or extended care facility employing a unit dose distribution system, shall be exempt from all requirements of this act with reference to the writing of prescriptions on official ~~triplicate~~ duplicate blanks, but shall be in writing on the patient's record, signed by the prescriber, dated, and shall state the name, strength and dosage schedule of the drug ordered. A direct copy of this order will be furnished within seventy-two (72) hours to the pharmacist supplying the medication. The record of said orders and the administration record shall be maintained as a record in the hospital, nursing home or extended care facility for a minimum of three (3) years and shall be available for inspection by all inspectors of the board.

SECTION 2. That Section 37-2725, Idaho Code, be, and the same is hereby amended to read as follows:

37-2725. PRESCRIPTION BLANKS -- POSSESSION -- COST OF BLANKS -- REPORT WHEN LOST OR STOLEN. Prescription blanks shall be issued by the board in increments of twenty-five (25) serially numbered forms, each in ~~triplicate~~ duplicate, and shall be furnished to any person authorized to write a prescription, and such prescription blanks shall not be transferable. Any person possessing any such blank otherwise than as herein provided is guilty of a misdemeanor. The board shall charge the licensee a reasonable amount for each series of ~~triplicate~~ duplicate prescription forms issued, and no less than twenty-five (25) and no more than one hundred (100) forms may be issued at one (1) time to any licensee.

Prescription blanks or drugs lost or stolen must be immediately reported to the board.

SECTION 3. That Section 37-2730, Idaho Code, be, and the same is hereby amended to read as follows:

37-2730. FILLING PRESCRIPTIONS -- DISPOSITION OF ORIGINAL AND COPY. (1) The original and one (1) copy of the prescription shall be delivered to the person filling the prescription. The duplicate shall be properly indorsed by the pharmacist filling the prescription at the time such prescription is filled retained by the prescriber as required in section 37-2728, Idaho Code. The original shall be retained by the person filling the prescription and at the end of each

~~month in which the prescription is filed; the duplicate shall be returned to the board~~ such prescriptions shall be filed with the board electronically or by other method as required by board rule.

(2) The board may require the filing of other prescriptions by board rule.

Approved February 19, 1997.

CHAPTER 19
(H.B. No. 90)

AN ACT

RELATING TO TAXATION; AMENDING SECTION 63-3004, IDAHO CODE, TO UPDATE REFERENCES 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, 1996~~7~~.

(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 its passage and approval, and retroactively to January 1, 1997.

Approved February 19, 1997.

CHAPTER 20
(H.B. No. 89)

AN ACT

RELATING TO TAXATION; AMENDING CHAPTER 1, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-113, IDAHO CODE, TO AUTHORIZE THE STATE TAX COMMISSION TO REQUIRE ROUNDING TO THE NEAREST WHOLE DOLLAR ANY AMOUNTS SHOWN OR REQUIRED TO BE SHOWN ON TAX RETURNS AND OTHER DOCUMENTS SUBMITTED TO THE COMMISSION AND TO AUTHORIZE THE COMMISSION TO MAINTAIN ITS RECORDS IN WHOLE DOLLAR AMOUNTS.

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

SECTION 1. 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 63-113, Idaho Code, and to read as follows:

63-113. REPORTING WHOLE DOLLAR AMOUNTS. The state tax commission may require rounding to the nearest whole dollar any amount shown or required to be shown on any return, form, statement or other document submitted to the state tax commission. Any record or other document prepared or maintained by the state tax commission may express any dollar amount rounded to the nearest whole dollar.

Approved February 24, 1997.

CHAPTER 21
(H.B. No. 102)

AN ACT

RELATING TO DISEASE IN LIVESTOCK AND OTHER ANIMALS; AMENDING SECTION 25-212, IDAHO CODE, TO CLARIFY CONDITIONS WHEN A DISEASE IN LIVESTOCK OR OTHER ANIMALS MAY CONSTITUTE AN EMERGENCY, TO CLARIFY WHEN ACTION MUST BE TAKEN IN RELATING TO A DISEASE AND TO CLARIFY WHEN INDEMNIFICATION SHALL BE MADE.

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

SECTION 1. That Section 25-212, Idaho Code, be, and the same is hereby amended to read as follows:

25-212. REPORTABLE EMERGENCY DISEASES WHICH CONSTITUTE AN EMERGENCY -- RULES -- DUTY OF VETERINARIANS AND OWNERS OF LIVESTOCK AND OTHER ANIMALS -- INDEMNITY. The director is authorized to declare any disease, parasite or agent which has been identified by the United States department of agriculture/animal and plant health inspection service/veterinary services (USDA/APHIS/VS) as a "communicable foreign disease not known to exist in the United States" or which is not naturally occurring in or has been eradicated from Idaho and which, if introduced into Idaho, would have a devastating impact on the livestock or other animals of the state, a disease which constitutes an emergency. The director is also authorized to promulgate rules which list diseases, parasites and other agents which, if introduced into the state, would result in devastation of the livestock or other animals within the state and which diseases therefore constitute an emergency. It is hereby made the duty of all persons practicing veterinary medicine in this state to report to the division immediately, by telephone or telegraph facsimile, any and all cases of exposure to or infection of foot and mouth disease or such other disease or diseases as may be declared to constitute an emergency by state or national authorities that they may find existing among animals of the state. Every owner of livestock or other animals and every breeder or dealer in livestock or other animals and everyone bringing livestock or other

animals into this state ~~shall on~~ upon observing the appearance of, or symptoms of any disease or diseases, or who has knowledge of exposure of the livestock or other animals to diseases as herein set forth among the livestock or other animals owned by him or under his care, shall give immediate notice by telephone or telegraph facsimile to the division of the facts discovered by him as aforesaid, and any owner of livestock or other animals who shall fail to make report as herein provided shall forfeit all claims for indemnity for animals condemned and slaughtered or destroyed on account of any disease or diseases as herein provided for in accordance with the provisions made and promulgated by the division. In the event the director determines that animals in the state have been exposed to or are infected with a disease which constitutes an emergency or in the event of an outbreak of any disease or diseases as herein provided among any of the animals of this state the state board of examiners is authorized and empowered, in case of extreme emergency and upon the recommendation of the division, to reimburse the owner by cash payment or to issue or cause to be issued certificates of indebtedness having interest at such rate as shall be set by the said state board of examiners, for the purpose of reimbursing the owner of any affected or exposed animal or animals which have been condemned, appraised and slaughtered or destroyed by direction of the division, and for property destroyed and for labor employed in digging trenches and for cleaning and disinfecting premises where such infected or exposed animal or animals have been kept; provided, that ~~in no case shall the state pay over fifty percent (50%) of the appraised value of such animals or property, or for such labor and disinfecting material, and on condition that the United States department of agriculture pay at least fifty percent (50%) of such expense~~ the state shall only pay the difference between appraised price less federal indemnity and salvage value for any animals condemned and slaughtered or destroyed under this section and the actual costs for burial or disposal of animal carcasses and for cleaning and disinfection of premises where infected or exposed animals have been kept. In the event federal indemnity is unavailable, the state shall only pay the difference between appraised price and salvage value. Appraisals shall be performed by a team comprised of an animal health representative, the owner and a person with experience in marketing the species of the animal condemned. The director may grant a hearing to any person, under such rules as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when the appraisal price is in dispute. An appeal may be taken from the decision of the director under the provisions of chapter 52, title 67, Idaho Code.

Approved February 24, 1997.

CHAPTER 22
(S.B. No. 1035)

AN ACT

RELATING TO PHARMACISTS; AMENDING SECTION 54-1709, IDAHO CODE, TO PRO-

VIDE PROPER NOMENCLATURE IN REFERENCE TO THE STATE PHARMACEUTICAL ASSOCIATION.

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

SECTION 1. That Section 54-1709, Idaho Code, be, and the same is hereby amended to read as follows:

54-1709. APPOINTMENT OF BOARD MEMBERS -- NOTICE OF VACANCY -- NOMINEES. Prior to the expiration of the regular term of a member of the board or upon the occurrence of declaration of a vacancy in the membership of the board, the governor shall notify in writing the Idaho State ~~Pharmaceutical~~ Pharmacy Association, Inc. thereof, and the association shall, within thirty (30) days thereafter, nominate three (3) qualified persons to fill such vacancy and shall forthwith forward the nominations to the governor, who may thereupon appoint from such nominees, the person to be a member of the board to fill such vacancy. If the association shall fail to furnish to the governor the names of nominees to fill a vacancy within the time herein provided, the governor may appoint any person otherwise qualified to fill said vacancy.

Approved February 24, 1997.

CHAPTER 23
(H.B. No. 91)

AN ACT

RELATING TO THE PERMANENT BUILDING FUND TAX; AMENDING SECTION 57-1110, IDAHO CODE, TO REQUIRE THE STATE TAX COMMISSION TO DEPOSIT TEN DOLLARS INTO THE PERMANENT BUILDING FUND FOR EACH INCOME TAX RETURN PROCESSED ON WHICH THAT TAX IS REPORTABLE; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 57-1110, Idaho Code, be, and the same is hereby amended to read as follows:

57-1110. ADDITIONAL TAX ON FILING INCOME TAX CREDITED TO PERMANENT BUILDING FUND. The state tax commission of the state of Idaho is hereby directed to deposit the proceeds of ten dollars (\$10.00) for each tax return it processes in regard to which the taxpayer is required to pay the tax imposed by ~~chapter-303, Idaho Session Laws of 1959 sections 63-3082 through 63-3087, Idaho Code,~~ directly to the credit of the permanent building fund.

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, 1997.

Approved March 3, 1997.

CHAPTER 24
(H.B. No. 95)

AN ACT

RELATING TO CIRCUIT BREAKER PROPERTY TAX RELIEF; AMENDING SECTION 63-701, IDAHO CODE, TO FURTHER DEFINE "NONHOUSEHOLD MEMBER" TO EXCLUDE INCOME OF A DISABLED VETERAN AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

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), ~~and~~ 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) or (e) 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 inten-

tion 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:

- (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.

Approved March 3, 1997.

CHAPTER 25
(H.B. No. 160)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LAW ENFORCEMENT IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 290, LAWS OF 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 290, Laws of 1996, there is hereby appropriated to the Department of Law Enforcement the following amount to be expended for the designated program according to the designated standard classifications from the listed fund for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
POLICE SERVICES:			
FROM:			
Miscellaneous Revenue Fund	\$50,000	\$283,800	\$333,800

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 3, 1997.

CHAPTER 26
(S.B. No. 1036)

AN ACT

RELATING TO PUBLIC DRINKING WATER SYSTEM LOANS; AMENDING SECTION 39-105, IDAHO CODE, TO PROVIDE ADDITIONAL DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 76, TITLE 39, IDAHO CODE, TO PROVIDE FOR AUTHORIZATIONS OF LOANS, TO CREATE THE DRINKING WATER LOAN ACCOUNT, TO PROVIDE FOR DISBURSEMENTS BY THE DIRECTOR OF LOANS TO PUBLIC WATER SYSTEMS, TO PROVIDE LIMITATIONS ON LOANS, TO PROVIDE FOR RULES, TO PROVIDE APPROVAL OF THE ATTORNEY GENERAL AND TO PROVIDE FOR AUDIT OF DISBURSEMENTS, TO PROVIDE FOR INVESTMENT OF FUNDS IN THE DRINKING WATER LOAN ACCOUNT, TO PROVIDE FOR APPROPRIATIONS FOR THE DRINKING WATER LOAN ACCOUNT AND TO PROVIDE THE PURPOSE OF THE CHAPTER, AND TO PROVIDE LIMITS ON THE AMOUNTS AND LOANS FROM THE DRINKING WATER LOAN ACCOUNT.

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

SECTION 1. That Section 39-105, Idaho Code, be, and the same is hereby amended to read as follows:

39-105. POWERS AND DUTIES OF THE DIRECTOR. The director shall have the following powers and duties:

1. All of the powers and duties of the department of public health, the department of health, the board of health, and the air pollution control commission, are hereby transferred to the director of the department of health and welfare, provided, however, that rule-making and hearing functions relating to environmental protection, public health and licensure and certification standards shall be vested in the board of health and welfare. The director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law, including the authority to adopt, promulgate, and enforce rules and regulations in those circumstances when the authority to adopt, promulgate, and enforce such rules and regulations is not vested in the board of health and welfare, and shall be the successor in law to all contractual obligations entered into by his predecessor in law. All rulemaking proceedings and hearings of the director shall be governed by the provisions of chapter 52, title 67, Idaho Code.

2. The director shall, pursuant and subject to the provisions of the Idaho Code, and the provisions of this act, formulate and recommend to the board, rules, regulations, codes and standards, as may be necessary to deal with problems related to personal health, water pol-

lution, air pollution, visual pollution, noise abatement, solid waste disposal, and licensure and certification requirements pertinent thereto, which shall, upon adoption by the board, have the force of law relating to any purpose which may be necessary and feasible for enforcing the provisions of this act, including, but not limited to the prevention, control or abatement of environmental pollution or degradation and the maintenance and protection of personal health. Any such regulation or standard may be of general application throughout the state or may be limited as to times, places, circumstances or conditions in order to make due allowance for variations therein.

3. The director, under the rules, regulations, codes or standards adopted by the board, shall have the general supervision of the promotion and protection of the life, health, mental health and environment of the people of this state. The powers and duties of the director shall include but not be limited to the following:

a. The issuance of licenses and permits as prescribed by law and by the rules and regulations of the board. For each air quality operating permit issued under title V of the federal clean air act and its implementing regulations, the director shall, consistent with the federal clean air act and its implementing regulations, expressly include a provision stating that compliance with the conditions of the permit shall be deemed compliance with the applicable requirements of the federal clean air act and the title V implementing regulations. The director may develop and issue general permits covering numerous similar sources, as authorized by 40 CFR 70.6(d) as may be amended, and as appropriate.

b. The supervision and administration of laboratories and the supervision and administration of standards of tests for environmental pollution, chemical analyses and communicable diseases. The director may require that laboratories operated by any city, county, institution, person, firm or corporation for health or environmental purposes conform to standards set by the board.

c. The supervision and administration of a mental health program, which shall include services for the evaluation, screening, custody and treatment of the mentally ill and those persons suffering from a mental defect, or mental defects.

d. The enforcement of minimum standards of health, safety and sanitation for all public swimming pools within the state.

e. The enforcement of standards, rules and regulations, relating to public water supplies and to administer the drinking water loan account pursuant to chapter 76, title 39, Idaho Code, including making loans to eligible public drinking water systems as defined in the federal safe drinking water act as amended, and to comply with all requirements of the act, 42 U.S.C. 300f, et seq. and regulations promulgated pursuant to the act. This includes, but is not limited to, the adoption and implementation of an operator certification program; the development of and implementation of a capacity development strategy to ensure public drinking water systems have the technical, managerial and financial capability to comply with the national primary drinking water regulations; and the enhancement of protection of source waters for public drinking water systems.

f. The supervision and administration of the various schools,

hospitals and institutions that were the responsibility of the board of health at the time this act went into effect.

g. The supervision and administration of services dealing with the problems of alcoholism, including but not limited to the care and rehabilitation of persons suffering from alcoholism.

h. The establishment of liaison with other governmental departments, agencies and boards in order to effectively assist other governmental entities with the planning for the control of or abatement of environmental and health problems. All of the rules, regulations and standards adopted by the board shall apply to state institutions.

i. The supervision and administration of an emergency medical service program, including but not limited to assisting other governmental agencies and local governmental units, in providing first aid emergency medical services and for transportation of the sick and injured.

j. The supervision and administration of a system to safeguard air quality and for limiting and controlling the emission of air contaminants.

k. The supervision and administration of a system to safeguard the quality of the waters of this state, including but not limited to the enforcement of standards relating to the discharge of effluent into the waters of this state and the storage, handling and transportation of solids, liquids, and gases which may cause or contribute to water pollution.

l. The supervision and administration of administrative units whose responsibility shall be to assist and encourage counties, cities, other governmental units, and industries in the control of and/or abatement of environmental and health problems.

m. The administration of solid waste disposal site and design review in accordance with the provisions of chapter 74, title 39, Idaho Code, and chapter 4, title 39, Idaho Code, and in particular as follows:

i. The issuance of a solid waste disposal site certificate in the manner provided in chapter 74, title 39, Idaho Code.

ii. Provide review and approval regarding the design of solid waste disposal facilities and ground water monitoring systems and approval of all applications for flexible standards as provided in 40 CFR 258, in accordance with the provisions of chapter 74, title 39, Idaho Code.

iii. Cooperating and coordinating with operational monitoring of solid waste disposal sites by district health departments pursuant to authority established in chapters 4 and 74, title 39, Idaho Code.

iv. The authority granted to the director pursuant to provisions of this subsection shall be effective upon enactment of chapter 74, title 39, Idaho Code, by the legislature.

v. The authority to develop and propose regulations as necessary to supplement details of compliance with the solid waste facilities act and applicable federal regulations, provided that such regulations shall not conflict with the provisions of this act nor shall such regulations be more strict than the requirements established in federal law or in the

solid waste facilities act.

n. The enforcement of all laws, rules, regulations, codes and standards relating to environmental protection and health.

o. The formulation and adoption of a comprehensive state nutrient management plan for the surface waters of the state of Idaho in consultation with the appropriate state or federal agencies, local units of government, and with public involvement as provided for under the administrative procedure act. The director shall recommend by March 1, 1990, to the board for adoption, rules and regulations setting forth procedures for development of the plan, including mechanisms to keep the public informed and encourage public participation in plan development.

The plan shall be developed on a hydrologic basin unit basis with a lake system emphasis. The panhandle hydrologic basin plan shall be completed no later than July 1, 1995. The remaining basin plans shall be completed no later than January 1, 1995. Each plan shall identify nutrient sources; the dynamics of nutrient removal, use, and dispersal; and preventative or remedial actions where feasible and necessary to protect the surface waters of the state. The director shall formulate and recommend to the board for adoption rules and regulations as necessary to implement the plan. The plan shall be used by the department and other appropriate agencies including soil conservation districts, public health districts and local units of government in developing programs for nutrient management. State and local units of government shall exercise their police powers in compliance with the comprehensive state nutrient management plan of this act. Local nutrient management programs adopted by any local unit of government prior to the completion of the state comprehensive nutrient management plan or a hydrologic basin plan shall be consistent with the criteria for inclusion in the comprehensive state nutrient management plan as enumerated in this subsection, as evidenced by findings of fact by the local units of government and confirmed by the division of environmental quality and the local health district board. The director shall recommend by March 1, 1990, to the board for adoption, rules and regulations for procedures to determine consistency.

p. The formulation of a water quality management plan for Priest lake in conjunction with a planning team from the Priest lake area whose membership shall be appointed by the board and consist of a fair representation of the various land managers, and user and interest groups of the lake and its Idaho watershed. The stated goal of the plan shall be to maintain the existing water quality of Priest lake while continuing existing nonpoint source activities in the watershed and providing for project specific best management practices when necessary. The plan shall include comprehensive characterization of lake water quality through completion of a baseline monitoring program to be conducted by the department and shall consider existing economics and nonpoint source activity dependent industries of the Priest lake area. The planning team shall conduct public hearings and encourage public participation in plan development including opportunity for public review and input. Technical assistance to the planning team, with state

nonpoint source management programs in forest practices, road construction and maintenance, agriculture and mining shall be provided by the department. Technical assistance to the planning team on area planning, zoning and sanitary regulations shall be provided by the clean lakes council. The plan shall be submitted to the board for its approval at the end of a three (3) year plan development period. Upon review and acceptance by the board, the plan shall be submitted to the legislature for amendment, adoption or rejection. If adopted by the legislature, the plan shall be enacted by passage of a statute at the regular legislative session when it receives the plan and shall have the force and effect of law. Existing forest practices, agricultural and mining nonpoint source management programs are considered to be adequate to protect water quality during the plan development period.

4. The director, when so designated by the governor, shall have the power to apply for, receive on behalf of the state, and utilize any federal aid, grants, gifts, gratuities, or moneys made available through the federal government, including but not limited to the federal water pollution control act, for use in or by the state of Idaho in relation to health and environmental protection.

5. The director shall have the power to enter into and make contracts and agreements with any public agencies or municipal corporation for facilities, land, and equipment when such use will have a beneficial, recreational, or therapeutic effect or be in the best interest in carrying out the duties imposed upon the department.

The director shall also have the power to enter into contracts for the expenditure of state matching funds for local purposes. This subsection will constitute the authority for public agencies or municipal corporations to enter into such contracts and expend money for the purposes delineated in such contracts.

6. The director is authorized to adopt an official seal to be used on appropriate occasions, in connection with the functions of the department or the board, and such seal shall be judicially noticed. Copies of any books, records, papers and other documents in the department shall be admitted in evidence equally with the originals thereof when authenticated under such seal.

SECTION 2. 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 76, Title 39, Idaho Code, and to read as follows:

CHAPTER 76 PUBLIC DRINKING WATER SYSTEM LOANS

39-7601. AUTHORIZATION OF LOANS. The director is hereby authorized to make loans at or below market interest rates, as funds are available, to any eligible public water system to assist the public water system or which will facilitate their compliance with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of this chapter.

39-7602. DISBURSEMENTS BY THE DIRECTOR OF LOANS TO PUBLIC WATER

SYSTEMS -- LIMITATIONS ON LOANS -- RULES -- APPROVAL OF THE ATTORNEY GENERAL -- AUDIT OF DISBURSEMENTS. (1) There is hereby created the drinking water loan account. The division of environmental quality shall use moneys from this account only for providing loans, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in the drinking water loan account, or for other financial assistance authorized in this chapter or by federal law to community water systems and nonprofit noncommunity water systems. Financial assistance under this section may be used by a public water system only for project expenditures, not including monitoring, operation and maintenance expenditures, which will facilitate compliance with national primary drinking water standards applicable to the system or which will significantly further the health protection objectives of this chapter. The funds may also be used for public water systems using constructed conveyances and not piped water systems if they meet the requirements of the safe drinking water act amendments of 1996 and the director determines that the water provided for residential or similar uses for cooking, drinking and bathing is centrally treated or treated at the point of entry to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations. The funds shall not be used for the acquisition of real property or an interest in real property unless the acquisition is integral to the project authorized by this section and the purchase is from a willing seller.

(2) (a) Except as provided in subsection (2)(b) of this section, no loan assistance shall be provided to a public water system that:

(i) Does not have the technical, managerial and financial capability to ensure compliance with the requirements of this chapter; or

(ii) Is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(b) A public water system referenced in subsection (2)(a) of this section may receive assistance under this section if:

(i) The assistance will ensure compliance, and

(ii) If subsection (2)(a)(i) of this section applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply or other procedures, and then only if the director determines that the measures are necessary to ensure that the system has the technical, managerial and financial capability to comply with the requirements of this chapter and the safe drinking water act amendments of 1996.

(3) Except as otherwise prohibited by state law, the amounts deposited into the drinking water loan account under this chapter may be used only for the following:

(a) To make loans on the conditions that:

(i) The interest rate for each loan is less than or equal to the market interest rate,

(ii) Principal and interest payments on each loan will commence not later than one (1) year after completion of the

project for which the loan was made and each loan will be fully amortized not later than twenty (20) years after completion of the project, except that in the case of a disadvantaged community, an extended term for a loan may be allowed if it terminates not later than thirty (30) years after the date the project is completed, and does not exceed the design life of the project,

(iii) The recipient of each loan will establish a dedicated source of revenue, or, in the case of a privately owned system, demonstrate that there is adequate security, for the repayment of the loan, and

(iv) The drinking water loan account will be credited with all payment of principal and interest on each loan;

(b) To buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the state at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(c) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of the bonds will be deposited into the drinking water loan account; and

(d) To earn interest on the amounts deposited into the drinking water loan account.

(4) For every agreement between the state and the federal government by which funds are made available, the state shall deposit in the drinking water loan account an amount equal to at least twenty percent (20%) of the total amount of the grant to be made to the state on or before the dates on which grant payments are made to the state.

(5) The director may promulgate rules necessary for the making and enforcing of loan contracts hereunder and for establishing procedures to be followed in applying for state loans or loan subsidies or training assistance herein authorized as shall be necessary for the effective administration of the loan program.

(6) All contracts entered into pursuant to this chapter shall be subject to approval by the attorney general as to form. All disbursements by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.

39-7603. INVESTMENT OF FUNDS IN DRINKING WATER LOAN ACCOUNT. Surplus moneys in the drinking water loan account established by section 39-7602, Idaho Code, shall be invested by the state treasurer in the manner for idle state moneys in the state treasury as provided for in section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the account. The account shall have paid into it: federal funds which are received by the state to provide for drinking water loans to public water systems together with the required state matching funds; all principal and interest repayments of loans made pursuant to this chapter; all donations and grants from any source which may be used for the provisions of this chapter; and any moneys which may hereafter be provided by law.

39-7604. APPROPRIATIONS FOR THE DRINKING WATER LOAN ACCOUNT -- PURPOSE OF CHAPTER. Moneys in the drinking water loan account are hereby perpetually appropriated to provide loans and other forms of financial assistance authorized under title XVI of the public health service act known as the safe drinking water act and the safe drinking water act amendments of 1996, 42 U.S.C. 300f et seq., to any eligible public water system in order to enable the system to comply with the above referenced act and relevant regulations.

39-7605. LIMITS ON THE AMOUNTS AND LOANS. The director may make loans to eligible public water systems pursuant to the requirements of this chapter and federal laws and regulations provided, that the projected disbursements for such loans would not cause the projected balance in the loan fund to fall below zero at any time. All loan disbursements shall be subject to the availability of moneys in the account.

Approved March 11, 1997.

CHAPTER 27
(S.B. No. 1002)

AN ACT

RELATING TO THE STATE BOARD OF PODIATRY; AMENDING SECTION 54-604, IDAHO CODE, TO DEFINE A QUORUM OF THE BOARD AND TO PROVIDE WHO MAY CONDUCT EXAMINATIONS OF APPLICANTS; AMENDING SECTION 54-605, IDAHO CODE, TO AUTHORIZE THE BOARD TO ESTABLISH EXAMINATION REQUIREMENTS, DATES, TIMES AND LOCATIONS BY RULE AND TO PROMULGATE RULES PROVIDING FOR A PODIATRIC RESIDENCY AS A CONDITION OF LICENSURE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-606, IDAHO CODE, TO REQUIRE AN ACCREDITED RESIDENCY AS DEFINED BY BOARD RULE AS A CONDITION OF LICENSURE AND TO PROVIDE EXAMINATION REQUIREMENTS; AMENDING SECTION 54-607, IDAHO CODE, TO DELETE REFERENCE TO PODIATRISTS' ASSISTANTS AND TO CLARIFY THE APPLICATION PROCESS; AMENDING SECTION 54-608, IDAHO CODE, TO PROVIDE THE GROUNDS FOR SUSPENSION, DENIAL, REFUSAL TO RENEW OR REVOCATION OF LICENSES; AMENDING SECTION 54-609, IDAHO CODE, TO EXPAND THE DEFINITION OF UNPROFESSIONAL CONDUCT; AND AMENDING SECTION 54-613, IDAHO CODE, TO CLARIFY THE PROCEDURES FOR OBTAINING A LICENSE WITHOUT WRITTEN EXAMINATION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-604, Idaho Code, be, and the same is hereby amended to read as follows:

54-604. ESTABLISHMENT OF STATE BOARD OF PODIATRY. There is hereby established in the department of self-governing agencies a state board of podiatry to be composed of five (5) members to be appointed by the governor in the manner hereinafter set forth. Four (4) of said members shall be podiatrists, duly licensed under the laws of the state of

Idaho, and who shall have been continuously engaged in the practice of podiatry for a period of not less than five (5) years prior to his appointment. The fifth member of the board shall be a layman, a resident of the state of Idaho for a period of not less than five (5) years prior to his appointment. With reference to the first board, the four (4) podiatrists shall be appointed for terms of one (1), two (2), three (3) and four (4) years, respectively. The lay board member shall be appointed for a term of three (3) years. Thereafter, all appointments to the board shall be made for terms of four (4) years. Vacancies upon the board, occurring for any reason, shall be filled by the governor. The governor in making appointments shall give consideration to but shall not be bound by the recommendations received from the Idaho Podiatry Association.

Within thirty (30) days from the appointment of the board by the governor, the board shall organize itself, select a chairman, a vice chairman and secretary. The chairman and the secretary shall be podiatrists. The board shall meet annually for the purpose of conducting examinations and transacting any other business which may lawfully come before it. The board may meet in special session at the call of the chairman, or at the call of not less than two-thirds (2/3) of the membership of the board. The members of the board shall each be compensated as provided by section 59-509(g), Idaho Code.

Examinations of applicants may be conducted by ~~an--examining the~~ board, ~~to-be-comprised-of-a-quorum~~ or by designated representatives of the board.

A majority-of-the-board-shall-constitute-a quorum will consist of at least three (3) members of the board. The chairman, or person acting as such, will vote only in the case of a tie.

SECTION 2. That Section 54-605, Idaho Code, be, and the same is hereby amended to read as follows:

54-605. POWERS AND DUTIES OF STATE BOARD OF PODIATRY. The state board of podiatry, herein referred to as the board, shall have the following powers:

1. To conduct examinations to ascertain the qualifications and fitness of applicants to practice podiatry; to pass upon the qualifications of applicants for licenses by endorsement; and to establish, by rule, the specific examinations to be required of each applicant for licensure and the dates, times and locations of those examinations.

2. To prescribe rules ~~and-regulations~~ defining for the podiatrists ~~what~~ shall constitute a reputable school, college or university, or department of a university or other institution in good standing, and to determine the reputability of good standing of a school, college or university, or department of a university or other institution, by reference to compliance with such rules ~~and-regulations~~.

3. To establish a standard of preliminary education deemed requisite for admission to a school, college or university teaching podiatry, and to require satisfactory proof of the enforcement of such standards by schools, colleges and universities.

4. To prescribe rules ~~and--regulations~~ for a fair and wholly

impartial method of examination of candidates to practice podiatry.

5. To conduct hearings and proceedings to suspend or revoke licenses of persons practicing podiatry, and to suspend or revoke such licenses for due cause.

6. To make and promulgate rules ~~and regulations~~ when required in this act to be administered.

7. To make and promulgate rules ~~and regulations~~ prescribing the standards for the ethical practice of podiatry in the state.

8. To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

9. To make and promulgate rules defining and requiring a podiatric residency as a condition of licensure.

SECTION 3. That Section 54-606, Idaho Code, be, and the same is hereby amended to read as follows:

54-606. STATE BOARD OF PODIATRY -- EXAMINATION FOR LICENSES.

Every person, except as hereinafter provided, desiring to commence the practice of podiatry within this state, shall make written application to the state board of podiatry, upon forms to be prescribed and furnished by the board, for a license so to do. Such applications shall be accompanied by a fee as established by board rule not to exceed four hundred dollars (\$400). Each applicant shall be at least twenty-one (21) years of age, of good moral character, have completed ~~one (1)~~ year--of an accredited podiatric residency, as defined by board rule, and ~~be~~ a graduate of some reputable school of podiatry accredited by the board. A reputable school of podiatry for the purposes herein shall mean a school of podiatry requiring for graduation the graduation from an accredited high school, credits granted for at least two (2) full years of general college study in a college or university of recognized standing, and four (4) full years of study in such school of podiatry or its equivalent.

Except as herein otherwise provided, each applicant shall be examined by the board to determine his knowledge of the subjects taught in reputable schools of podiatry, and which examinations shall include the following subjects: Anatomy, histology, pathology, bacteriology, physiology, surgery, roentgenology, podiatric medicine, chemistry, dermatology, materia medica, diagnosis, therapeutics, clinical and orthopedic podiatry, limited in scope to podiatry. Additional subjects may be prescribed from time to time by the board. Examinations may be in one (1) or more of the following formats: written, oral and practical in--nature. A candidate for licensure may be required to take and pass one (1) or more examinations as set forth in board rule.

The board shall also collect a separate fee from all applicants for examination. The examination fee shall equal that charged by the national examining entity, together with an additional twenty-five dollar (\$25.00) administration fee.

No applicant shall be granted a license who shall fail to obtain a satisfactory score as established by the board on all the subjects examined upon. Should any applicant fail on such examination and by reason thereof be refused a license, he shall be entitled within six (6) months of such refusal to a re-examination upon payment of an additional fee as established by board rule not to exceed four hundred

dollars (\$400) to the board; provided, however, that two (2) such re-examinations shall exhaust his privilege under his original application.

SECTION 4. That Section 54-607, Idaho Code, be, and the same is hereby amended to read as follows:

54-607. LICENSES -- ISSUANCE -- RENEWALS -- DISPLAY. If the applicant shall pass a satisfactory examination, and shall show that he is a person of good moral character and he possesses the qualifications required by this chapter to entitle him to a license as a podiatrist, he shall be entitled to a license authorizing him to practice podiatry within the state of Idaho. Said successful applicant shall be issued his license by the board upon payment of the original license fee which shall be the same fee as required for renewal.

All licenses to practice podiatry shall expire on the 30th day of June of each year; all licensed podiatrists ~~and podiatrists¹-assistants; within the meaning of this chapter;~~ are entitled to and shall renew their licenses on or before the 1st day of July of each year; and shall make application ~~to the bureau of occupational licenses~~ therefor, accompanied by an annual renewal license fee established by board rule not to exceed one hundred fifty dollars (\$150) for podiatrists. Payment of fees herein provided, and satisfactory evidence of having complied with continued education requirements as established by board rules are a condition precedent ~~to the performance of any acts by the bureau~~ for issuance of a license.

Every person to whom a license is granted shall have such license displayed continuously in a conspicuous part of his office wherein his practice of podiatry is conducted.

The board shall keep on file a register of all applicants for license, rejected applicants, and licensees.

The fee for reinstatement of a license shall be as provided in section 67-2614, Idaho Code. All fees shall be paid to the bureau of occupational licenses.

SECTION 5. That Section 54-608, Idaho Code, be, and the same is hereby amended to read as follows:

54-608. GROUND FOR SUSPENSION, DENIAL, REFUSAL TO RENEW OR REVOCATION OF LICENSE. Every ~~No~~ license heretofore or hereafter ~~may be issued, to any person to practice podiatry in this state shall be subject to suspension or revocation by the board in accordance with the procedures set forth in chapter 52, title 67, Idaho Code, upon any of the following grounds~~ and a license previously issued ~~may be suspended or revoked, if the person applying, or the person licensed is:~~

1. Fraud or deception in procuring a license. Found guilty by a court of competent jurisdiction of a felony or any offense involving moral turpitude;

2. Publication or use of untruthful or improbable statements with the view of deceiving or defrauding the public or any patient. Found by the board to be a repeated and excessive abuser of any drug, including alcohol, or any controlled substance;

3. Conviction of any offense involving moral turpitude. Found by

the board to be in violation of any provision of this act or the rules promulgated pursuant thereto;

4. Habitual--intemperance-in-the-use-of-ardent-spirits,-narcotics or-stimulants. Found by the board to have used fraud or deception in the procuring of any license;

5. Immoral,-unethical,-unprofessional-or--dishonorable-conduct manifestly-disqualifying-the-licensee--from--the--public--practice--of healing-the-sick. Found by the board to have had any action, including denial of a license or the voluntary surrender of or voluntary limitation on a license, taken against the licensee by any peer review body, any health care institution, any professional medical society or association or any court, law enforcement or governmental agency; or

6. The--violation--of--any--of--the--provisions--of--this--act--or--rules promulgated-pursuant-thereto Found by the board to have been unethical, unprofessional or dishonorable in the practice of healing the sick.

SECTION 6. That Section 54-609, Idaho Code, be, and the same is hereby amended to read as follows:

54-609. UNPROFESSIONAL OR DISHONORABLE CONDUCT JUSTIFYING SUSPENSION OR REVOCATION OF LICENSE DEFINED. It shall constitute unprofessional or dishonorable conduct justifying suspension or revocation of a license for any person holding a license to practice podiatry to:

1. Offer, give or promise, either directly or indirectly, any gift in return for the procurement of a patient or patients for podiatric treatment.

2. Request, list, accept or receive any rebates or commission for prescribing or recommending any footwear, drug, medicine, or any other article, to his patients.

3. Prescribe, dispense or pretend to use, in treating any patient, any secret remedial agent, or manifest or promote its use in any way, or guarantee or imply to guarantee any treatment, therapy or remedy whatsoever.

4. Use any form of advertising that is false, misleading or deceptive.

5. Use any title other than that of podiatrist or doctor of podiatric medicine; provided the term "foot specialist" or "physician and surgeon of the feet" may be used as explanatory terms of the title podiatrist but not alone or as a substitute therefor.

6. Employ a solicitor or solicitors to obtain business.

7. Publish or use untruthful or improbable statements with the intent of deceiving or defrauding the public or any patient.

8. Violate any rule promulgated by the board which prescribes the standards for the ethical practice of podiatry in this state.

SECTION 7. That Section 54-613, Idaho Code, be, and the same is hereby amended to read as follows:

54-613. LICENSE WITHOUT WRITTEN EXAMINATION. The board may issue a license to an applicant by endorsement where the applicant has passed an examination for and has been is currently licensed to practice podiatry in another state, or who has successfully passed the

written examination of a recognized national certifying agency in podiatry; provided that the written examination of such other state or national certifying agency upon which the licensure application is based was, in the opinion of the board, substantially equivalent to its own written examination. ~~; provided; further; that; t~~ The applicant satisfies must satisfy in all other respects the requirements for a license licensure in this act, set-forth including successfully passing an oral and/or practical examination if required by board rule. Such All applications to the board shall for licensure by endorsement must be accompanied by an application fee and by an examination fee as established by board rule not to exceed four hundred dollars (\$400).

Approved March 12, 1997.

CHAPTER 28
(S.B. No. 1023)

AN ACT

RELATING TO THE ESTABLISHMENT OF THE IDAHO STATEWIDE TRIAL COURT AUTOMATED RECORDS SYSTEM (ISTARS) TECHNOLOGY FUND; AMENDING CHAPTER 16, TITLE 1, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 1-1623, IDAHO CODE, TO CREATE IN THE OFFICE OF THE STATE TREASURER THE ISTARS TECHNOLOGY FUND TO BE USED BY THE SUPREME COURT AS APPROPRIATED BY THE LEGISLATURE FOR THE PURPOSE OF MAINTAINING, REPLACING AND ENHANCING THE IDAHO STATEWIDE TRIAL COURT AUTOMATED RECORDS SYSTEM (ISTARS) PROGRAM; AMENDING SECTION 31-3201, IDAHO CODE, TO PROVIDE FOR THE COLLECTION OF AN IDAHO STATEWIDE TRIAL COURT AUTOMATED RECORDS SYSTEM TECHNOLOGY FEE OF FIVE DOLLARS ON ALL CRIMINAL AND INFRACTION OFFENSES TO BE DEPOSITED INTO THE ISTARS TECHNOLOGY FUND; AMENDING SECTION 31-3201A, IDAHO CODE, TO INCREASE THE FEE FOR FILING A CIVIL CASE BY FIVE DOLLARS, TO INCREASE THE FEE FOR MAKING AN APPEARANCE IN ANY CIVIL ACTION BY FIVE DOLLARS AND TO DEPOSIT THE FIVE DOLLAR INCREASES TO THESE FEES INTO THE ISTARS TECHNOLOGY FUND AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE AND APPLICATION.

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

SECTION 1. That Chapter 16, Title 1, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 1-1623, Idaho Code, and to read as follows:

1-1623. IDAHO STATEWIDE TRIAL COURT AUTOMATED RECORDS SYSTEM (ISTARS) TECHNOLOGY FUND. There is hereby created in the office of the state treasurer the ISTARS technology fund. Moneys deposited into the fund pursuant to sections 31-3201 and 31-3201A, Idaho Code, upon appropriation by the legislature, shall be used by the supreme court for the purpose of maintaining, replacing and enhancing the Idaho Statewide Trial Court Automated Records System (ISTARS) program. The ISTARS technology fund shall be separate and distinct from the state general fund, and expenditures from the ISTARS technology fund shall be solely dedicated to the purposes set forth in this section. Moneys

deposited into the fund may be allowed to accumulate from year to year for designated maintenance, replacement, extension or enhancement of the ISTARs program.

SECTION 2. That Section 31-3201, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201. CLERK OF DISTRICT COURT -- FEES. (1) The clerk of the district court shall lawfully charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law:

- For filing and docketing abstract or transcript of judgment from another court \$2.00
 - For issuing execution upon an abstract or transcript of judgment and filing same on return \$2.00
 - For recording execution issued upon abstract or transcript of judgment, per page \$2.00
 - For taking affidavits, including jurat \$1.00
 - For taking acknowledgments, including seal \$1.00
 - For filing and indexing designation of agent of foreign corporation \$2.00
 - For filing and indexing notarial statement \$2.00
 - For making copy of any file or record, by the clerk, the clerk shall charge and receive, per page \$1.00
 - For comparing and conforming a prepared copy of any file or record, the clerk shall charge and receive, per page \$.50
 - For certifying the same an additional fee for certificate and seal \$1.00
- For all services not herein enumerated, and of him lawfully required, the clerk of the district court shall demand and receive such fees as are herein allowed for similar services.

(2) All fees collected under the provisions of this section shall be paid over to the county treasurer, at the same time and in the same manner as other fees.

(3) In addition to all other fines, forfeitures and costs levied by the court, the clerk of the district court shall collect five dollars (\$5.00) as an administrative surcharge fee on each criminal or infraction case, to be paid over to the county treasurer at the same time and in the same manner as other fees, for the support of the county justice fund, or the current expense fund if no county justice fund has been established, and shall collect five dollars (\$5.00) as an administrative surcharge fee on each civil case, including each appeal, to be paid over to the county treasurer for the support of the county court facilities fund, or to the district court fund if no county court facilities fund has been established.

(4) Provided further, an additional handling fee of two dollars (\$2.00) shall be imposed on each monthly installment of criminal or infraction fines, forfeitures, and other costs paid on a monthly basis.

(5) Provided further, in addition to all other fines, forfeitures and costs levied by the court, the clerk of the district court shall collect five dollars (\$5.00) as an Idaho Statewide Trial Court Automated Records System (ISTARS) technology fee on each criminal and

infraction offense to be paid over to the county treasurer who shall, within five (5) days after the end of the month, pay such fee to the state treasurer for deposit into the ISTARs technology fund.

SECTION 3. 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 \$349.00 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 \$12.00 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 \$14.00 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 \$349.00 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; \$5.00 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 into the ISTARS technology fund; and \$17.00 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 \$14.00 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 \$10.00 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 \$17.50 shall be paid, but not in advance, by each person found guilty of any felony or misdemeanor, except when the court orders such fee waived because the person is indigent and unable to pay 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 \$12.50 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 \$10.00 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 \$149.00 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; \$5.00 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 into the ISTARS technology fund; and \$10.00 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.

(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.

(f) A fee of \$19.00 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 \$13.00 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.

(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.

(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.

(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.

(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.

(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. 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.

(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.

(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 certi-

fyng 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.

(n) Fees not covered by this section shall be set by rule or administrative order of the supreme court.

(o) 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.

(p) 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.

(q) 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.

(r) 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.

SECTION 4. This act shall be in full force and effect on and after July 1, 1997, and the additional fees provided for herein shall apply to criminal and infraction offenses committed on or after July 1, 1997, and shall apply to civil case filings and appearances occurring on or after July 1, 1997.

Approved March 12, 1997.

CHAPTER 29
(S.B. No. 1027)

AN ACT

RELATING TO PUBLIC SCHOOL TRANSPORTATION; AMENDING SECTION 33-1506, IDAHO CODE, TO PROVIDE FLEXIBILITY IN THE TIMING OF AN ANNUAL INSPECTION OF SCHOOL BUSES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-1506, Idaho Code, be, and the same is hereby amended to read as follows:

33-1506. INSPECTION OF SCHOOL BUSES. All school buses shall at all times conform to the standards of construction prescribed therefor by the state board of education.

Before any newly acquired school bus is used for transporting pupils it shall be inspected by a duly authorized representative of the state department of education, and if, upon inspection, it conforms to prescribed standards of construction, or such other standards prescribed by law or regulation, it may be used for transporting pupils; otherwise, no such school bus shall be used for that purpose.

~~Prior to the beginning of school in each school year, all school buses shall be inspected before being placed in operation for that school year.~~ The board of trustees of each school district shall provide for an annual inspection of all school buses by district personnel or upon contract at intervals of not more than twelve (12) months. The district, over the signature of the superintendent, shall file with the state department of education its report of inspection of the school buses operated by the authority of the school district. At intervals of not more than sixty (60) days during ~~the same~~ each school year the board of trustees shall cause inspection to be made of all school buses operating under the authority of the board. In addition, the state department of education shall conduct random, spot inspections of school buses throughout the school year.

Whenever any school bus is found, upon inspection, to be deficient in any of the prescribed standards, or is found in any way to be unsafe or unfit for the transportation of pupils, such vehicle shall be withdrawn from service and shall not be returned to service until the district certifies the necessary repairs have been made.

Approved March 12, 1997.

CHAPTER 30
(S.B. No. 1047)

AN ACT

RELATING TO PUBLIC ASSISTANCE; AMENDING SECTION 56-223, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND DELETE AN OBSOLETE REFERENCE.

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

SECTION 1. That Section 56-223, Idaho Code, be, and the same is hereby amended to read as follows:

56-223. PUBLIC ASSISTANCE NOT ASSIGNABLE. Public assistance awarded under this act shall not be transferable or assignable, and none of the money paid or payable under this act shall be subject to execution, attachment, or other legal process; except that the department may transfer funds to another public agency in lieu of payments to recipients, said funds to be transferred by such agency to project sponsors for payment as wages to said recipients participating in special work projects ~~under the provisions of part 6 of title IV of the Social Security Act.~~

Approved March 12, 1997.

CHAPTER 31
(S.B. No. 1048)

AN ACT

RELATING TO PUBLIC ASSISTANCE; AMENDING SECTION 56-224, IDAHO CODE, TO DELETE AN OBSOLETE REFERENCE AND PROVIDE A REFERENCE TO ELIGIBILITY STANDARDS.

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

SECTION 1. That Section 56-224, Idaho Code, be, and the same is hereby amended to read as follows:

56-224. RECOVERY. The department may recover the amount of any public assistance obtained by any person who was not entitled thereto. If at any time during the continuance of assistance, the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient to notify the state department immediately of the receipt or possession of such property or income. Any assistance granted after the recipient has come into possession of such property or income in excess of ~~his need, as determined when assistance was granted, or upon reconsideration thereof~~ eligibility standards, may be recovered by the state department.

On the death of a recipient who has received public assistance to which he was not entitled, or who has received public assistance in an amount greater than that to which he was entitled, by reason of possession or having come into possession of resources which he did not disclose to the department, or which had, or which acquired, a greater value than was disclosed, the total amount of such assistance paid to such recipient to which he was not entitled shall be allowed as a preferred claim against the estate of such recipient.

Approved March 12, 1997.

CHAPTER 32
(S.B. No. 1049)

AN ACT

RELATING TO PUBLIC ASSISTANCE; AMENDING SECTION 56-210, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF HEALTH AND WELFARE TO ADOPT NONFINANCIAL REQUIREMENTS OF TITLE XVI OF THE SOCIAL SECURITY ACT FOR DETERMINATION OF ELIGIBILITY FOR CASH ASSISTANCE.

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

SECTION 1. 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 eligible person or family may receive shall be determined in accordance with the rules of the state department subject to the availability of funds for such assistance.

(2) Old age assistance, aid to the blind and aid to the permanently and totally disabled shall be granted to a person who is needy as defined by the department and who meets the nonfinancial requirements of title XVI of the social security act.

(3) The department may also increase or decrease the payment for groups of cases where the circumstances are specifically identified. The department shall be the single state agency for administration of public assistance programs or plans that receive federal funding.

Approved March 12, 1997.

CHAPTER 33
(S.B. No. 1051)

AN ACT

RELATING TO FAMILY SUPPORT AND IN-HOME ASSISTANCE FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; AMENDING THE HEADING FOR CHAPTER 51, TITLE 39, IDAHO CODE; AMENDING CHAPTER 51, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-5100, IDAHO CODE, TO PROVIDE A STATEMENT OF LEGISLATIVE FINDINGS; AMENDING SECTION 39-5101, IDAHO CODE, TO FURTHER DEFINE THE LEGISLATIVE PURPOSE; AMENDING SECTION 39-5102, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-5103, IDAHO CODE, TO PROVIDE STANDARDS FOR PROVISION OF FINANCIAL ASSISTANCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5104, IDAHO CODE, TO PROVIDE ELIGIBILITY STANDARDS FOR PARTICIPATION IN THE FAMILY SUPPORT AND IN-HOME ASSISTANCE PROGRAM; AMENDING SECTION 39-5105, IDAHO CODE, TO SPECIFY CONDITIONS FOR DISCONTINUANCE OF ASSISTANCE; AMENDING SECTION 39-5106, IDAHO CODE, TO PROVIDE A SHORT TITLE; AND REPEALING CHAPTER 47, TITLE 39, IDAHO CODE.

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

SECTION 1. That the heading for Chapter 51, Title 39, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 51
FAMILY SUPPORT AND IN-HOME FINANCIAL ASSISTANCE

SECTION 2. That Chapter 51, 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 39-5100, Idaho Code, and to read as follows:

39-5100. LEGISLATIVE FINDINGS. The legislature of the state of Idaho finds that:

(1) Families are the major providers of support, care, information, training, and other services to their family members with developmental disabilities.

(2) Families with individuals who have developmental disabilities may experience extraordinary financial outlays, physical and emotional challenges, and daily stress.

(3) Failure to provide the necessary services and supports to families with a member with developmental disabilities can result in admission of the individual to institutional care.

(4) Flexible and coordinated support and assistance to families avoids duplication of services, uses existing resources more efficiently, and prevents gaps in services to families.

(5) A family's ability to make informed decisions regarding in-home or out-of-home living arrangements for a member who has a developmental disability is critical to the quality and cost-effective care of their family member.

(6) Family support and in-home assistance promotes and enhances the family's capacity to provide care.

(7) Family support and in-home assistance stimulates the formation of community supports to use public dollars more efficiently.

Therefore, it is in the interest of the state of Idaho to provide in-home assistance for families for supports that enable family members with developmental disabilities to reside at home.

SECTION 3. That Section 39-5101, Idaho Code, be, and the same is hereby amended to read as follows:

39-5101. PURPOSE. ~~The legislature finds that it is in the interest of developmentally disabled children who are institutionalized or who live at home, and in the interest of the state of Idaho, to enable such children to return to or remain in their homes for care and training. The legislature further finds that the financial burden of developmentally disabled children is a factor which contributes to institutionalization. It is the purpose of t~~This act to authorize a program of financial assistance to eligible parents families who agree to carry out a planned program of home-based care and training support for their dependents of twenty-one (21) years of age or less who are developmentally disabled family members with developmental disabilities.

SECTION 4. That Section 39-5102, Idaho Code, be, and the same is hereby amended to read as follows:

39-5102. DEFINITIONS. As used in this chapter:

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

(2) ~~"Developmental disability" means developmental disability as defined in subsections (2) and (3) of section 39-4604, Idaho Code~~ a chronic disability of an individual which appears before the age of twenty-two (22) years of age and:

(a) Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or a condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and

(b) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and

(c) Reflects the need for a combination and sequence of special, interdisciplinary treatment or other services which are of life-long or extended duration and individually planned and coordinated.

(3) "Director" means the director of the Idaho department of health and welfare.

(4) ~~"Individual habilitation plan"~~In-home assistance application means a written document describing the ~~care and developmental~~ needs of an developmentally disabled child individual with developmental disabilities and specifying the ~~program of services or treatment supports~~ required to effect positive change in specific areas of need.

(5) "Institution" means any public or private residential facility which is licensed in the state of Idaho for the purpose of providing care, ~~and treatment and training for~~ individuals with ~~developmentally disabled persons~~ disabilities.

(6) ~~"Parent" means the natural or adoptive parent, guardian, person who stands in loco parentis to the child, or a person to whom legal custody has been given by a court, and in whose home the child resides~~ "Family" means a group of interdependent persons residing in the same household and includes an individual with a developmental disability and one (1) or more of the following:

(a) A birth or adoptive mother or father, stepparent, brother, sister or any combination; or

(b) Extended blood relatives, such as a grandparent, aunt, uncle, nephew or niece; or

(c) Legal guardian.

The term "family" does not include paid providers of care.

SECTION 5. That Section 39-5103, Idaho Code, be, and the same is hereby amended to read as follows:

39-5103. STANDARDS FOR THE PROVISION OF FINANCIAL ASSISTANCE. The director of the Idaho department of health and welfare shall have the

power and it shall be his duty to promulgate appropriate rules and regulations necessary to implement and enforce the following standards for the provision of in-home financial assistance:

(1) Financial assistance provided under this chapter shall not exceed two hundred and fifty dollars (\$250) per month per child individual, except that this limit may be waived by the director department in cases of extraordinary need; ~~however, no grant of assistance shall exceed thirty-three per cent (33%) of the current average institutional costs for a child.~~

(2) The amount of a grant of assistance shall be made based upon the ~~child's~~ need for services as specified in section 39-5103(4), Idaho Code, without regard to the ~~parent's~~ family's income or eligibility for any other program administered by the department.

~~(3) Priority for assistance will be given to parents of children who are institutionalized and who will return them to their homes, and to parents of children for whom institutionalization may be imminent.~~

(4) Receipt of supports will be determined on an individual family basis. Support priorities will be determined with consideration for the following criteria:

(a) Families of individuals with a developmental disability who will be able to return to a home setting from an institution and to those families for whom supports will prevent placement of the member with a developmental disability in an institution;

(b) Severity of consequences without supports;

(c) Urgency of need;

(d) Availability of funds.

(4) Assistance moneys may be used for the following when no other assistance is available:

(a) Diagnostic and evaluative procedures;

(b) Purchase of special equipment;

(c) Specialized therapies;

(d) Special diets;

(e) Medical and dental care not covered under the family's health insurance or ~~federally~~ other publicly funded programs such as medical assistance or crippled children's services;

(f) Home health care or personal assistance services;

(g) Counseling for the ~~child~~ individual or family, including behavior management;

(h) Respite care or out of the ordinary expenses related to supervised care according to the approved in-home assistance application, including necessary related sibling care;

(i) ~~Babysitting, child care or day care~~ Environmental adaptations and technical assistance as necessary to permit successful integration and access;

(j) Special clothing including incontinence supplies;

(k) Necessary supports for participation in ~~r~~Recreational services;

(l) ~~Related t~~Transportation;

(m) Housing modifications for the purpose of accessibility or ease in handling; and

(n) Similar or related costs.

(5) ~~Consistent with an individual habilitation plan, parents Families~~ shall be free to select from among qualified choose providers of

services.

(6) Assistance moneys shall not be used for the payment of educational or educationally related services which properly are the responsibility of local public schools.

~~(7) Financial assistance moneys provided under this chapter shall be excluded from family financial resources in determining the fee for service to be charged for any service provided by the department~~ Supports under this chapter shall not replace or reduce other public benefits to families, or be considered as resources or income in any eligibility determination or sliding fee scale.

SECTION 6. That Section 39-5104, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-5104. ELIGIBILITY FOR ASSISTANCE. (1) Individuals for whom assistance may be granted must:~~

- ~~(a) Be developmentally disabled;~~
- ~~(b) Be twenty-one (21) years of age or younger; and~~
- ~~(c) Be presumptively eligible for participation in the medical assistance program if a resident of an institution;~~

~~(2) Parents to whom assistance is granted must:~~

- ~~(a) Reside within the state of Idaho;~~
- ~~(b) Desire to maintain within their home, or return to their home from an institutional setting, their developmentally disabled child;~~

~~(c) A family is eligible to participate in the family support and in-home assistance program if the family:~~

- ~~(1) Resides within the state of Idaho;~~
- ~~(2) Includes a family member with a developmental disability;~~
- ~~(3) Expresses willingness for the family member with a developmental disability to reside at home;~~

~~(4) Participate with the development of Submits an individual habilitation plan in-home assistance application for the child family member with a developmental disability;~~

~~(d) Sign an agreement to implement the agreed-upon individual habilitation plan;~~

- ~~(e5) Obtains the agreed-upon services or equipment; and~~
- ~~(f6) Maintain an accounting of Accounts for the funds expended for the agreed-upon services and equipment.~~

SECTION 7. That Section 39-5105, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-5105. DISCONTINUANCE OF ASSISTANCE. (1) Assistance may be terminated under the following conditions:~~

- ~~(a1) The parents family or individual requests termination;~~
- ~~(b2) Death of the child individual with a developmental disability;~~

~~(c3) Voluntary or court-ordered out-of-home placement of the child;~~

~~(d) The provisions of subsections (1) or (2) of section 39-5104, Idaho Code, Eligibility criteria are no longer met; or~~

~~(e4) Inadequate funds are available for continuance.~~

SECTION 8. That Section 39-5106, Idaho Code, be, and the same is hereby amended to read as follows:

39-5106. SHORT TITLE. This chapter shall be known and cited as the "Developmental Disabilities Family Support and In-Home Financial Assistance Act."

SECTION 9. That Chapter 47, Title 39, Idaho Code, be, and the same is hereby repealed.

Approved March 12, 1997.

CHAPTER 34
(S.B. No. 1055)

AN ACT

RELATING TO CHILD SUPPORT; AMENDING SECTION 32-706A, IDAHO CODE, TO EXTEND THE SUNSET CLAUSE ON THE AUTHORITY TO ADOPT CHILD SUPPORT GUIDELINES.

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

SECTION 1. That Section 32-706A, Idaho Code, be, and the same is hereby amended to read as follows:

32-706A. PURPOSE -- AUTHORIZATION TO ADOPT GUIDELINES -- GUIDELINES TO BE PRESUMPTIVE. A. The purpose of this act is to provide compliance with recent federal action whereby the congress of the United States has enacted 42 USC 667 as amended by public law 100-485, 102 STAT 2343, which measure requires that, effective October 13, 1989, as a condition to having a state plan for the receipt of federal aid for dependent children funds approved, a state must establish child support guidelines, which are to have a rebuttable presumption of being the correct amount for purposes of setting the level of child support, unless in a particular case the court finds, under criteria established by the legislature of the state that application of the guidelines would be unjust or inappropriate. In addition, the purpose of this act is to recognize and give presumptive effect to the child support guidelines which have been adopted by the supreme court of the state of Idaho, to be effective on and after April 1, 1989, which guidelines have been declared by the supreme court to be advisory, as an aid for the litigants and the courts to evaluate the needs of the children and the resources of the parents in determining the appropriate level of child support.

B. The legislature hereby authorizes and encourages the supreme court of the state of Idaho to adopt and to periodically review for modification, guidelines to promote uniform and adequate child support awards, to supplement the factors set forth in section 32-706, Idaho Code, to be used as an aid and a structure for litigants and courts to evaluate the individual circumstances of the needs of children and the resources of parents, in determining the levels of child support, and

in evaluating the evidentiary circumstances of each individual case.

C. In arriving at the amount to be ordered as child support, the court, in addition to considering the factors described in section 32-706, Idaho Code, shall also apply the guidelines adopted by the supreme court of the state of Idaho on January 27, 1989, and as those guidelines are from time to time amended. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate. If the court determines that circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court.

D. The provisions of this section shall be null, void and of no force and effect on and after July 1, 1997⁹.

Approved March 12, 1997.

CHAPTER 35
(S.B. No. 1077)

AN ACT

RELATING TO LIENS IN CROPS; AMENDING CHAPTER 3, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-308A, IDAHO CODE, TO PROVIDE FOR AMENDMENT OR ASSIGNMENT OF NOTICE OF CLAIM OF LIEN; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 3, 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 45-308A, Idaho Code, and to read as follows:

45-308A. AMENDMENT OR ASSIGNMENT OF NOTICE. (1) A claimant may amend a notice of claim of lien to disclose a change of the name or address of a claimant or producer by filing a notice of amendment with the secretary of state. The notice of amendment shall include:

- (a) The file number assigned by the secretary of state to the notice of claim of lien to be amended by the notice of amendment;
- (b) The date of filing of the notice of claim of lien to be amended;
- (c) The name of the claimant on the notice of claim of lien to be amended; and
- (d) The information to be amended.

(2) A claimant may assign his rights under a lien and may give notice of the assignment by filing a notice of assignment with the secretary of state. The notice of assignment shall include:

- (a) The file number assigned by the secretary of state to the

notice of claim of lien to which the assignment pertains;

(b) The date of filing of the notice of claim of lien to which the assignment pertains;

(c) The name of the claimant on the notice of claim of lien to which the assignment pertains; and

(d) The name and address of the assignee.

(3) A notice of amendment or a notice of assignment shall be filed on a standard form prescribed by the secretary of state, and upon the same execution and fee conditions as apply to a notice of claim of lien.

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, 1997.

CHAPTER 36
(S.B. No. 1102)

AN ACT

RELATING TO THE DATE BY WHICH ALL APPLICATIONS TO LEASE OR TO RENEW AN EXISTING LEASE OF STATE LANDS WHICH EXPIRES DECEMBER THIRTY-FIRST OF ANY YEAR SHALL BE FILED IN THE OFFICE OF THE DIRECTOR OF THE DEPARTMENT OF LANDS; AMENDING SECTION 58-307, IDAHO CODE, TO PROVIDE THAT ALL APPLICATIONS TO LEASE OR RENEW AN EXISTING LEASE WHICH EXPIRES ON DECEMBER THIRTY-FIRST OF ANY YEAR SHALL BE FILED BY THE THIRTIETH DAY OF APRIL PRECEDING THE DATE OF THE EXPIRATION.

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

SECTION 1. That Section 58-307, Idaho Code, be, and the same is hereby amended to read as follows:

58-307. TERM OF LEASE -- APPLICATION FOR RENEWAL -- ALLOWANCE FOR IMPROVEMENTS. (1) No lease of state public school endowment lands, other than those valuable for stone, coal, oil, gas or other minerals, shall be for a longer term than ten (10) years; provided, however, that state lands other than public school endowment lands may be leased for a period of up to twenty-five (25) years to federal agencies, state agencies, counties or cities when leased for public purposes.

(2) Notwithstanding any other provisions of law, only the state endowment lands, other than public school endowment lands, described below may be leased for a period of up to forty-nine (49) years for commercial purposes, under such terms and conditions as may be set by the board, provided that the board consults with the county commissioners of the county in which the lands are located before leasing the lands described below, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances

insofar as is reasonable and practicable. The department shall hold a hearing, on each of the parcels described below, in the community in which the parcel is located.

(a) One (1) parcel - E1/2, Section 5, T2N, R2E, Boise Meridian, containing three hundred twenty (320) acres, more or less, and located south of the Boise Airport on Pleasant Valley Road.

(b) One (1) parcel - SWSWNW, Section 27, T3N, R2E, Boise Meridian, containing eight (8) acres, more or less, located northeasterly of the Boise Airport and north of the Boise Interagency Fire Center.

(c) Four (4) parcels - E1/2SW, W1/2SE, NESE, Section 31; SW1/4, Section 32, T3N, R2E, Boise Meridian, all containing three hundred sixty (360) acres, more or less, located south of the Boise Airport and west of Pleasant Valley Road.

(d) Three (3) parcels - SWSW, Section 28; Pt. SESE, Section 29 (east of the Railroad R/W, now a bikepath); W1/2NW, Section 33, all in T3N, R18E, Boise Meridian, all containing one hundred twenty-five (125) acres, more or less, located two (2) miles northerly of Hailey, Idaho, excepting therefrom, a parcel of land, containing twenty (20) acres, more or less, at a location to be determined with access to the sheep driveway located on the county road.

(e) One (1) parcel - SWNE, Section 32, T3N, R2E, Boise Meridian, containing forty (40) acres, more or less, located southerly and westerly of the Boise Airport off Gowen Road; Public Building Endowment.

(f) Two (2) parcels - Part NESWNE, Section 35, T3N, R2E, Boise Meridian, containing three and fifteen hundredths (3.15) acres, more or less; Part NENESE, Section 35, T3N, R2E, Boise Meridian, containing one and eight-tenths (1.8) acres, more or less; both located northerly and easterly of I-84 between the Broadway Interchange and the Gowen Road/State Highway 21 Interchange; Normal School Endowment.

(g) One (1) parcel - Part Lot 1, Section 1, T2N, R2E, Boise Meridian, containing five (5) acres, more or less, located near the Gowen Road/State Highway 21 Exit from I-84; Penitentiary Endowment.

(h) One (1) parcel - N1/2NW1/4SW1/4, SW1/4NW1/4SW1/4, Section 4, T2N, R2E, Boise Meridian, excepting that portion deeded to Ada County for a public road, containing twenty-eight and seventy-nine hundredths (28.79) acres, more or less, located south of Boise Airport and east of Pleasant Valley Road; Normal School Endowment.

(3) Notwithstanding any other provisions of law, only the state public school endowment lands described below may be leased for commercial purposes, for a term not to exceed ten (10) years, and the board may grant, upon payment of good and valuable consideration, a preferential right to renew said lease not more than four (4) times, provided that the board shall consult with the county commissioners of the county in which the lands are located before leasing the lands described below, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. The department shall hold a hearing, on each of the parcels described below, in the community in which the

parcel is located.

(a) One (1) parcel - All, Section 16, T3N, R18E, Boise Meridian, containing six hundred forty (640) acres, more or less, and located in Ohio Gulch some five (5) miles northerly of Hailey, Idaho.

(b) One (1) parcel - E1/2NE, Section 16, T18N, R3E, Boise Meridian, containing eighty (80) acres, more or less, and located northwesterly of the intersection of Deinhard Lane and Sampson Trail in McCall, Idaho.

(c) One (1) parcel - S1/2NW, NESW, Part NWSW, Part SWSW, Part SESW, Section 36, T3N, R2E, Boise Meridian, containing one hundred seventy-eight and seventy-one hundredths (178.71) acres, more or less, located northerly and easterly of I-84 between the Broadway Interchange and the Gowen Road/State Highway 21 Interchange; Public School Endowment.

(d) One (1) parcel - NE1/4SW1/4, SE1/4NW1/4SW1/4, Section 4, T2N, R2E, Boise Meridian, containing fifty (50) acres, more or less, located south of Boise Airport and east of Pleasant Valley Road; Public School Endowment.

(4) The term "commercial purposes" means industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, multifamily residential developments and other similar businesses. For purposes of this section, agricultural leases, grazing leases, oil and gas leases, mineral leases, geothermal leases and single family, recreational cottage site and homesite leases are not considered leases for commercial purposes.

(5) The board may require that all fixed improvements constructed upon land leased for commercial purposes be removed or become the property of the state upon termination of the lease, and that any heirs, encumbrances or claims of third parties with respect to any improvements shall be expressly subordinate and subject to the rights of the state under this section.

(6) Except for geothermal, oil and gas, and mineral leases, the lease year shall run from January 1 through December 31, and all leases shall expire on December 31 of the year of expiration.

(7) The annual rental shall be due and payable in advance of year one of the lease and by January 1 of each succeeding year, except for grazing leases which shall be due and payable by the date set by the state board of land commissioners in the lease, but in no case shall the rental for grazing leases be due and payable earlier than January 1 or later than May 1 of each succeeding year.

(8) All applications to lease or to renew an existing lease which expires December thirty-first of any year, shall be filed in the office of the director of the department of lands by the thirtieth day of ~~June~~ April preceding the date of such expiration. Such applications will be considered by the state land board and be disposed of in the manner provided by law; except that the board may reject conflicting applications for a lease for commercial purposes if the lessee exercises the preference right to renew clause.

(9) Where conflicts appear upon leases which do not contain a preferential right to renew clause, such applications shall be considered as having been filed simultaneously. However, nothing herein

shall be construed to prevent the state board of land commissioners from accepting and considering applications for new leases at any time.

(10) In case improvements have been made on land while under lease which is expiring, and the former lessee is not the successful bidder, but the land is leased to another, the amount of such improvements shall be paid to the former lessee. The following shall be considered improvements: plowing done within one (1) year, provided no crop has been raised on the plowed land after such plowing, fencing, buildings, cisterns, wells, growing crops and any other asset which shall be considered an improvement by the director.

(11) Commercial leases of the state lands described in this section shall not be subject to the conflict auction provisions of section 58-310, Idaho Code. The board may, at its discretion, call for proposals and sealed bids by public advertisement, and may evaluate said proposals and award the lease to the bidder whose proposal achieves the highest return over the term of the lease and who is capable of meeting such terms and conditions as may be set by the board. In the alternative, the board may call for lease applications by public advertisement and if more than one (1) person files an application to hold an auction in the same manner as provided in section 58-310, Idaho Code. In either case, the board must obtain a reasonable rental, based upon fair market value of the state land, throughout the duration of the lease. The board may reject any or all proposals and any or all bids, and may reoffer the lease at a later date if the board determines that the proposals or bids do not achieve the highest and best use of the land at market rental.

Approved March 12, 1997.

CHAPTER 37
(S.B. No. 1131)

AN ACT

RELATING TO THE GRIZZLY BEAR MANAGEMENT OVERSIGHT COMMITTEE; AMENDING SECTION 2, CHAPTER 403, LAWS OF 1993, AS AMENDED BY SECTION 1, CHAPTER 296, LAWS OF 1995, TO EXTEND THE SUNSET CLAUSE TWO YEARS.

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

SECTION 1. That Section 2, Chapter 403, Laws of 1993, as amended by Section 1, Chapter 296, Laws of 1995, be, and the same is hereby amended to read as follows:

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. The provisions of this act shall be null and void and of no force and effect on and after July 1 1997.

Approved March 12, 1997.

CHAPTER 38
(S.B. No. 1137)

AN ACT

RELATING TO THE COMPREHENSIVE STATE WATER PLAN; RATIFYING AND APPROVING THE COMPREHENSIVE STATE WATER PLAN WITH AMENDMENTS TO POLICIES 3F AND 5B, RELATING TO TAILINGS POND REGULATION AND TO SNAKE RIVER MINIMUM FLOWS, AS THE PLAN WAS ADOPTED BY THE STATE WATER RESOURCE BOARD IN DECEMBER 1996; AND DECLARING AN EMERGENCY.

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

SECTION 1. That pursuant to Section 42-1734B(6), Idaho Code, the Comprehensive State Water Plan adopted by resolution of the Idaho Water Resource Board in December 1996, is ratified and approved with the following amendment to Policy 5B relating to Snake River Minimum Flows. The Comprehensive State Water Plan and the amendment to Policy 5B shall read as follows:

1A-STATE SOVEREIGNTY

It is the policy of Idaho that the state has sovereignty over decisions affecting the development and use of its water resources, and that the state opposes any attempt by the federal government, its management agencies, any other state, or any other entity to usurp the state's role in these areas.

1B-PUBLIC INTEREST

It is the policy of Idaho that water be managed with due regard for the public interest as established by state law.

1C-BENEFICIAL USE OF WATER

It is the policy of Idaho that beneficial uses include certain nonconsumptive water uses.

1D-TRANSFERABILITY OF USE

It is the policy of Idaho that changes in the nature of use of a water right be allowed, including changes to nonconsumptive uses, provided other water rights are not injured.

1E-WATER MEASUREMENT

It is the policy of Idaho that the water resources of the state should be quantified and their uses should be measured.

1F-CONJUNCTIVE MANAGEMENT

It is the policy of Idaho that where evidence of hydrologic connection exists between ground and surface waters, they are managed conjunctively in recognition of the interconnection.

1G-REASONABLE USE

It is the policy of Idaho to promote the reasonable use of water in accordance with state law.

1H-GROUND WATER WITHDRAWAL

It is the policy of Idaho that average withdrawals from an aquifer should not exceed the reasonably anticipated rate of future recharge to that aquifer.

1I-WATER SUPPLY BANK

It is the policy of Idaho that the sale or lease of water is critical to the efficient management of the state's water resources. Use of the State's Water Supply Bank shall be encouraged.

1J-RECHARGE

It is the policy of Idaho that managed recharge be encouraged, pursuant to state law.

1K-SPRING FLOWS

It is the policy of Idaho that the hydrogeologic relationships between ground water supplies and spring flows continue to be quantified to allow for the determination of optimal development of the water resources.

1L-WATER QUALITY

It is the policy of Idaho that water be protected against unreasonable contamination or deterioration in quality, thereby maintaining designated beneficial uses.

1M-POLLUTION CONTROL

It is the policy of Idaho that the use of water to dilute pollution is not a substitute for adequate treatment.

2A-SPECIES OF CONCERN

It is the policy of Idaho that the public interests be considered when decisions are made to maintain sustainable populations of plant and animal species whose existence is threatened by mankind's actions.

2B-FEDERALLY LISTED SPECIES

It is the policy of Idaho to cooperate, insofar as allowed by state law, in efforts to conserve and restore plant and animal species listed by the federal government as Threatened or Endangered.

2C-LAKE AND RESERVOIR MANAGEMENT

It is the policy of Idaho that comprehensive management plans for surface use and water quality protection be developed for lakes and reservoirs in the state.

2D-CLIMATE VARIABILITY

It is the policy of Idaho that climate variability be considered in planning for and in the management of the state's water resources.

3A-INSTREAM FLOW

It is the policy of Idaho that when it is in the public interest the Idaho Water Resource Board should seek to appropriate waters in the state for instream flow purposes.

3B-POTENTIAL RESERVOIR SITES

It is the policy of Idaho that potential reservoir sites be protected from significant land use change.

3C-STATE PROTECTED RIVER SYSTEM

It is the policy of Idaho that a state protected river system be maintained to meet the desires of the citizens of Idaho. The system should provide for the protection of the unique features that exist on various rivers within the state, and should provide the necessary authority and funding to protect such rivers and related lands for recreational, scenic, and natural values.

3D-RIPARIAN HABITAT AND WETLANDS

It is the policy of Idaho to protect the ecological viability of riparian habitat and wetlands within the state in the public interest.

3E-STREAM CHANNEL REHABILITATION

It is the policy of Idaho that the costs and benefits of stream channel rehabilitation be evaluated where past activities currently or potentially affect the yield or quality of the state's watersheds.

3F-TAILINGS POND REGULATION

It is the policy of Idaho that the construction, operation, and maintenance of mine tailings impoundment structures be regulated by the state.

3G-RADIOACTIVE WASTE MONITORING

It is the policy of Idaho to maintain a state program to monitor and regulate the use, handling, and storage of radioactive wastes.

3H-SAFETY MEASURES PROGRAM

It is the policy of Idaho that a program should be established to assist local units of government in repairing and installing safety structures on or near canals, rivers, lakes, and reservoirs. The program should be established as a cost-sharing cooperative program.

3I-FLOOD PRONE AREAS

It is the policy of Idaho to encourage the protection of flood plains and reliance on management rather than structural alternatives in reducing or preventing flood damages.

3J-FLOOD CONTROL LEVEE REGULATION

It is the policy of Idaho that the construction and maintenance of flood control levees be regulated by the State.

4A-AGENCY CONSOLIDATION

It is the policy of Idaho that the administration of state programs for water allocation, planning, and water quality regulation be consolidated in one agency.

4B-REVIEW OF FEDERAL RESERVOIR WATER ALLOCATION

It is the policy of Idaho that agreements be established with federal agencies to allow Idaho Water Resource Board review of any proposed

water allocation from federal reservoirs in excess of 500 acre-feet annually.

4C-ENERGY PLAN

It is the policy of Idaho that the State Energy Plan set forth policies for energy use and development in the state and that the plan be updated at least every five years.

4D-HYDROPOWER LICENSING

It is the policy of Idaho to insure that public interest, existing water rights, related settlement agreements, and the future water and energy needs of the State are considered in hydropower licensing.

4E-HYDROPOWER SITING

It is the policy of Idaho that new hydropower developments be in conformance with the State Water Plan and the State Energy Plan.

4F-CONSERVANCY DISTRICTS

It is the policy of Idaho that where practical, the total water needs of a geographic area be satisfied by a legal entity having the authority and responsibility to address all water needs in a comprehensive manner.

4G-RESEARCH PROGRAM

It is the policy of Idaho to encourage and conduct research on important water resource topics.

4H-FUNDING PROGRAM

It is the policy of Idaho that state funds be available to support the development, preservation, conservation, and restoration of the water and related resources of the state.

4I-PLANNING PROGRAM

It is the policy of Idaho that water management plans be prepared for the individual river basins.

4J-FEDERAL AND TRIBAL WATER RIGHTS

It is the policy of Idaho to quantify all federal and tribal water rights within the state.

4K-WATER RESOURCE MANAGEMENT

It is the policy of Idaho that the diversion and use of water occur only in accordance with water rights issued by the state and federal reserved rights established by the courts. Adjudication of water rights through the state courts should be completed where necessary to fully define and quantify the rights.

5A-SWAN FALLS AGREEMENT

It is the policy of Idaho that the Swan Falls agreement between the state and Idaho Power Company establishes the framework for water management in the Snake River basin.

5B-SNAKE RIVER MINIMUM FLOWS

It is the policy of Idaho that minimum average daily flows at the Murphy gaging station shall meet or exceed 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31. The average daily flow measured at the Weiser gage shall not be less than 4,750 cfs. A minimum average daily flow of 5,000 cfs at Johnson's Bar shall be maintained and an average daily flow of 13,000 cfs shall be maintained at Lime Point (river mile 172) a minimum of 95 percent of the time. The exercise of water rights above Milner Dam has and may reduce the flow at the dam to zero.

5C-SNAKE RIVER TRUST WATER

It is the policy of Idaho that water held in trust by the state pursuant to Idaho Code 42-203B be reallocated to new uses in accordance with the criteria established by Idaho Code 42-203A and 42-203C.

5D-SNAKE RIVER BASIN DCMI

It is the policy of Idaho that 150 cfs of the water held in trust by the state above Swan Falls Dam pursuant to Policy 5C be reallocated to meet future domestic, commercial, municipal, and industrial consumptive uses in accordance with state law.

5E-SNAKE RIVER BASIN AGRICULTURE

It is the policy of Idaho that appropriated water held in trust by the state pursuant to Policy 5C, less the amount of water necessary to provide for present and future DCMI uses as set forth in Policy 5D, shall be available for reallocation to meet new and supplemental irrigation requirements which conform to Idaho Code 42-203A, 203B, 203C, and 203D.

5F-SNAKE RIVER BASIN HYDROPOWER

It is the policy of Idaho that hydropower use be recognized as a beneficial use of water, and that depletion of flows below the minimum average daily flows set forth in Policy 5B is not in the public interest.

5G-SNAKE RIVER NAVIGATION

It is the policy of Idaho that water sufficient for commercial and recreational navigation is provided by the minimum flows established for the Snake River.

5H-SNAKE RIVER BASIN SPRINGS

It is the policy of Idaho to seek to maintain spring flows in the American Falls and Thousand Springs reaches of the Snake River which will sustain beneficial uses of surface and ground water supplies in accordance with state law.

5I-SNAKE RIVER BASIN NEW STORAGE

It is the policy of Idaho that applications for large surface storage projects upstream from the Murphy gage be approved subject to the requirement that the use is in the public interest.

5J-STORAGE ACQUISITION

It is the policy of Idaho that reservoir storage be acquired in the name of the Idaho Water Resource Board to provide management flexibility in assuring the minimum flows designated for the Snake River.

6A-BEAR RIVER COMPACT

It is the policy of Idaho that water use and management in the Bear River Basin conform to the allocations set forth in the Bear River Compact [Idaho Code 42-3402].

6B-INTERSTATE WATER DELIVERY

It is the policy of Idaho that Idaho water users in the Lower Division of the Bear River Basin must be protected from inequitable water allocation in the event of a water emergency and the scheduling of interstate water deliveries.

6C-BEAR LAKE

It is the policy of Idaho to recognize and preserve the outstanding values of Bear Lake while continuing to meet existing allocations for irrigation and hydroelectric power generation.

6D-BEAR RIVER BASIN WATER PROJECTS

It is the policy of Idaho to encourage additional projects for the development of the water resources of the basin without regard to state boundaries.

7A-PANHANDLE BASINS

It is the policy of Idaho that the ground and surface waters of the Idaho Panhandle be managed to protect the environmental quality of the region.

7B-PANHANDLE MINIMUM FLOWS

It is the policy of Idaho to provide sufficient water to meet the minimum requirements for aquatic life, fish and wildlife, and to provide for recreation in the Panhandle Basins.

7C-PANHANDLE DCMI

It is the policy of Idaho to provide water for new domestic, commercial, municipal and industrial uses. A depletion of 14 cfs is allocated for these purposes.

7D-PANHANDLE AGRICULTURAL WATER

It is the policy of Idaho that additional water be made available for irrigated agriculture in the Panhandle. A combined net depletion of 200 cfs is allocated for this purpose.

7E-PANHANDLE NAVIGATION

It is the policy of Idaho that water sufficient for commercial and recreational navigation be maintained in the streams and lakes of the Idaho Panhandle.

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, 1997.

CHAPTER 39
(S.B. No. 1146)

AN ACT

RELATING TO THE IDAHO HORSE BOARD; AMENDING SECTION 25-2510, IDAHO CODE, TO GOVERN THOSE WHO ARE ELIGIBLE TO PARTICIPATE IN A REFERENDUM ON THE MANDATORY FEE IMPOSED ON EACH HORSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 25-2510, Idaho Code, be, and the same is hereby amended to read as follows:

25-2510. REFERENDUM FOR HORSE OWNERS. (1) After five (5) years from the effective date of this section, a referendum shall be held to determine if horse owners favor the continuation of the mandatory provisions prescribed in section 25-2505, Idaho Code. The question shall be submitted to all horse owners who had a brand inspection the year prior to the referendum. The brand board shall provide a ballot at the time of the brand inspection. Horse owners who have been issued a lifetime brand inspection subsequent to the effective date of this amendment are also eligible to participate in the referendum and may do so by requesting a ballot from the Idaho horse board. Voting shall be by secret ballots upon which the words "Do you favor the continuation of a mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "x" mark in the square before the proposition which the voter favors. If a majority of the referendum vote is in favor of continuing the mandatory program, the provisions of section 25-2505, Idaho Code, shall be extended indefinitely or until such time that the horse board deems it necessary to hold another referendum on the issue.

(2) After five (5) years from the effective date of the referendum required in the provisions of subsection (1) of this section, and every five (5) years thereafter, a referendum on the continuation of the mandatory assessment to fund the Idaho horse board may be held at the petition of horse owners, or at the request of the Idaho horse board. The question shall be submitted by secret ballots upon which the words, "Do you favor the continuation of a mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "x" mark in the square before the question which the voter favors. If a majority of the referendum vote is in favor of continuing the mandatory assessment, all of the provisions of chapter 25, title 25, Idaho Code,

shall continue. If a majority of the referendum vote is against continuing the mandatory assessment, the assessment imposed in section 25-2505, Idaho Code, shall cease to be mandatory on the date the director of the department of agriculture announces the results of the referendum vote. The procedures necessary to initiate a referendum under the provisions of this subsection are as follows:

(a) A referendum shall be held if the Idaho department of agriculture receives a petition requesting such a referendum signed by ten percent (10%) or more of horse owners who have had a brand inspection, in either of the two (2) immediate past years; or

(b) A referendum shall be held if the Idaho department of agriculture receives a written request for such referendum from the Idaho horse board.

(3) (a) Any referendum shall be conducted only among owners who paid an assessment ~~during one (1) of the previous two (2) years~~ the year prior to the referendum and by owners who hold a lifetime brand inspection issued since 1993.

(b) Any referendum must be supervised by the Idaho department of agriculture.

(c) Any referendum shall be held, and the result determined and declared by the director of the department of agriculture, and recorded in the office of the secretary of state.

(d) Notice of any referendum must be given by the Idaho horse board in a manner determined by it. The ballots must be prepared by the Idaho horse board and forwarded to eligible owners, ~~who shall return them within twenty (20) days after mailing by the Idaho horse board~~ as prescribed in subsection (1) of this section. Returned ballots shall be delivered to the Idaho department of agriculture, main office, Boise, Idaho, on or before July 20 of the year of the referendum.

(e) The Idaho horse board shall pay the costs of any referendum.

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, 1997.

CHAPTER 40
(S.B. No. 1168)

AN ACT

RELATING TO CONTRACTS FOR SCHOOL BUS TRANSPORTATION; AMENDING SECTION 33-402, IDAHO CODE, TO PROVIDE THAT PUBLICATION OF NOTICE TO PROVIDE BUS TRANSPORTATION FOR A SCHOOL DISTRICT SHALL BE MADE FOUR WEEKS PRIOR TO THE BID OPENING; AND AMENDING SECTION 33-1510, IDAHO CODE, TO CORRECT A REFERENCE AND PROVIDE A SPECIFIC CODE CITATION.

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

SECTION 1. That Section 33-402, Idaho Code, be, and the same is hereby amended to read as follows:

33-402. NOTICE REQUIREMENTS. a. Notice of all school elections must be given by posting and publishing notice of said elections and such notice shall state:

1. The date of holding the election;
2. The hours between which the polls will be open;
3. The definite place or places of holding the election;
4. In the case of election of trustees, the offices to be filled, the trustee zones, and a statement that declarations of candidacy must be filed not later than 5:00 p.m. on the fifth Friday prior to the day of the election;
5. In the case of bond election, the amount of the issue, the purpose and period of the issue;
6. In the case of the assumption of a debt, the amount of any such debt to be assumed by each district, or part of a district; and
7. In all other elections, a brief statement of the question being submitted to the electors.

b. In school elections involving (i) the incurring or increasing of a debt, (ii) approving a levy for a plant facilities reserve fund and term thereof, (iii) excising and annexing territory, (iv) consolidating districts, or (v) dividing a district, notice of the election shall be posted not less than twenty-one (21) days prior to the day of the election in at least three (3) places in each district participating in or affected by such election, one (1) of which places shall be at or near the main door of the administrative offices of each such district, and by publishing at least once each week for three (3) consecutive weeks prior to the day of the election in a newspaper as provided in section 60-106, Idaho Code, published in the county or in any county in which such district may lie and having general circulation within such district.

c. Notice of all other school elections shall be given in the same manner, except that the posting shall be for not less than ten (10) days, and publishing shall be at least once each week for two (2) consecutive weeks prior to the day of the election.

d. Notice of the deadline for filing declaration of candidacy for election of trustees shall be posted for not less than ten (10) days and published at least once each week for two (2) consecutive weeks prior to the last day for filing nominating petitions as required by section 33-502, Idaho Code.

e. In elections for excising and annexing the territory of school districts, or to create new school districts by consolidation or division, the clerk of the board of county commissioners of the county in which the district lies, or of the home county if the district be a joint district, shall prepare, post, sign and arrange for the publishing of, the notice of election. In all other elections it shall be the duty of the clerk of the board of trustees so to do.

f. Notice of annual meeting of elementary school districts as provided for in section 33-510, Idaho Code, and of intent to discontinue a school, as provided for in section 33-511, Idaho Code, and annual budget hearing as provided for in section 33-801, Idaho Code,

shall be given by posting and publishing as outlined in subsection b of this section except that posting shall be for not less than ten (10) days, and publishing shall be once in a newspaper as provided in section 60-106, Idaho Code, published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, published in the county in which such district lies. If more than one (1) newspaper is printed and published in said district or county, then in the newspaper most likely to give best general notice of the election within said district; provided that if no newspaper is published in the said district or county, then in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the election within the district.

g. Notices calling for bids for the acquisition, use, or disposal of real and personal property as provided for in section 33-601, Idaho Code, and contracting for transportation services as provided for in section 33-1510, Idaho Code, shall be given by publishing twice, not less than one (1) week apart in a newspaper as provided in section 60-106, Idaho Code, published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, published in the county in which such district lies. If more than one (1) newspaper is printed and published in said district or county, then in the newspaper most likely to give best general notice of the election within said district; provided that if no newspaper is published in the said district or county, then in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the election within the district. The notice inviting bids shall set a date and place for opening bids. The first publication of the notice shall be at least two (2) weeks before the date of opening the bids; except that the notice for contracting for transportation services shall be made not less than four (4) weeks before the date of opening bids.

h. Proof of posting notice shall be upon the affidavit of the person posting the same; and proof of publication shall be upon the affidavit of the publisher of the newspaper or newspapers respectively. Such affidavits shall be filed with his board by the clerk responsible for the posting and the publishing of said notice, before the day of the election named in the notice.

SECTION 2. That Section 33-1510, Idaho Code, be, and the same is hereby amended to read as follows:

33-1510. CONTRACTS FOR TRANSPORTATION SERVICE. All contracts entered into by boards of trustees for the transportation of pupils shall be in writing in a form approved by the state superintendent of public instruction. No contract shall be executed covering a period of time exceeding five (5) years.

Before entering into such contracts, the board of trustees shall invite bids by once twice giving notice as provided in section 33-402 g., Idaho Code, and shall award the contract to the lowest responsible bidder.

Approved March 12, 1997.

CHAPTER 41
(S.B. No. 1183)

AN ACT

RELATING TO PROGRAMS FOR DRIVER TRAINING; AMENDING SECTION 33-1702, IDAHO CODE, TO DIRECT THE STATE BOARD OF EDUCATION TO ADOPT STANDARDS TO PROVIDE CLASSROOM INSTRUCTION FOR DRIVER TRAINING THROUGH A CORRESPONDENCE COURSE.

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

SECTION 1. That Section 33-1702, Idaho Code, be, and the same is hereby amended to read as follows:

33-1702. MINIMUM STANDARDS FOR COURSES. (1) The state board of education and the department of law enforcement shall cooperate in establishing, and amending as need arises, minimum standards for driver training programs reimbursable hereunder.

(2) Such standards shall require not less than thirty (30) clock hours of classroom instruction and six (6) hours behind the wheel practice driving; but the state board of education may allow in lieu of not more than three (3) hours of such practice driving, such equivalent thereof in simulated practice driving as the said board may have, by uniform regulations, approved. The board shall adopt standards necessary to allow completion of the thirty (30) clock hours of required classroom instruction through an approved correspondence course.

(3) When an approved driver training course is provided by a private, commercial driver training school, the standards for the driver training program as specified in subsection (2) of this section can be satisfied if all of the following alternative requirements are met:

- (a) No more than four (4) students are in a class; and
- (b) Not less than thirty (30) hours of classroom instruction are provided; and
- (c) Not less than six (6) hours behind-the-wheel practice driving are required; and
- (d) Not less than six (6) hours of observation time are completed with a parent or legal guardian.

Approved March 12, 1997.

CHAPTER 42
(S.B. No. 1229)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED FOR FISCAL YEAR 1997; 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 1996, there is hereby appropriated to the Office of the Governor for 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, 1996, through June 30, 1997:

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED:

FOR:

Trustee and Benefit Payments	\$10,000
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FROM:

Randolph Sheppard Fund	\$10,000
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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, 1997.

CHAPTER 43
(S.B. No. 1230)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE BOARD OF MEDICINE FOR FISCAL YEAR 1997; 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 350, Laws of 1996, there is hereby appropriated to the Department of Self-governing Agencies for the Board of Medicine 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, 1996, through June 30, 1997:

BOARD OF MEDICINE:

FOR:

Operating Expenditures	\$30,000
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FROM:

State Regulatory Fund	\$30,000
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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, 1997.

CHAPTER 44
(S.B. No. 1231)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL
YEAR 1998; LIMITING THE NUMBER OF FULL-TIME POSITIONS; AND TRANS-
FERRING MONEYS TO THE GENERAL FUND.

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

SECTION 1. There is hereby appropriated to the Public Utilities Commission the following amount, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. ADMINISTRATION:				
FROM:				
General Fund	\$ 263,500			\$ 263,500
Public Utilities				
Commission Fund	<u>619,700</u>	<u>\$ 204,500</u>	<u>\$22,900</u>	<u>847,100</u>
TOTAL	\$ 883,200	\$ 204,500	\$22,900	\$1,110,600
B. UTILITIES REGULATION:				
FROM:				
Public Utilities				
Commission Fund	\$1,391,900	\$ 793,800	\$42,200	\$2,227,900
C. REGULATED CARRIERS:				
FROM:				
Public Utilities				
Commission Fund	\$ 389,200	\$ 216,000	\$ 8,800	\$ 614,000
 GRAND TOTAL	 \$2,664,300	 \$1,214,300	 \$73,900	 \$3,952,500

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Public Utilities Commission is authorized no more than fifty-four (54) full-time equivalent positions at any point during the period July 1, 1997 through June 30, 1998, 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. Notwithstanding any other provisions of law, there is hereby appropriated from the Public Utilities Commission Fund and transferred to the General Fund an amount equal to the General Fund expenditures of the Public Utilities Commission for the period July 1, 1997, through June 30, 1998.

Approved March 12, 1997.

CHAPTER 45
(S.B. No. 1232)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS FOR FISCAL YEAR 1997; AND DECLARING AN EMER-
GENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 350, Laws of 1996, there is hereby appropriated to the Department of Self-governing Agencies for the Board of Professional Engineers and Land Surveyors 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, 1996, through June 30, 1997:

BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS:

FOR:

Personnel Costs	\$ 3,300
Operating Expenditures	<u>27,300</u>
TOTAL	\$30,600

FROM:

State Regulatory Fund	\$30,600
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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, 1997.

CHAPTER 46
(H.B. No. 6)

AN ACT
APPROPRIATING MONEYS TO THE LEGISLATIVE COUNCIL FROM THE GENERAL FUND
FOR RETAINING A CONSULTANT TO STUDY THE EFFECTS OF RESTRUCTURING
THE ELECTRIC UTILITY INDUSTRY; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby appropriated to the Legislative Council \$100,000 from the General Fund to be expended for the period on and after the effective date of this act until November 30, 1998, and shall be utilized to retain a consultant or consultants to assist the Committee appointed by the Legislative Council to study the possible restructuring of the electric utility industry. Notwithstanding any other provision of law to the contrary, any unexpended moneys appropriated pursuant to this act need not be encumbered at the end of the fiscal year.

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 13, 1997.

CHAPTER 47
(H.B. No. 15)

AN ACT

APPROPRIATING THREE HUNDRED THOUSAND DOLLARS OR A LESSER AMOUNT AS MAY BECOME AVAILABLE FROM THE FUNDS MADE AVAILABLE TO THE DEPARTMENT OF LABOR OF THE STATE OF IDAHO PURSUANT TO SECTION 903 OF THE FEDERAL SOCIAL SECURITY ACT, AS AMENDED, FOR THE PURCHASE OF REAL AND PERSONAL PROPERTY, FOR THE CONSTRUCTION OF OFFICE BUILDINGS FOR USE BY THE DEPARTMENT OF LABOR, AND FOR REPAIRING, REMODELING AND MAINTAINING OFFICE BUILDINGS USED BY THE DEPARTMENT OF LABOR; AND PROVIDING THAT NO PART OF THE MONEY APPROPRIATED SHALL BE OBLIGATED AFTER THE EXPIRATION OF THE TWO YEAR PERIOD BEGINNING WITH THE FIRST DAY OF JULY, 1997.

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

SECTION 1. There is hereby appropriated out of the funds made available to the Department of Labor of the State of Idaho, pursuant to Section 903 of the Federal Social Security Act, as amended, the sum of \$300,000 or a lesser amount as may become available as this state's share of funds allocated under the provisions of Section 903 of the Federal Social Security Act, as amended, to be used to purchase real and personal property, the construction of office buildings for use by the Department of Labor, and for repairing, remodeling and maintaining office buildings used by the Department of Labor of the State of Idaho, as authorized by and subject to the limitations of Section 72-1346(e), Idaho Code, and Section 72-1348(d), Idaho Code.

SECTION 2. No part of the money appropriated shall be obligated after the expiration of the two year period beginning with the first day of July, 1997.

Approved March 13, 1997.

CHAPTER 48
(H.B. No. 29)

AN ACT

RELATING TO COUNTY BUDGET LAW; AMENDING SECTION 31-1604, IDAHO CODE, TO ALLOW FOR THE PUBLICATION OF THE TENTATIVE BUDGET IN TWO OR MORE CLASSIFICATIONS.

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

SECTION 1. That Section 31-1604, Idaho Code, be, and the same is hereby amended to read as follows:

31-1604. APPROVAL OF TENTATIVE APPROPRIATIONS -- NOTICE -- FINAL APPROPRIATIONS. The suggested budget prepared by the county budget officer as hereinabove provided, together with the estimates and information furnished by the various offices, departments, services, agencies and institutions of the county shall be submitted by said county budget officer to the board of county commissioners of his county on or before the first Monday in August of each year; said county commissioners shall convene to consider said proposed budget in detail and make any alterations allowable by law and which they deem advisable, and agree upon a tentative amount to be allowed and appropriated for the ensuing fiscal year to each office, department, service, agency or institution of the county. Such allowances or appropriations shall be made under the classifications of:

"Salaries"; or "Salaries and Benefits," and

"Detail of Other Expenses," or "Detail of Other Expenses and Benefits," and may include "Benefits," as a separate category as hereinafter provided.

When the commissioners have agreed on such tentative appropriations the county budget officer, not later than the third week in August, shall cause notice to be published setting forth the amount of anticipated revenue from property taxes and the total of revenues anticipated from sources other than property taxes and the amount proposed to be appropriated to each office, department, service, agency or institution for the ensuing fiscal year, in ~~at least three~~ not less than two (2) classifications ~~including and which shall include~~ "Salaries," or "Salaries and Benefits," and "Detail of Other Expenses," or "Detail of Other Expenses and Benefits," and which may include "Benefits" as a separate classification together with the amounts expended under these classifications during each of the two (2) previous fiscal years by each office, department, service, agency or institution; and that the board of county commissioners will meet on or before the Tuesday following the first Monday in September, next succeeding, for the purpose of considering and fixing a final budget and making appropriations to each office, department, service, agency or institution of the county for the ensuing fiscal year at which time any taxpayer may appear and be heard upon any part or parts of said tentative budget and fixing the time and place of such meeting. Said notice shall be published in a newspaper as prescribed in section 31-819, Idaho Code.

Approved March 13, 1997.

CHAPTER 49
(H.B. No. 48)

AN ACT

RELATING TO ENGINEERS AND SURVEYORS; AMENDING SECTION 54-1215, IDAHO CODE, TO PROVIDE FOR THE USE OF ELECTRONIC DISCLAIMERS IN PLACE OF HANDWRITTEN SIGNATURES ON CERTAIN ENGINEERING DOCUMENTS AND COPIES WHEN DISTRIBUTED FOR INFORMATIONAL PURPOSES.

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

SECTION 1. That Section 54-1215, Idaho Code, be, and the same is hereby amended to read as follows:

54-1215. CERTIFICATES -- SEALS. (1) The board shall issue a certificate of registration upon payment of the registration fee as provided for in this chapter to any applicant who, in the opinion of the board, has satisfactorily met all of the requirements of this chapter, and an enrollment certificate shall be issued to those who qualify as engineers-in-training and land surveyors-in-training. In the case of a registered professional engineer, the certificate shall authorize the practice of "professional engineering," and in the case of a registered professional land surveyor the certificate shall authorize the practice of "land surveying." Certificates of registration shall show the full name of the registrant, shall give a serial registration number, and shall be signed by the chairman and the secretary of the board under seal of the board.

(2) The issuance of a certificate of registration by the board shall be prima facie evidence that the person named therein is entitled to all the rights, privileges and responsibilities of a registered professional engineer or of a registered professional land surveyor, provided that said certificate of registration has not expired or has not been suspended or revoked.

(3) Each registrant hereunder shall, upon registration, obtain a seal, the use and design of which are described below. It shall be unlawful for any person to affix or to permit his seal and signature to be affixed to any documents after the certificate of the registrant named thereon has expired or has been suspended or revoked, unless said certificate shall have been renewed, reinstated, or reissued, or for the purpose of aiding or abetting any other person to evade or attempt to evade any portion of this chapter.

(a) The seal may be a rubber stamp, crimp or electronically generated image. Whenever the seal is applied, the registrant's written signature and date shall be adjacent to or across the seal. No further words or wording is required. A facsimile signature generated by any method will not be acceptable.

(b) The seal, signature and date shall be placed on all final specifications, land surveys, reports, plats, drawings, plans, design information and calculations, whenever presented to a client or any public or governmental agency.

(c) The seal, signature and date shall be placed on all original documents ~~in such a manner that the seal, signature and date will~~

~~be reproduced on all copies.~~ The application of the registrant's seal, signature and date shall constitute certification that the work thereon was done by him or under his responsible charge. Each plan or drawing sheet shall be sealed and signed by the registrant or registrants responsible for each sheet. In the case of a firm, partnership or corporation, each plan or drawing sheet shall be sealed and signed by the registrant or registrants involved. The principal in responsible charge shall sign and seal the title or first sheet. Copies of electronically produced documents, listed in paragraph (b) of this subsection, distributed for informational uses such as for bidding purposes or working copies, may be issued with the registrant's seal and a notice that the original document is on file with the registrant's signature and date. The words "Original Signed By:" and "Date Original Signed:" shall be placed adjacent to or across the seal on the electronic original. The storage location of the original document shall also be provided. Only the title page of reports, specifications and like documents need bear the seal, signature and date of the registrant.

(d) The seal and signature shall be used by registrants only when the work being stamped was under the registrant's responsible charge.

(e) In the case of a temporary permit issued to an engineering registrant of another state, the registrant shall use his state of registration seal and shall affix his signature to all his work performed in this state under the terms of the temporary permit.

(f) The design of the seal shall be determined by the board; however, the following minimum information shall be on the seal:

The words "State of Idaho"

The registrant's name

The registrant's registration number

The words "Professional Engineer"

or "Professional Land Surveyor"

(4) The board shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter, an enrollment certificate or card as an engineer-in-training or land surveyor-in-training, which indicates that his name has been recorded as such in the board office. The engineer-in-training or land surveyor-in-training enrollment card does not authorize the holder to practice as a professional engineer or a professional land surveyor.

Approved March 13, 1997.

CHAPTER 50
(H.B. No. 49)

AN ACT

RELATING TO DISTRIBUTION OF FUEL TAX REVENUES; AMENDING SECTION 63-2412, IDAHO CODE, TO INCREASE THE AMOUNT DISTRIBUTED EACH FISCAL YEAR TO THE LOCAL BRIDGE INSPECTION ACCOUNT TO ONE HUNDRED THOUSAND DOLLARS.

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

SECTION 1. That Section 63-2412, Idaho Code, be, and the same is hereby amended to read as follows:

63-2412. DISTRIBUTION OF TAX REVENUES. (1) The revenues received from the taxes imposed by sections 63-2402 and 63-2405, Idaho Code, and any penalties, interest, or deficiency additions, or from the fees imposed by the commission under the provisions of section 63-2409, Idaho Code, shall be distributed periodically as follows:

(a) An amount of money equal to the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission at the end of each fiscal year shall be distributed as listed in paragraph (e) of this subsection.

(b) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

(c) As soon as possible after the beginning of each fiscal year, the sum of two hundred fifty thousand dollars (\$250,000) shall be distributed to the railroad grade crossing protection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 62-304C, Idaho Code.

(d) As soon as possible after the beginning of each fiscal year, the sum of fifty one hundred thousand dollars (\$5100,000) shall be distributed to the local bridge inspection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 40-703, Idaho Code.

(e) From the balance remaining with the commission after distributing the amounts in paragraphs (a) through (d) of subsection (1) of this section:

1. One and twenty-eight hundredths per cent (1.28%) shall be distributed as follows: sixty-six per cent (66%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed to the waterways improvement account, as created in chapter 15, title 57, Idaho Code. Up to twenty per cent (20%) of the moneys distributed to the waterways improvement account under the provisions of this paragraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the waterways improvement account. Thirty-three per cent (33%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One per cent (1%) of the one and twenty-eight hundredths per cent (1.28%) shall be

distributed to the search and rescue account created in section 67-2903, Idaho Code;

2. One and twenty-eight hundredths per cent (1.28%) shall be distributed as follows: sixty-six per cent (66%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed to the off-road motor vehicle account, as created in section 57-1901, Idaho Code. Up to twenty per cent (20%) of the moneys distributed to the off-road motor vehicle account by this subpart may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the off-road motor vehicle account. Thirty-three per cent (33%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One per cent (1%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed to the search and rescue account created in section 67-2903, Idaho Code; and

3. Forty-four hundredths per cent (.44%) shall be distributed to the park and recreation capital improvement account as created in section 57-1801, Idaho Code, to be used solely to improve roads and bridges within and leading to parks and recreation areas of the state.

4. The balance remaining shall be distributed to the highway distribution account created in section 40-701, Idaho Code.

(2) The revenues received from the taxes imposed by section 63-2408, Idaho Code, and any penalties, interest, and deficiency amounts, shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account, and those moneys are hereby continuously appropriated.

(b) The balance remaining of all the taxes collected shall be distributed to the state aeronautics account, as provided in section 21-211, Idaho Code.

Approved March 13, 1997.

CHAPTER 51
(H.B. No. 58)

AN ACT

RELATING TO MOTOR VEHICLE REGISTRATION FEES; AMENDING SECTION 49-434, IDAHO CODE, TO PROVIDE AN EXTENDED REGISTRATION PROGRAM FOR TRAILERS AND SEMITRAILERS IN A COMBINATION OF VEHICLES AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-434, Idaho Code, be, and the same is hereby amended to read as follows:

49-434. OPERATING FEES. (1) There shall be paid on all commercial vehicles, noncommercial vehicles, and on all farm vehicles having a maximum gross weight not in excess of sixty thousand (60,000) pounds, an annual registration fee in accordance with the following schedule.

Maximum Gross Weight (Pounds)	Annual Registration Fee	
	Noncommercial and Farm Vehicles	Commercial Vehicles
8,001-16,000 inc.	\$ 31.08	\$ 30.60
16,001-26,000 inc.	61.08	143.40
26,001-30,000 inc.	91.68	223.80
30,001-40,000 inc.	130.08	291.60
40,001-50,000 inc.	188.28	360.00
50,001-60,000 inc.	311.88	515.40

(2) There shall be paid on all commercial vehicles, irrespective of body type, and on all farm vehicles having a maximum gross weight in excess of sixty thousand (60,000) pounds, an annual registration fee in the amount of one hundred twenty dollars (\$120).

(3) In addition, an annual registration fee shall be required for each trailer or semitrailer in a combination of vehicles in the amount of fifteen dollars (\$15.00). As an option to the trailer and semitrailer annual registration, the department may provide extended registration.

(a) The optional extended-registration period shall not extend beyond seven (7) years.

(b) The fee shall be fifteen dollars (\$15.00) for each year.

(c) The license plate originally issued shall remain on the trailer or semitrailer until the registration expires.

(d) If the ownership of a trailer or semitrailer changes during the extended-registration period, the original owner may transfer the plate to another vehicle. The remaining fee shall be credited against the cost of the new registration. No refunds shall be given for any unexpired portion of the trailer or semitrailer registration fee if the plate is not transferred by the owner to another trailer. An extended plate shall not be transferred to another owner when the ownership of a trailer or semitrailer changes.

(e) A sticker validating the extended registration shall be affixed to the license plate. The owner shall obtain a replacement plate, validation sticker and a registration document from the department when a plate is lost, destroyed or illegible.

(4) An annual registration fee of eight dollars (\$8.00) shall be required for each rental utility trailer having a maximum laden or gross weight of up to two thousand (2,000) pounds, or fifteen dollars (\$15.00) for each rental utility trailer having a maximum laden or gross weight in excess of two thousand (2,000) pounds.

~~(a) For a fee of fifteen dollars (\$15.00) per year for each trailer or semitrailer;~~ For a fee of eight dollars (\$8.00) or fifteen dollars (\$15.00) per year, as applicable, for each rental utility trailer, the department may issue a ~~trailer;~~ rental utility trailer ~~or semitrailer~~ license plate that shall remain valid

for a period of five (5) years.

(b) The license plate shall become void if the owner's interest in the ~~trailer~~; rental utility trailer ~~or-semitrailer~~ changes during the five (5) year period.

(c) If the owner fails to enter the ~~licensed-trailer~~; rental utility trailer ~~or-semitrailer~~ on the annual renewal application during the five (5) year period, the registration record shall be purged. Any unexpired, unexpired plate shall be returned to the department if it is not entered on the renewal application.

(35) An administrative fee of four dollars (\$4.00) shall be paid and deposited to the state highway account on all registrations completed by the department under this section.

(46) In addition to the registration and license fees provided by subsections (1) and (2) of this section, there shall be paid on all commercial vehicles having a maximum gross weight in excess of sixty thousand (60,000) pounds, a use fee based upon the registered maximum gross weight in accordance with the following schedule. The use fees shall be calculated by multiplying the mills per mile, determined from the mills per mile schedule table, times the reported mileage for the vehicle, subject to the provisions of 9 this section.

Maximum Gross Weight of Vehicle (Pounds)	Mills per Mile
60,001-62,000	30.05
62,001-64,000	31.35
64,001-66,000	32.60
66,001-68,000	33.90
68,001-70,000	35.15
70,001-72,000	36.40
72,001-74,000	38.55
74,001-76,000	40.65
76,001-78,000	42.75
78,001-80,000	44.90
80,001-82,000	47.00
82,001-84,000	49.10
84,001-86,000	51.20
86,001-88,000	53.30
88,001-90,000	55.40
90,001-92,000	57.50
92,001-94,000	59.60
94,001-96,000	61.70
96,001-98,000	63.80
98,001-100,000	65.90
100,001-102,000	68.00
102,001-104,000	70.10
104,001-106,000	72.20

For each additional two thousand (2,000) pounds or fraction thereof in excess of one hundred six thousand (106,000) pounds add 2.1 mills per mile.

(57) In addition to the registration and license fees of this section, there shall be paid on all farm vehicles, and any commercial vehicle exclusively engaged in the transportation of logs, pulp wood, stull, poles, piling, rough lumber, ores, ore concentrates, sand and

gravel aggregates in bulk, livestock and vehicles used for the sole purpose of transporting milk from the farm to processing plant, having a maximum gross weight in excess of sixty thousand (60,000) pounds, a use fee in accordance with the following schedule. The use fees shall be calculated by multiplying the mills per mile, determined from the mills per mile schedule table, times the reported mileage for the vehicle, subject to the provisions of this section.

Maximum Gross Weight of Vehicle (Pounds)	Mills per Mile
60,001-62,000	22.45
62,001-64,000	22.45
64,001-66,000	22.45
66,001-68,000	22.45
68,001-70,000	22.45
70,001-72,000	22.45
72,001-74,000	22.45
74,001-76,000	22.45
76,001-78,000	22.45
78,001-80,000	22.45
80,001-82,000	24.55
82,001-84,000	26.65
84,001-86,000	28.75
86,001-88,000	30.85
88,001-90,000	32.95
90,001-92,000	35.05
92,001-94,000	37.15
94,001-96,000	39.25
96,001-98,000	41.35
98,001-100,000	43.45
100,001-102,000	45.55
102,001-104,000	47.65
104,001-106,000	49.75

For each additional two thousand (2,000) pounds or fraction thereof in excess of one hundred six thousand (106,000) pounds add 2.1 mills per mile.

(68) If any vehicle, or combinations of vehicles move on the highways of the state, and the vehicle or combination exceeds its registered maximum gross weight there shall be paid for that vehicle, the fees provided for in either subsection (46) or (57) of this section, as applicable, for the actual gross weight of the vehicle or combination of vehicles for the miles traveled at the heavier weight.

(79) If any vehicle or combinations of vehicles haul nonreducible loads, as authorized under the provisions of section 49-1004, Idaho Code, then and in that event there shall be paid for that vehicle, in addition to the other fees required in this section, an additional use fee of 2.1 mills per mile for each two thousand (2,000) pounds or fraction thereof of the maximum gross weight in excess of those set forth in section 49-1001, Idaho Code.

(810) Any owner operating vehicle combinations may apply to the department for authority to report multiple weights and pay use fees based upon the maximum gross weight of each configuration in the combination being operated. The owner shall declare a maximum gross

weight for each configuration being operated but not more than three (3) maximum gross weights for a vehicle combination may be declared. Any owner who receives authority to report and pay use fees at multiple maximum gross weights shall register the motor vehicle in a combination at the highest maximum gross weight of the vehicle. Any owner who reports vehicle combinations at multiple weights and fails to maintain records and furnish said records to the department upon request which show the configuration of the combination of vehicles and the trailer and unit number for all miles and trip segments traveled shall have all miles assessed at the highest maximum gross weight of the combination of vehicles.

(911) An applicant for registration of a commercial vehicle, a noncommercial vehicle or a farm vehicle shall set forth the maximum gross weight of the vehicle or combination of vehicles and the applicant shall pay any annual registration fees and any annual license fees on trailers and semitrailers required at the time he makes application for registration subject to the provisions of subsections (1) and (2) of this section. No part of the registration or license fees shall be subject to refund. The use fee payment required shall be computed according to the schedule in either subsection (46) or (57) of this section on the mileage operated over the highways of the state of Idaho and the owner of any vehicle against which a use fee is assessed, shall at the time of making his next quarterly report pay the use fee, if any, for the three (3) calendar months immediately prior. In determining the mileage subject to the use fee, there shall be deducted the miles traveled on roadways maintained with private funds by agreement with the public agency or agencies having jurisdiction over them. In no event shall the total money credited to the owner for the mileage exceed the actual cost of maintenance expended by him.

(102) Any owner who operates or intends to operate non-Idaho based vehicles in Idaho that are subject to the use fee required under the provisions of this section shall apply for a use fee account before operating the vehicles in Idaho. In lieu of establishing a use fee account the owner may purchase a trip permit under the provisions of section 49-432 or 49-433, Idaho Code, as applicable. The department shall develop rules to administer the use fee account. Any owner who has not established a use fee account or has not purchased a trip permit prior to operating in Idaho shall have committed an infraction.

SECTION 2. This act shall be in full force and effect on and after January 1, 1998.

Approved March 13, 1997.

CHAPTER 52
(H.B. No. 71)

AN ACT

RELATING TO THE DISTRICT COURT FUND; AMENDING SECTION 31-867, IDAHO CODE, TO ALLOW FOR THE PAYMENT OF DEPUTY CLERKS OF THE DISTRICT

COURT SALARIES FROM THE DISTRICT COURT FUND.

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

SECTION 1. That Section 31-867, Idaho Code, be, and the same is hereby amended to read as follows:

31-867. SPECIAL LEVY FOR COURTS -- DISTRICT COURT FUND. (1) The board of county commissioners of each county in this state may levy annually upon all taxable property of its county, a special tax not to exceed four hundredths per cent (.04%) of market value for assessment purposes for the purpose of providing for the functions of the district court and the magistrate division of the district court within the county. All revenues collected from such special tax shall be paid into the "district court fund," which is hereby created, and the board may appropriate otherwise unappropriated moneys into the district court fund. Moneys in the district court fund ~~shall~~ may be expended for all court expenditures other than courthouse construction ~~or~~ and remodeling ~~and-for-salaries-of-the-deputies--of--the--district--court clerk, which salaries shall be expended from the current expense fund.~~

(2) Balances in the district court fund may be accumulated from year to year sufficient to operate the court functions on a cash basis, but such balances shall not exceed sixty per cent (60%) of the total budget for court functions for the current year.

(3) There is hereby created the county court facilities fund which may be established in each county by resolution adopted at a public meeting of the board of county commissioners. Moneys in the county court facilities fund shall be expended for planning, remodeling and construction of court facilities. The county court facilities fund shall be separate and distinct from the county current expense fund and county expenditures from the county court facilities fund shall be solely dedicated to the purposes set forth in this section. At the discretion of the board of county commissioners, funds deposited in the county court facilities fund may be accumulated from year to year or expended on a regular basis.

Approved March 13, 1997.

CHAPTER 53
(H.B. No. 82)

AN ACT

RELATING TO CRIMINAL OFFENSES; AMENDING SECTION 18-116, IDAHO CODE, TO CLARIFY THAT INTOXICATION IS NOT A DEFENSE TO ANY OFFENSE AND CANNOT BE A CONSIDERATION WHEN DETERMINING A MENTAL STATE AND PROVIDING AN EXCEPTION.

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

SECTION 1. That Section 18-116, Idaho Code, be, and the same is

hereby amended to read as follows:

18-116. INTOXICATION NO EXCUSE FOR CRIME. ~~No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.~~ A person who is in an intoxicated condition is criminally responsible for his conduct and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected or otherwise ingested the substance causing the condition.

Approved March 13, 1997.

CHAPTER 54
(H.B. No. 83)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-528, IDAHO CODE, TO PROVIDE THAT ALL ORDERS OR FINAL JUDGMENTS MADE BY ANY COURT IN MATTERS AFFECTING A JUVENILE WITHIN THE PURVIEW OF THE ACT MAY BE APPEALED BY THE JUVENILE OR THE STATE.

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

SECTION 1. That Section 20-528, Idaho Code, be, and the same is hereby amended to read as follows:

20-528. APPEALS. All orders or final judgments made by any court in matters affecting a juvenile within the purview of this act may be appealed by the juvenile or the state. A decision by the court pursuant to section 20-508, Idaho Code, not to waive jurisdiction under this act over the juvenile may be appealed by the state. Appeals shall be reviewed as provided by the appellate rules of the supreme court of Idaho, except no undertaking shall be required. Upon filing of the notice of appeal, the district court shall take jurisdiction of the case and if the juvenile is in detention shall promptly hold a hearing after the filing of a request to determine whether the juvenile shall remain in detention.

Approved March 13, 1997.

CHAPTER 55
(H.B. No. 94)

AN ACT

RELATING TO KILOWATT HOUR TAXES; REPEALING SECTION 63-2708, IDAHO CODE; AND AMENDING CHAPTER 27, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-2708, IDAHO CODE, TO INCORPORATE BY REFERENCE THE ADMINISTRATION AND ENFORCEMENT PROVISIONS OF THE IDAHO INCOME TAX ACT.

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

SECTION 1. That Section 63-2708, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 27, 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 63-2708, Idaho Code, and to read as follows:

63-2708. COLLECTION AND ENFORCEMENT -- ACTIONS AGAINST STATE OF IDAHO. (1) In addition to the enforcement and penalty provisions in this chapter, the deficiency in tax, notice of deficiency and collection and enforcement procedures provided by the Idaho income tax act, in sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042, 63-3043, 63-3044, 63-3045, 63-3045A, 63-3045B, 63-3046, 63-3047, 63-3048 through 63-3065A, 63-3068, 63-3071, and 63-3075 through 63-3078, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this chapter and for the assessment and collection of any amounts due under 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 kilowatt hour tax liens and proceedings.

(2) The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment shall be paid as provided for payment of refunds under this chapter.

Approved March 13, 1997.

CHAPTER 56
(H.B. No. 109)

AN ACT

RELATING TO INCOME TAXATION OF CAPITAL GAINS; AMENDING SECTION 63-3022H, IDAHO CODE, TO PROVIDE THAT THE HOLDING PERIOD FOR PROPERTY QUALIFIED FOR CAPITAL GAINS DEDUCTION SHALL BE COMPUTED IN

ACCORDANCE WITH SECTION 1223 OF THE INTERNAL REVENUE CODE, TO PROVIDE AN EXCEPTION, DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3022H, 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 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 at least five (5) years;

(b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;

(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.

(f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the internal revenue code shall apply, except that when the holding period includes any period during which the taxpayer held property other than the property sold, all property held during the holding period must qualify under this section.

(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 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, 1997.

Approved March 13, 1997.

CHAPTER 57
(H.B. No. 110)

AN ACT

RELATING TO INCOME TAX; AMENDING SECTION 63-3010, IDAHO CODE, TO DEFINE TAXABLE YEAR; AMENDING SECTION 63-3013, IDAHO CODE, TO DEFINE RESIDENT; REPEALING SECTION 63-3015, IDAHO CODE; REPEALING SECTION 63-3019, IDAHO CODE; AMENDING SECTION 63-3022, IDAHO CODE, TO CORRECT A STATUTORY REFERENCE; AMENDING SECTION 63-3022L, IDAHO CODE, TO CORRECT A STATUTORY REFERENCE; AMENDING SECTION 63-3025B, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION AND TO MAKE PROVISIONS RELATING TO FARMER'S COOPERATIVES CONFORM TO THE INTERNAL REVENUE CODE; REPEALING SECTION 63-3029G, IDAHO CODE; AMENDING SECTION 63-3032, IDAHO CODE, TO PROVIDE A FILING DATE FOR RETURNS BY FARMER'S COOPERATIVES; AMENDING SECTION 63-3033, IDAHO CODE, TO CLARIFY PROVISIONS RELATING TO EXTENSIONS OF TIME FOR FILING RETURNS, COMPUTATION OF INTEREST IN CASES OF SUCH EXTENSIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3034, IDAHO CODE, TO CLARIFY DUE DATES IN CASES OF EXTENSIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3045, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO CLARIFY THE APPLICATION OF INTEREST ON DEFICIENCIES TO PENALTIES AND INTEREST AND IN CASES OF CAPITAL LOSS CARRYBACKS; AMENDING SECTION 63-3046, IDAHO CODE, TO CLARIFY THE APPLICATION OF INTEREST TO PENALTIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3073, IDAHO CODE, TO CLARIFY THE APPLICATION OF INTEREST IN CASES OF CAPITAL LOSS CARRYBACKS; REPEALING SECTION 63-3081, IDAHO CODE; AND DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3010, Idaho Code, be, and the same is hereby amended to read as follows:

63-3010. TAXABLE YEAR. The term "taxable year" with respect to any taxpayer means:

- (1) The taxable year of such taxpayer as shown on his return required pursuant to the Internal Revenue Code; or
- (2) Such other period as may be required by law; or
- (3) The calendar year.

SECTION 2. That Section 63-3013, Idaho Code, be, and the same is hereby amended to read as follows:

63-3013. RESIDENT. (1) 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
- (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.
- (c2) An individual shall not be considered a resident, but may be considered a part-year resident, during a period of absence from this state described as follows:
 - (1a) 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.
 - (2b) 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.
 - (3c) 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.
 - (4d) 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).
 - (5e) 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
 - (6f) The individual did not, during such period, claim Idaho as his tax home for federal income tax purposes.
 - (7g) 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 3. That Section 63-3015, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 63-3019, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Section 63-3022, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022JL, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(a) Add interest and dividends received or accrued during the taxable year from foreign securities and from securities issued by states and other political subdivisions, other than those issued by the state of Idaho, its cities and political subdivisions, exempt from federal income tax under the Internal Revenue Code, less applicable amortization.

(1) In the case of a corporation whose income is taxable under this chapter, no deduction shall be allowed for interest on indebtedness incurred or continued to purchase after January 1, 1983, or to carry obligations acquired after January 1, 1983, the interest of which is wholly exempt from the taxes imposed under this chapter. The amount of interest on indebtedness thus incurred or continued shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as the taxpayer's average adjusted basis of the obligations mentioned in the preceding sentence bears to such average adjusted basis for all assets of the taxpayer, or, at the option of the taxpayer, an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as the taxpayer's interest income from the obligations mentioned in the preceding sentence bears to the taxpayer's total income for the taxable year.

(2) In the case of a corporation whose Idaho taxable income is computed pursuant to section 63-3027, Idaho Code, the interest expense deductible shall be an amount equal to interest and dividend income subject to apportionment, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income not subject to apportionment. Interest expense not included in the preceding sentence shall be directly offset against interest and dividend income not subject to apportionment. This provision shall not apply to dividend income excluded pursuant to section 63-3027C(c) and (e), Idaho Code.

(b) Add any state taxes, measured by net income, paid or accrued during the taxable year adjusted for state tax refunds used in arriving at taxable income.

(c) Add the net operating loss deduction used in arriving at taxable income.

(d) (1) A net operating loss for any taxable year commencing on and after January 1, 1990, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the three (3) immediately preceding taxable years. Any portion

of the net operating loss not subtracted in the three (3) preceding years may be subtracted in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the three (3) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The term "income" as used in this subsection (d) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code.

(2) Net operating losses incurred by a corporation during a year in which such corporation did not transact business in Idaho may not be subtracted. Net operating losses incurred by a person, other than a corporation, in business activities not taxable by Idaho may not be subtracted.

(e) In the case of a corporation, add the amount deducted under the provisions of sections 243(a) and (c), 244, 245 and 246A of the Internal Revenue Code (relating to dividends received by corporations) as limited by section 246(b)(1) of said code.

(f) In the case of a corporation, subtract an amount determined under section 78 of the Internal Revenue Code to be taxable as dividends.

(g) Subtract the amount of any income received or accrued during the taxable year which is exempt from taxation by this state, under the provisions of any other law of this state or a law of the United States, if not previously subtracted in arriving at taxable income.

(h) In the case of corporations and partnerships, add Idaho taxable income of nonresident officers, directors, shareholders, partners or members to the extent such income is attributed to the corporation or partnership in section 63-3022L, Idaho Code.

(i) For the purpose of determining the Idaho taxable income of the beneficiary of a trust or of an estate, distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section. In the event that a nonresident beneficiary of a trust or estate fails to file an Idaho income tax return reporting all or any part of distributable net income taxable in Idaho or fails to pay any tax due thereon, the trust or estate making the payment or distribution shall be taxable upon the amount of such distribution or payment at the rates established by section 63-3024, Idaho Code.

(j) In the case of an individual who is on active duty as a full-time officer, enlistee or draftee, with the armed forces of the United States, which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid by the armed forces of the United States for services performed outside this state. The deduction is allowed only to the extent such income is included in taxable income, and provided

that appropriate adjustments shall be made in determining the deductions and exemptions allowed pursuant to section 63-3026A(4), Idaho Code.

(k) In the case of a corporation, add any capital loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. In the case of persons, other than corporations, add any capital loss deducted which was incurred in business activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to ~~the~~ an S corporation or partnership under this section, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (d) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(1) In the case of an individual, there shall be allowed as a deduction from gross income either (1) or (2) at the option of the taxpayer:

- (1) a. The standard deduction as defined in section 63, Internal Revenue Code, plus contributions made to the state of Idaho for credit to the medical assistance account, if such contributions were not previously subtracted in arriving at taxable income, plus
 - b. Itemized expenditures of not to exceed one thousand dollars (\$1,000) per cared for member incurred in providing personal care services to or for an immediate member of the taxpayer's family; such services may be provided either in the taxpayer's home or the family member's home; personal care services shall be as defined in chapter 56, title 39, Idaho Code, but the cared for member need not be medicaid eligible for the purposes of this section only, if he substantially meets all of the other requirements of chapter 56, title 39, Idaho Code; in order for the deduction under this paragraph to be allowed, the expenditures claimed must not have been reimbursed by medicare, medicaid or private insurance, and such expenditures must not have been previously subtracted in arriving at taxable income.
- (2) a. Itemized deductions as defined in section 63 of the Internal Revenue Code except state income taxes as specified in section 164 of the Internal Revenue Code, plus
 - b. Contributions made to the state of Idaho for credit to the medical assistance account, if such contributions were not previously subtracted in arriving at taxable income, plus
 - c. Itemized expenditures of not to exceed one thousand dollars (\$1,000) per cared for member incurred in providing personal care services to or for an immediate member of the taxpayer's family; such services may be provided either in the taxpayer's home or the family member's home; personal care services shall be as defined in chapter 56, title 39, Idaho Code, but the cared for member need not be medicaid eligible for the purposes of this section only, if he substantially meets all of the other requirements of chapter 56, title 39, Idaho Code; in order for the deduction under this paragraph c. to be allowed, the expenditures claimed must not have been reimbursed by medicare, medicaid or private insurance.

ance, and such expenditures must not have been previously subtracted in arriving at taxable income.

(m) Deduct any amounts added to gross income under section 87 of the Internal Revenue Code for tax credits allowable to the taxpayer under section 40 of the Internal Revenue Code.

(n) Add the taxable amount of any lump sum distribution deducted from gross income pursuant to section 402(d)(3) of the Internal Revenue Code. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(o) Deduct any amounts included in gross income under the provisions of section 86 of the Internal Revenue Code relating to certain social security and railroad benefits.

(p) In the case of a self-employed individual, deduct the actual cost of premiums paid to secure worker's compensation insurance for coverage in Idaho, if such cost has not been deducted in arriving at taxable income.

(q) Add the amount claimed as a credit under section 63-3029C, Idaho Code, if previously deducted in arriving at taxable income.

SECTION 6. That Section 63-3022L, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022L. NONRESIDENT OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS OR MEMBERS OF A CORPORATION OR PARTNERSHIP. (1) Nonresident officers, directors, shareholders, partners or members of a corporation or partnership transacting business in Idaho may elect to have Idaho taxable income described in subsection (2) of this section reported and taxed as Idaho taxable income of the corporation or partnership. Income subject to the election in this subsection shall be taxed at the rate applicable to corporations. The election shall be made on the return of the corporation or partnership from which the income is received and on which the income is reported in Idaho taxable income. The election in this section is not available to a nonresident who has Idaho taxable income in addition to income described in subsection (2) of this section.

(2) The election in subsection (1) of this section applies to:

(a) Wages, salary and other compensation paid to such nonresident officers, directors, shareholders, partners or members to the extent the compensation is Idaho taxable income of the nonresident to whom it is paid under section 63-3026A, Idaho Code; and

(b) The share of any income, loss, deduction or credit of an S corporation or partnership required to be included on such nonresident shareholder's, partner's or member's federal return except that such amount shall first be apportioned and allocated in the manner provided in section 63-3027, Idaho Code.

(c) When the total income attributable to a nonresident under paragraphs (a) and (b) of this subsection is less than the filing requirement of the nonresident under section 63-3030(32), Idaho Code, the income is not income under this subsection.

(3) If no election is made and a nonresident officer, director, shareholder, partner or member of a corporation or partnership transacting business in Idaho fails to file an Idaho individual income tax return reporting all or any part of the items described in subsection

(2) of this section or fails to pay any tax due thereof, such corporation or partnership shall include such items in its Idaho taxable income and be taxed at the rate applicable to corporations.

(4) The provisions of this section shall not apply to a corporation, other than an S corporation, with less than fifty per cent (50%) of its income taxable within this state.

SECTION 7. That Section 63-3025B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3025B. ORGANIZATIONS EXEMPT FROM THE TAX IMPOSED BY THIS ~~ACT~~ CHAPTER. (1) Except as provided in subsection (4) of this section, ~~a~~n organization described in section 501 of the internal revenue code, and the additional organizations listed below shall be specifically exempt from taxation under this ~~act~~ chapter unless such exemption is denied under section 502, 503 or 504 of the internal revenue code:

(~~1a~~) Fraternal beneficiary societies, orders, or associations, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system;

(~~2b~~) Farmer's or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including interinsurers and reciprocal underwriters of the same class) the income of which is used or held only for the purpose of paying losses or expenses;

~~(3) Farmer's, fruit grower's, or like associations organized and operated on a cooperative basis:~~

~~(a) For the purpose of marketing the products of members, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them;~~

~~(b) For the purpose of purchasing supplies and equipment for the use of members and turning over such supplies and equipment to them at actual cost, plus necessary expenses;~~

~~Exemption shall not be denied any such association because it has capital stock if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state on the value of the consideration for which the stock was issued or eight percent (8%) per annum, whichever is greater, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate directly or indirectly in the profits of the association, dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose;~~

(~~4c~~) Federal land banks and national farm loan associations, as provided in the federal farm loan act, as amended;

(2) Farmer's cooperatives shall be exempt from taxation under this chapter to the extent exempted by section 521 of the internal revenue code.

~~(5) Provided however, that Federal savings and loan associations shall not be exempt hereunder; from taxation under this chapter.~~

~~(64) Provided further that~~ Unrelated business income as defined in the internal revenue code shall be subject to taxation under this ~~act chapter.~~

SECTION 8. That Section 63-3029G, Idaho Code, be, and the same is hereby repealed.

SECTION 9. That Section 63-3032, Idaho Code, be, and the same is hereby amended to read as follows:

63-3032. TIME FOR FILING INCOME TAX RETURNS. (1) Except as provided in section 63-3033, Idaho Code:

(a) Returns made on the basis of the calendar year shall be filed in the office of the Idaho state tax commission on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed in the office of the Idaho state tax commission on or before the 15th day of the fourth month following the close of the fiscal year.

(b) In the case of a return for any period of less than one (1) year, the return shall be filed on or before the date required in this section, or on or before such date as required for such tax period by the internal revenue code, whichever is later.

(2) Returns made by farmer's cooperatives to the extent the cooperative is taxable under section 63-3025B, Idaho Code, shall be due on or before September 15th following the close of the calendar year or on or before the 15th day of the ninth month following the close of the fiscal year.

SECTION 10. That Section 63-3033, Idaho Code, be, and the same is hereby amended to read as follows:

63-3033. EXTENSION OF TIME. (a) The state tax commission may grant a reasonable extension of time for filing any return, declaration, statement or other document, or payment required by this ~~act chapter~~; provided, however, that: (1) no such extension shall be for a period in excess of six (6) months; (2) a payment must accompany the initial request for extension of time to file an income tax return which must be at least eighty per cent (80%) of the total tax reported on the income tax return when it is filed, or must be the same as the total tax reported on the income tax return for the prior year if a return was filed for the prior year.

~~(3b) Taxpayers residing outside any of the United States and Puerto Rico (including persons in military or naval service) shall have an automatic extension of time within which to file income tax returns with this state for a period which shall expire on the fifteenth day of the sixth month following the close of their taxable year. Any taxpayer entitled to an automatic extension shall attach a statement to his return claiming his right to such extension.~~

(c) Taxpayers who are military personnel or residents of foreign nations and entitled to extensions for filing federal income tax returns as a result of the application of the provisions of sections 911 and 7508 of the Internal Revenue Code, as they appeared on the first day of January, 1969, shall be entitled to extensions of time

for the same period for filing income tax returns with the state of Idaho subject to the requirements imposed in implementation of the indicated sections.

(d) Any taxpayer entitled to an extension under subsection (b) or (c) of this section shall attach a statement to his return claiming his right to the extension.

(be) If the amount of payment made under subsection (a) (2) of this section is less than eighty per cent (80%) of the total tax due under the provisions of this chapter and is less than the amount of the total tax reported on the income tax return for the prior year, a penalty may be applied to the total of the balance due in the amount prescribed by section 63-3046(a), Idaho Code, unless reasonable cause can be established.

(ef) In all cases, where the state tax commission has granted an extension of time in which to file any return, interest shall be paid on any tax due from the original due date to date of payment at the rate provided in section 63-3045, Idaho Code.

SECTION 11. That Section 63-3034, Idaho Code, be, and the same is hereby amended to read as follows:

63-3034. PAYMENT OF TAX. (a) The entire tax imposed by this ~~act~~ chapter shall be paid to the state tax commission on or before the date, including any extensions of the due date, upon which the return must be filed with the state tax commission, provided that payments made before the termination of the year for which taxes are paid shall be (1) based upon the taxpayer's estimate of total state tax liability or (2) when the estimated gross income of any such taxpayer is more than six hundred dollars (\$600) and the state tax commission deems it necessary to insure compliance with this ~~act~~ chapter, the commission may require any persons subject to this ~~act~~ chapter to place with the commission such security as the commission may determine.

(b) The amount of the security shall be fixed by the tax commission but shall not be greater than twice the amount of tax estimated to be due, or twenty thousand dollars (\$20,000), whichever is less. The amount of the security may be increased or decreased by the tax commission at any time within the limitations set forth in this subsection.

(c) If the tax commission finds that a taxpayer of whom security is required fails to furnish the security, the tax commission may issue a jeopardy assessment as prescribed by section 63-3065, Idaho Code, and take appropriate action to effect collection of the required security.

(d) The tax commission may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or the state of Idaho which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to make such sale in order to recover any tax, interest or penalties due on any amount required to be collected. Notice of the sale must be given to the person who deposited the security at least ten (10) days before the sale; such notice may be given personally or by mail addressed to the person at the address furnished to the tax commission and as it appears in the

records of the tax commission. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security.

SECTION 12. 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 subsection (1)(a) of this subsection, and such protest does not comply with the regulations rules 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 subsection (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 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 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 shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest.

(b) 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 subsection (b6) (c) 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 carryback of a net operating loss or a capital loss carryback, 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.

(bc) 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 midterm 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 13. That Section 63-3046, Idaho Code, be, and the same is hereby amended to read as follows:

63-3046. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY. (a) If any part of any deficiency is due to negligence or disregard of rules and regulations but without intent to defraud, five per cent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency ~~except that no interest shall accrue upon the five per cent (5%) amount hereby imposed.~~

(b) If any part of any deficiency is due to fraud with intent to evade tax, then fifty per cent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.

(c) In the event the return required by this act chapter is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

(d) (1) If there is a substantial understatement of tax for any

taxable year, there shall be added to the tax an amount equal to ten per cent (10%) of the amount of any underpayment attributable to such understatement.

(2) For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

- (i) Ten per cent (10%) of the tax required to be shown on the return for the taxable year, or
- (ii) Five thousand dollars (\$5,000).

(3) In the case of a corporation, paragraph (d)(2)(ii) of this section shall be applied by substituting ten thousand dollars (\$10,000) for five thousand dollars (\$5,000).

(4) For purposes of paragraph (d)(2) of this section, the term "understatement" means the excess of:

- (i) The amount of tax required to be shown on the return for the taxable year, over
- (ii) The amount of the tax imposed which is shown on the return.

(5) The amount of the understatement under paragraph (4) shall be reduced by that portion of the understatement which is attributable to:

- (i) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or
- (ii) Any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

(6) In the case of any item attributable to a tax shelter as defined in section 6661 of the Internal Revenue Code:

- (i) Paragraph (5)(ii) shall not apply, and
- (ii) Paragraph (5)(i) shall not apply unless (in addition to meeting the requirements of such paragraph) the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment.

(7) The state tax commission may waive all or any part of the addition to tax provided by this section on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

(e) Any person who fails to file a statement of payment to another person required by this act chapter, including the duplicate statement of tax withheld on wages, on the date prescribed therefor (including any extension of time for filing) shall, unless he shows that such failure is due to reasonable cause and not to wilful neglect, pay, upon notice and demand by the state tax commission and in the same manner as the payment of the tax, a penalty of two dollars (\$2.00) for each month or part of a month each statement is not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars (\$2,000).

(f) If the penalty to be added to the tax by subsections (a), (b), (c), (d) or (e) hereof of this section is less than ten dollars (\$10.00), the penalty to be added to the tax shall be a minimum of ten dollars (\$10.00).

(g) A processing charge to be determined and established annually

by the state tax commission shall be collected from any person who draws or delivers a check, draft or order for the payment of money in complete or partial satisfaction of the tax imposed by this chapter if that person does not have sufficient funds in or credit with the bank or depository upon which the check, draft or order is drawn. Money collected under this subsection shall be paid to the state tax commission to defer costs of handling such checks, drafts or orders.

SECTION 14. That Section 63-3073, Idaho Code, be, and the same is hereby amended to read as follows:

63-3073. INTEREST ON REFUNDS AND CREDITS. Upon the allowance of a credit or refund of any tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate provided in section 63-3045, Idaho Code, from the date such tax, penalty, or sum was paid or from the date the return was required to be filed, whichever date is the later, to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken; provided, however, that in case of a voluntary and unrequested payment in excess of actual tax liability, no interest shall be allowed when such excess is refunded or credited.

Interest on refunds resulting from net operating loss carryback claims or from capital loss carryback claims shall be computed from the last day of the taxable year in which the net operating loss arises.

SECTION 15. That Section 63-3081, Idaho Code, be, and the same is hereby repealed.

SECTION 16. 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, 1997.

Approved March 13, 1997.

CHAPTER 58
(H.B. No. 111)

AN ACT

RELATING TO INCOME TAX; AMENDING SECTION 63-3022A, IDAHO CODE, TO CLARIFY THE AMOUNT OF DEDUCTION AVAILABLE TO TAXPAYERS WHO FILE JOINT RETURNS AND TO CLARIFY THE LIMITATION ON THE DEDUCTION FOR TAXPAYERS OR TAXPAYER SPOUSES WHO RECEIVE RETIREMENT BENEFITS UNDER THE FEDERAL RAILROAD RETIREMENT ACT OR THE FEDERAL SOCIAL SECURITY ACT; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3022A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022A. DEDUCTION OF CERTAIN RETIREMENT BENEFITS. (a) For taxable years commencing on or after January 1, 1973, an amount specified by subsection (b) of this section of the following retirement benefits may be deducted by an Idaho resident from taxable income if such Idaho resident has either attained age sixty-five (65), or has attained age sixty-two (62) and is classified as disabled:

(1) Retirement annuities paid by the United States of America to a retired civil service employee or the unremarried widow of a retired civil service employee.

(2) Retirement benefits paid from the firemen's retirement fund of the state of Idaho to a retired fireman or the unremarried widow of a retired fireman.

(3) Retirement benefits paid from the policemen's retirement fund of a city within this state to a retired policeman or the unremarried widow of a retired policeman.

(4) Retirement benefits paid by the United States of America to a retired member of the military services of the United States or the unremarried widow of such member.

(b) The amount of retirement benefits that may be deducted from taxable income shall be an amount not in excess of maximum retirement benefits under the social security act, as amended, on the date on which this act is passed and approved, including adjustments to be made based upon consumer price index adjustments provided in section 215 of the social security act. The state tax commission shall ascertain benefit changes made in accordance with the social security act and publish the appropriate deduction amounts provided by this section reflecting such changes annually. Maximum retirement benefits under the social security act shall mean:

(1) In the case of a taxpayer who ~~is entitled to~~ files a joint return with his spouse for the tax year, an amount equal to the maximum social security benefits payable for the tax year to a man attaining age sixty-five (65) in the tax year who has earned the maximum earnings creditable under social security for the years used in the computation of his benefits, and whose spouse has no social security benefits except those payable on his record of earnings.

(2) In the case of a taxpayer who is not married, an amount equal to maximum social security benefits payable for the tax year to a person attaining age sixty-five (65) in the tax year who has earned the maximum earnings creditable under social security for the years used in the computation of his benefits.

(3) In the case of an unremarried widow, an amount equal to the maximum social security benefits payable for the tax year to a widow attaining age sixty-five (65) in the tax year who has no social security benefits except those to which she is entitled on her deceased husband's record and whose husband had received no reduced retirement benefits prior to his death and whose husband had earned the maximum earnings creditable under social security

for the years used in the computation of his benefits under social security.

(4) Maximum retirement benefits shall, in every case, take into consideration and be adjusted to reflect adjustments that would be made to such amounts had they been received as social security benefits as the result of the receipt of earnings in excess of earnings limitations. The terms in this paragraph are those defined in the social security act.

(5) Taxpayers not described in paragraphs (1), (2), (3) and (4) of this subsection may not deduct any amount of retirement benefits under this section.

(c) The total deduction under this section may not exceed the total amount of retirement benefits or annuities which are described in subsection (a) of this section and which are included in the taxpayer's gross income in the tax year. If the taxpayer or the taxpayer's spouse receives retirement benefits under the federal railroad retirement act or the federal social security act in the tax year, then the amount of any retirement annuities computed under subsection (b) of this section shall be reduced by the amount of such federal railroad retirement act or and federal social security act retirement benefits received by either the taxpayer or the taxpayer's spouse, and the lesser of the amount so computed or the total amount of retirement benefits or annuities which are described in subsection (a) of this section and which are included in the taxpayer's gross income shall constitute the allowable deduction.

(d) As used in this section, the word "widow" shall include a widower.

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, 1997.

Approved March 13, 1997.

CHAPTER 59
(H.B. No. 112)

AN ACT

RELATING TO CORPORATE INCOME TAX; AMENDING SECTION 63-3027C, IDAHO CODE, TO ALLOW MULTINATIONAL CORPORATIONS FILING CERTAIN RETURNS TO DEEM INCOME FROM A PASSIVE FOREIGN INVESTMENT COMPANY TO BE DIVIDENDS RECEIVED FROM PAYERS INCORPORATED OUTSIDE THE UNITED STATES AND SUBJECT TO DIVIDEND EXCLUSION; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3027C, Idaho Code, be, and the same is hereby amended to read as follows:

63-3027C. ELECTION IS BINDING -- TREATMENT OF DIVIDENDS. (a) A water's-edge election shall be made in the original return for a year and shall be binding for all years thereafter, except as follows:

(1) If, in the future, the United States supreme court or the supreme court of the state of Idaho rules that there is a state or federal constitutional right for a group of corporations to use the worldwide unitary method, a water's-edge combined group of corporations may, without permission of the tax commission, change its future filing to the worldwide unitary method.

(2) Any changes to use of the water's-edge method or any other changes beyond those described in paragraph (1) of this subsection may only occur with the written permission of the tax commission.

(3) No water's-edge election shall be made for an income year beginning prior to the operative date of sections 63-3027B through 63-3027E, Idaho Code.

(b) When disregarding an election or granting a change of election, the tax commission shall impose conditions which are necessary to prevent the avoidance of tax or to clearly reflect income for the period the election was made.

(c) For purposes of this section:

(1) Dividends received from payors incorporated outside the fifty (50) states and District of Columbia, to the extent taxable, shall be treated as income subject to apportionment.

(2) The income of corporations filing elections under section 936 of the Internal Revenue Code shall be deemed dividends received from payors incorporated outside the fifty (50) states and District of Columbia.

(3) Eighty-five per cent (85%) of all dividends described in subsection (c)(1) or (c)(2) of this section shall be excluded from income subject to apportionment.

(4) The dividends subject to apportionment shall be in lieu of any expenses attributable to such dividend income.

(5) Any actual dividend received from a corporation filing an election under section 936 of the Internal Revenue Code shall be eliminated from income.

(d) Any dividend from any payor required to be combined under the water's-edge election shall be eliminated from the calculation of apportionable income. Dividends received from a corporation described in section 922 of the Internal Revenue Code (defining "FSC") will be treated as follows:

(1) Dividends received from an FSC will be eliminated in the proportion that FSC federal taxable income for the year, out of which the dividend was paid, bears to the total FSC income before taxes for such year.

(2) The portion of FSC dividend not eliminated under paragraph (1) of this subsection will be subject to the eighty-five per cent (85%) exclusion provided for in subsection (c)(3) of this section.

(e) For purposes of this section:

(1) Amounts included in income by reference to subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code shall constitute dividends from payors outside the fifty (50) states and District of Columbia; and

(2) Amounts included in income under part VI of subchapter P of

chapter 1 of the Internal Revenue Code shall constitute dividends from payors outside the fifty (50) states and the District of Columbia; and
 (3) Deemed distributions defined by Section 78 of the Internal Revenue Code shall be excluded from the income of the water's-edge combined group.

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, 1997.

Approved March 13, 1997.

CHAPTER 60
 (H.B. No. 113)

AN ACT

RELATING TO PUBLIC RECORDS; REPEALING SECTION 9-340, IDAHO CODE; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-340, IDAHO CODE, TO PROVIDE EXEMPTIONS FROM DISCLOSURE FOR CERTAIN PUBLIC RECORDS; AND AMENDING SECTION 26-2916, IDAHO CODE, TO CORRECT A STATUTORY REFERENCE.

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

SECTION 1. That Section 9-340, Idaho Code, be, and the same is hereby repealed.

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 9-340, Idaho Code, and to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

- (1) Exemption under state or federal law or court rule.
 - (a) 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.
 - (b) 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.
- (2) Law enforcement records, investigatory records of agencies,

worker's compensation.

(a) 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.

(b) Juvenile 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.

(c) Records 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. Records exempt from disclosure shall include, but not be limited to, those containing the names and addresses of witnesses or victims or those containing information identifying victims or witnesses.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(i) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(ii) 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

(iii) 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

(iv) 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.

(3) Privacy, personnel records, personal information, health records, professional discipline.

(a) 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.

(b) 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.

(c) 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.

(d) Records of a personal nature as follows:

(i) Records of personal debt filed with a public agency pursuant to law;

(ii) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(iii) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

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

(v) Vital statistics records;

(vi) 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:

1. Such information shall be available upon request to a law enforcement agency; and

2. 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 and either date of birth or address of the person for whom the information is requested.

(e) 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.

(f) 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.

(g) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(h) 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.

(i) 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.

(j) The records, finding, determinations and decision of any pre-litigation screening panel formed under chapter 10, title 6, Idaho Code.

(k) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(l) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(m) 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.

(4) Trade secrets, production records, appraisals, bids, proprietary information.

(a) 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:

(i) 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

(ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) 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.

(c) Records relating to the appraisal of real property, timber or

mineral rights prior to its acquisition, sale or lease by a public agency.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) 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.

(o) 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:

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

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

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

(5) Archaeological, endangered species, libraries, legislative, test keys, miscellaneous exemptions.

(a) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative 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.

(g) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(h) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

SECTION 3. That Section 26-2916, Idaho Code, be, and the same is hereby amended to read as follows:

26-2916. CONFIDENTIALITY OF DATA SUBMITTED TO THE DIRECTOR. (1) All information or reports obtained by the director from an applicant, licensee or authorized representative, whether obtained through reports, applications, examinations, audits, investigation, or otherwise including, but not limited to:

(a) All information contained in or related to examination, investigation, operating, or condition reports reported by, on behalf of, or for the use of the director; or

(b) Financial statements, balance sheets, or authorized representative information;

are confidential trade secrets and may not be disclosed or distributed outside the department in accordance with the provisions of section 9-340(24)(a), Idaho Code, by the director or any officer or employee of the department.

(2) The director, however, may provide for the release of information to representatives of state or federal agencies who state in writing that they shall maintain the confidentiality of such information if:

(a) The licensee provides consent prior to the release; or

(b) The director finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given prior notice by the director of its intent to release such information.

(3) Nothing in this section shall prohibit the director from releasing to the public a list of persons licensed under the provi-

sions of this chapter or to release aggregated financial data on such licensees.

(4) The director may release information without prior notice to a law enforcement agency of this state or the United States in connection with a criminal referral made under this chapter or other law.

Approved March 13, 1997.

CHAPTER 61
(H.B. No. 117)

AN ACT

RELATING TO INCOME TAX; AMENDING SECTION 63-3046, IDAHO CODE, TO IMPOSE A PENALTY ON EMPLOYERS REQUIRED TO REGISTER FOR INCOME TAX WITHHOLDING PURPOSES BUT WHO FAIL TO REGISTER, TO PROVIDE AN EXCEPTION FOR REASONABLE CAUSE, TO PROVIDE FOR NOTICE OF PENALTIES AND MANNER OF ASSESSMENT AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 63-3046, Idaho Code, be, and the same is hereby amended to read as follows:

63-3046. PENALTIES AND ADDITIONS TO THE TAX IN CASE OF DEFICIENCY. (a) If any part of any deficiency is due to negligence or disregard of rules ~~and regulations~~ but without intent to defraud, five per cent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency except that no interest shall accrue upon the five per cent (5%) amount hereby imposed.

(b) If any part of any deficiency is due to fraud with intent to evade tax, then fifty per cent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.

(c) In the event the return required by this ~~act~~ chapter is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

(d) (1) If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten per cent (10%) of the amount of any underpayment attributable to such understatement.

(2) For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

- (i) Ten per cent (10%) of the tax required to be shown on the return for the taxable year, or
- (ii) Five thousand dollars (\$5,000).

(3) In the case of a corporation, paragraph (d)(2)(ii) of this

section shall be applied by substituting ten thousand dollars (\$10,000) for five thousand dollars (\$5,000).

(4) For purposes of paragraph (d)(2) of this section, the term "understatement" means the excess of:

(i) The amount of tax required to be shown on the return for the taxable year, over

(ii) The amount of the tax imposed which is shown on the return.

(5) The amount of the understatement under paragraph (4) shall be reduced by that portion of the understatement which is attributable to:

(i) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or

(ii) Any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

(6) In the case of any item attributable to a tax shelter as defined in section 6661 of the Internal Revenue Code:

(i) Paragraph (5)(ii) shall not apply, and

(ii) Paragraph (5)(i) shall not apply unless (in addition to meeting the requirements of such paragraph) the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment.

(7) The state tax commission may waive all or any part of the addition to tax provided by this section on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

(e) (1) Any person who fails to file a statement of payment to another person required by this act chapter, including the duplicate statement of tax withheld on wages, on the date prescribed therefor (including any extension of time for filing) shall, unless he shows that such failure is due to reasonable cause and not to willful neglect, pay, upon notice and demand by the state tax commission and in the same manner as the payment of the tax, be subject to a penalty of two dollars (\$2.00) for each month or part of a month each statement is not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars (\$2,000).

(2) Any employer required to register under the provisions of section 63-3035, Idaho Code, who fails to register after receiving written notice from the state tax commission of the requirement to register shall be subject to a penalty of one hundred dollars (\$100) for each month or part of a month after the date of the notice during which the failure occurs.

(3) The penalties provided in this subsection shall not apply if the person shows that the failure to register is due to reasonable cause and not to willful neglect.

(4) The state tax commission shall give notice of any penalty provided in this subsection and shall assess the penalties in the manner provided for deficiencies of tax.

(f) If the penalty to be added to the tax by subsections (a), (b), (c), (d) or (e) hereof of this section is less than ten dollars

(\$10.00), the penalty to be added to the tax shall be a minimum of ten dollars (\$10.00).

(g) A processing charge to be determined and established annually by the state tax commission shall be collected from any person who draws or delivers a check, draft or order for the payment of money in complete or partial satisfaction of the tax imposed by this chapter if that person does not have sufficient funds in or credit with the bank or depository upon which the check, draft or order is drawn. Money collected under this subsection shall be paid to the state tax commission to defer costs of handling such checks, drafts or orders.

Approved March 13, 1997.

CHAPTER 62
(H.B. No. 120)

AN ACT

RELATING TO SALES TAX; AMENDING SECTION 63-3612, IDAHO CODE, TO CLARIFY THE DEFINITION OF SALE; AMENDING SECTION 63-3620, IDAHO CODE, TO DELETE PROVISIONS RELATING TO RESALE CERTIFICATES; AMENDING SECTION 63-3622, IDAHO CODE, TO INCLUDE PROVISIONS RELATING TO RESALE CERTIFICATES; REPEALING SECTION 63-3622H, IDAHO CODE; AMENDING SECTION 63-3622K, IDAHO CODE, TO ADD LANGUAGE RELATING TO EXEMPTIONS FOR HOME YARD SALES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3623B, IDAHO CODE, TO DELETE CERTAIN PENALTIES AND PERMIT TRANSFER OF AMUSEMENT DEVICE DECALS UPON NOTICE TO THE TAX COMMISSION; AND AMENDING SECTION 63-3626, IDAHO CODE, TO EXTEND THE STATUTE OF LIMITATIONS ON CREDITS AND REFUNDS FOR CERTAIN PERIODS OPEN FOR ASSESSMENT.

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

SECTION 1. That Section 63-3612, Idaho Code, be, and the same is hereby amended to read as follows:

63-3612. SALE. (1) The term "sale" means ~~and includes~~ any transfer of title, exchange or barter, conditional or otherwise, ~~in any manner or by any means whatsoever~~, of tangible personal property for a consideration and shall include any similar transfer of possession ~~through incorporation or any other artifice~~ found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, an exchange or barter.

(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:

(a) Producing, fabricating, processing, printing, or imprinting of tangible personal property ~~for a consideration~~ for consumers who furnish, either directly or indirectly, the materials tangible personal property used in the producing, fabricating, processing, printing, or imprinting.

(b) Furnishing, preparing, or serving ~~for a consideration~~ food, meals, or drinks and nondepreciable goods and services directly

consumed by customers included in the charge thereof.

(c) A ~~transaction whereby the~~ transfer of possession of property ~~is transferred but where~~ the seller retains the title as security for the payment of the sales price.

(d) A transfer ~~for a consideration~~ of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(e) Admission charges to a place or for an event in Idaho.

(f) ~~Receipts from t~~The use of or the privilege of using tangible personal property or other facilities for recreational purposes recreation.

(g) Providing hotel, motel, tourist-home campground, or trailer court accommodations, and nondepreciable goods and ~~services~~ directly consumed by customers and included in the charge thereof services, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.

(h) ~~Receipts from t~~The lease or rental of tangible personal property.

(i) ~~As used in subsections (b) and (g) of this section, goods "directly consumed by customers" shall not be interpreted to mean any linens, bedding, cloth napkins or similar nondisposable property.~~

~~(j) Receipts from~~ The intrastate transportation for hire by air of freight or passengers, except (1) as part of a regularly scheduled flight by a certified air carrier, under authority of the United States, or (2) when providing air ambulance services.

(3) As used in subsections (2)(b) and (2)(g) of this section, goods "directly consumed by customers" shall not be interpreted to mean any linens, bedding, cloth napkins or similar nondisposable property.

SECTION 2. 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 retailer engaged in business in this state, before conducting business within this state, shall file with the state tax commission 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 or by an individual authorized by the seller to sign the application. 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 chapter relating to the sales tax or any rules of the state tax commission relating to the sales tax prescribed and adopted under this chapter, the state tax commission may revoke or suspend any one or more of the permits held by the person. 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 chapter relating to the sales tax and the 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--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.~~

SECTION 3. That Section 63-3622, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622. EXEMPTIONS -- EXEMPTION AND RESALE CERTIFICATES -- PENALTIES. (a) To prevent evasion of the sales and use tax, it shall be presumed that all 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 or resale certificate.

(b) The An 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.~~

(c) A 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. A 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. 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.

(d) A seller may accept an exemption or 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. Other than as provided elsewhere in this section, when an exemption or resale 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 or resale certificate that is not readable, legible or copyable.

(be) Any person who gives an exemption or resale 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.

(cf) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. 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 or resale 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.

(g) It shall be presumed that sales made to a person who has completed an exemption or 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 exemption certificate.

SECTION 4. That Section 63-3622H, Idaho Code, be, and the same is hereby repealed.

SECTION 5. 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, 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, 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, joint venture, or limited liability company by the transfer of assets to the partnership, joint venture, or limited liability company or transfers to a partnership, joint venture, or limited liability company in exchange for proportionate interests in the partnership, 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, 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.

(8) The sale or purchase of tangible personal property at home yard sales; provided however, that no more than two (2) such home yard sales per individual calendar year shall be exempt.

(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) or (b)(8) 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 6. 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 oper-

ated 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).

(hg) 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.

(ih) 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.

(ji) 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~~ only after written notice of the transfer is given to the state tax commission.

SECTION 7. That Section 63-3626, Idaho Code, be, and the same is hereby amended to read as follows:

63-3626. REFUNDS, LIMITATIONS, INTEREST. (a) If the tax commission determines that any amount due under this chapter has been paid more than once or has been erroneously or illegally collected or computed, the tax commission shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount then due and payable to the tax commission from that person and any balance refunded to the person by whom it was paid or to his successors, administrators or executors; the tax commission is authorized and the state board of tax appeals authorized to order the tax commission in proper cases to credit or refund such amounts whether or not such payments have been paid under protest and certify such refund to the state board of examiners.

(b) (1) No such credit or refund shall be allowed or made after three (3) years from the time the payment was made, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) Provided--tThe three (3) year period allowed by subsection (b)(1) of this section for making refunds or credit claims shall not apply in cases where the tax commission asserts a deficiency under sections 63-3629 and or 63-3630, Idaho Code;--and. In such cases, no credits or refunds shall be allowed or made after the later of:

- (i) Three (3) years from the time the payment was made; or
- (ii) The date upon which amounts asserted by deficiency become assessed;

unless before the expiration of such period a claim therefore is filed by the taxpayer. A taxpayers desiring to appeal or otherwise seek a refund of amounts paid in obedience to such deficiencies must do so by appealing within the time limits elsewhere prescribed in this act sections 63-3631 and 63-3049, Idaho Code.

(c) Interest shall be allowed on the amount of such credits or refunds at the rate provided in section 63-3045, Idaho Code, from the date such tax was paid.

(d) Appeal of a tax commission decision denying in whole or part

a claim for refund shall be made in accordance with and within the time limits prescribed in section 63-3632, Idaho Code.

Approved March 13, 1997.

CHAPTER 63
(H.B. No. 121)

AN ACT

EXPRESSING LEGISLATIVE INTENT; PROVIDING FOR THE REDUCTION OF GENERAL FUND APPROPRIATIONS FOR VARIOUS AGENCIES, DEPARTMENTS AND INSTITUTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. It is legislative intent that to the extent possible, the General Fund appropriation reductions in this legislation be implemented in the same manner as the reduced General Fund spending authority on file in the Office of the State Controller in compliance with Executive Order 96-21.

SECTION 2. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Executive Office of the Governor in Section 2, Chapter 266, Laws of 1996, is hereby reduced by \$31,500 for the period July 1, 1996, through June 30, 1997.

SECTION 3. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Division of Financial Management in Section 2, Chapter 277, Laws of 1996, is hereby reduced by \$35,700 for the period July 1, 1996, through June 30, 1997.

SECTION 4. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Endowment Fund Investment Board in Section 1, Chapter 141, Laws of 1996, is hereby reduced by \$8,100 for the period July 1, 1996, through June 30, 1997.

SECTION 5. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Commission on Aging in Section 1, Chapter 155, Laws of 1996, is hereby reduced by \$92,800 for the period July 1, 1996, through June 30, 1997.

SECTION 6. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Human Rights Commission in Section 1, Chapter 142, Laws of 1996, is hereby reduced by \$10,600 for the period July 1, 1996, through June 30, 1997.

SECTION 7. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Com-

mission for the Blind and Visually Impaired in Section 1, Chapter 315, Laws of 1996, is hereby reduced by \$30,700 for the period July 1, 1996, through June 30, 1997.

SECTION 8. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Commission on Women's Programs in Section 1, Chapter 292, Laws of 1996, is hereby reduced by \$1,000 for the period July 1, 1996, through June 30, 1997.

SECTION 9. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Military Division in Section 1, Chapter 291, Laws of 1996, is hereby reduced by \$69,200 for the period July 1, 1996, through June 30, 1997.

SECTION 10. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Commerce in Section 1, Chapter 117, Laws of 1996, is hereby reduced by \$66,700 for the period July 1, 1996, through June 30, 1997.

SECTION 11. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Administration in Section 2, Chapter 284, Laws of 1996, is hereby reduced by \$99,700 for the period July 1, 1996, through June 30, 1997.

SECTION 12. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Revenue and Taxation in Section 2, Chapter 118, Laws of 1996, is hereby reduced by \$471,700 for the period July 1, 1996, through June 30, 1997.

SECTION 13. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Agriculture in Section 1, Chapter 294, Laws of 1996, is hereby reduced by \$86,200 for the period July 1, 1996, through June 30, 1997.

SECTION 14. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Commission on Hispanic Affairs in Section 1, Chapter 350, Laws of 1996, is hereby reduced by \$2,700 for the period July 1, 1996, through June 30, 1997.

SECTION 15. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Correction in Section 1, Chapter 154, Laws of 1996, is hereby reduced by \$1,520,000 for the period July 1, 1996, through June 30, 1997.

SECTION 16. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the

Department of Law Enforcement in Section 1, Chapter 290, Laws of 1996, is hereby reduced by \$322,500 for the period July 1, 1996, through June 30, 1997.

SECTION 17. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Office of the State Board of Education in Section 1, Chapter 278, Laws of 1996, is hereby reduced by \$24,900 for the period July 1, 1996, through June 30, 1997.

SECTION 18. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Superintendent of Public Instruction/State Department of Education in Section 1, Chapter 100, Laws of 1996, is hereby reduced by \$106,800 for the period July 1, 1996, through June 30, 1997.

SECTION 19. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Idaho School for the Deaf and the Blind in Section 1, Chapter 276, Laws of 1996, is hereby reduced by \$145,800 for the period July 1, 1996, through June 30, 1997.

SECTION 20. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the State Board for Vocational Education for the Division of Vocational Education in Section 1, Chapter 378, Laws of 1996, is hereby reduced by \$828,500 for the period July 1, 1996, through June 30, 1997.

SECTION 21. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys for Community College Support in Section 1, Chapter 318, Laws of 1996, is hereby reduced by \$282,500 for the period July 1, 1996, through June 30, 1997.

SECTION 22. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys for Boise State University, Idaho State University, Lewis-Clark State College, the University of Idaho and the Office of the State Board of Education in Section 1, Chapter 126, Laws of 1996, is hereby reduced by \$4,514,900 for the period July 1, 1996, through June 30, 1997.

SECTION 23. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Agricultural Research and Cooperative Extension Service Program in Section 1, Chapter 319, Laws of 1996, is hereby reduced by \$497,300 for the period July 1, 1996, through June 30, 1997.

SECTION 24. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Health Education Programs in Section 1, Chapter 317, Laws of 1996, is hereby reduced by \$76,500 for the period July 1, 1996, through June 30, 1997.

SECTION 25. Notwithstanding any other provision of the law to the

contrary, the total appropriation of General Fund moneys to the Special Programs in Section 1, Chapter 389, Laws of 1996, is hereby reduced by \$129,500 for the period July 1, 1996, through June 30, 1997.

SECTION 26. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Idaho Educational Public Broadcasting System in Section 1, Chapter 265, Laws of 1996, is hereby reduced by \$32,400 for the period July 1, 1996, through June 30, 1997.

SECTION 27. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the State Library Board in Section 1, Chapter 279, Laws of 1996, is hereby reduced by \$56,900 for the period July 1, 1996, through June 30, 1997.

SECTION 28. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Idaho State Historical Society in Section 1, Chapter 293, Laws of 1996, is hereby reduced by \$35,800 for the period July 1, 1996, through June 30, 1997.

SECTION 29. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Division of Vocational Rehabilitation in Section 1, Chapter 346, Laws of 1996, is hereby reduced by \$78,100 for the period July 1, 1996, through June 30, 1997.

SECTION 30. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Health and Welfare for Indirect Support Services, Veterans Services, and the Independent Commissions and Councils in Section 1, Chapter 140, Laws of 1996, is hereby reduced by \$372,700 for the period July 1, 1996, through June 30, 1997.

SECTION 31. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Health and Welfare for the Division of Health, the Division of Welfare, and the Division of Medical Assistance in Section 1, Chapter 153, Laws of 1996, is hereby reduced by \$4,476,800 for the period July 1, 1996, through June 30, 1997.

SECTION 32. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Health and Welfare for the Division of Family and Community Services and the Division of Community Rehabilitation in Section 1, Chapter 212, Laws of 1996, is hereby reduced by \$1,085,800 for the period July 1, 1996, through June 30, 1997.

SECTION 33. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Health and Welfare for the Division of Environmental Quality in Section 1, Chapter 128, Laws of 1996, is hereby reduced by

\$26,800 for the period July 1, 1996, through June 30, 1997.

SECTION 34. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Public Health Districts in Section 1, Chapter 238, Laws of 1996, is hereby reduced by \$198,200 for the period July 1, 1996, through June 30, 1997.

SECTION 35. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Parks and Recreation in Section 1, Chapter 280, Laws of 1996, is hereby reduced by \$162,600 for the period July 1, 1996, through June 30, 1997.

SECTION 36. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Lands in Section 1, Chapter 273, Laws of 1996, is hereby reduced by \$257,600 for the period July 1, 1996, through June 30, 1997.

SECTION 37. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Water Resources in Section 1, Chapter 180, Laws of 1996, is hereby reduced by \$225,300 for the period July 1, 1996, through June 30, 1997.

SECTION 38. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Lieutenant Governor in Section 1, Chapter 390, Laws of 1996, is hereby reduced by \$2,400 for the period July 1, 1996, through June 30, 1997.

SECTION 39. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Attorney General in Section 1, Chapter 219, Laws of 1996, is hereby reduced by \$110,600 for the period July 1, 1996, through June 30, 1997.

SECTION 40. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the State Treasurer in Section 1, Chapter 321, Laws of 1996, is hereby reduced by \$28,000 for the period July 1, 1996, through June 30, 1997.

SECTION 41. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the State Controller in Section 1, Chapter 320, Laws of 1996, is hereby reduced by \$49,000 for the period July 1, 1996, through June 30, 1997.

SECTION 42. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Secretary of State in Section 1, Chapter 288, Laws of 1996, is hereby reduced by \$38,200 for the period July 1, 1996, through June 30, 1997.

SECTION 43. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Public

Utilities Commission in Section 1, Chapter 289, Laws of 1996, is hereby reduced by \$6,800 for the period July 1, 1996, through June 30, 1997.

SECTION 44. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Labor in Section 1, Chapter 286, Laws of 1996, is hereby reduced by \$10,300 for the period July 1, 1996, through June 30, 1997.

SECTION 45. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Legislative Council in Section 2, Chapter 275, Laws of 1996, is hereby reduced by \$83,700 for the period July 1, 1996, through June 30, 1997.

SECTION 46. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Supreme Court in Sections 1 and 2, Chapter 355, Laws of 1996, is hereby reduced by \$386,500 for the period July 1, 1996, through June 30, 1997.

SECTION 47. Notwithstanding any other provision of the law to the contrary, the total appropriation of General Fund moneys to the Department of Juvenile Corrections in Section 1, Chapter 295, Laws of 1996, is hereby reduced by \$445,700 for the period July 1, 1996, through June 30, 1997.

SECTION 48. Notwithstanding any other provision of the law to the contrary, the State Controller is hereby directed to reduce the transfers from the General Fund to the Legislative Fund by \$108,800 upon the written notification of the presiding officers of each house of the legislature.

SECTION 49. 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 13, 1997.

CHAPTER 64
(H.B. No. 126)

AN ACT

RELATING TO DISASTER RELIEF AND EXTENSIONS OF TIME FOR FILINGS AND PAYMENTS RELATING TO TAXES; AMENDING CHAPTER 1, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-113, IDAHO CODE, TO PROVIDE THE STATE TAX COMMISSION WITH AUTHORITY TO GRANT TO TAXPAYERS AFFECTED BY DISASTER AN EXTENSION OF TIME TO FILE DOCUMENTS AND PAY ANY TAX ADMINISTERED OR ENFORCED BY THE COMMISSION; AMENDING CHAPTER 2, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-220, IDAHO CODE, TO PROVIDE BOARDS OF COUNTY COMMISSIONERS IN CERTAIN DISASTER AFFECTED COUNTIES WITH AUTHORITY TO GRANT TO TAX-

PAYERS AFFECTED BY DISASTER AN EXTENSION OF TIME TO FILE DOCUMENTS
AND PAY PROPERTY TAXES; AND DECLARING AN EMERGENCY.

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

SECTION 1. 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 63-113, Idaho Code, and to read as follows:

63-113. FILING AND PAYMENT EXTENSIONS AS DISASTER RELIEF. (1) The state tax commission may grant an extension of time for any filing, or any payment, which is required under any tax law administered or enforced by the state tax commission, to those persons whose ability to timely comply with their filing or payment requirement was adversely affected by a natural disaster declared by the President of the United States or by the governor of the state in a state or territory of the United States.

(2) The state tax commission shall provide a procedure for affected taxpayers to justify the extension and provide such other information as the commission may require to support the taxpayer's application. A notice of denial of an extension application shall be given in the manner provided for notices of deficiencies in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(3) No extension granted under this section shall be for a period in excess of one (1) year.

(4) In all cases where the state tax commission has granted an extension under this section, payment of the tax shall not be subject to any late filing penalty or interest if payment of the tax is made on or before the extended due date. Failure to file on the extended due date will thereafter cause the imposition of penalty and interest. Section 63-3033, Idaho Code, shall not apply to taxpayers who receive extensions under this section.

(5) Any rule, activity, procedure or form adopted by the commission to facilitate the provisions of this section, are exempt from the provisions of chapter 52, title 67, Idaho Code.

SECTION 2. That Chapter 2, 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 63-220, Idaho Code, and to read as follows:

63-220. TAX EXTENSIONS AS DISASTER RELIEF. (1) The board of county commissioners of any Idaho county declared by the governor of the state of Idaho as a natural disaster area may grant an extension of time for any filings or payments required under section 63-302(1), 63-602G, 63-706 or 63-903, Idaho Code, to those persons whose ability to timely comply with their filing or payment requirement is adversely affected by a natural disaster set forth in the declaration.

(2) Before granting any extension the board of county commissioners shall provide a procedure for affected taxpayers to justify the extension and provide such other information as the board may require

to support the taxpayer's application.

(3) No extension granted under this section shall be for a period in excess of sixty (60) days.

(4) In all cases where the board has granted an extension under this section, payment of the tax shall not be subject to any late filing penalty or interest if payment of the tax is made on or before the extended due date. Failure to make payments on or before the extended due date will thereafter cause the imposition of penalty and interest.

(5) When, as a result of relief granted under this section, a county official or state agency is unable to comply with a provision in this title requiring an action by a specified date, the action may be delayed only for such reasonably necessary time as the state tax commission approves, but not to exceed sixty (60) days.

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 13, 1997.

CHAPTER 65
(H.B. No. 183)

AN ACT

RELATING TO APPROPRIATIONS; AMENDING THE APPROPRIATION MADE IN SECTION 1, CHAPTER 154, LAWS OF 1996, TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 1997; AMENDING SECTION 2, CHAPTER 154, LAWS OF 1996, TO DECREASE THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 154, Laws of 1996, be, and the same is hereby amended to read as follows:

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				
	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	\$ 2,231,600	\$ 1,677,300	\$ 54,700	\$ 4,078,800 6,757,200	\$ 8,042,400 10,720,800
<u>Federal Grant Fund</u>				<u>1,021,600</u>	<u>1,021,600</u>

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Parolee					
Supervision					
Fund	48,400	14,300	400		63,100
Miscellaneous					
Revenue					
Fund	800	7,000			7,800
TOTAL	<u>\$ 2,280,800</u>	<u>\$ 1,698,600</u>	<u>\$ 55,100</u>	<u>\$ 4,078,800</u>	<u>\$ 8,113,300</u>
				<u>7,778,800</u>	<u>11,813,300</u>
B. PRISONS DIVISION:					
(1) INSTITUTIONAL SUPPORT:					
FROM:					
General					
Fund	\$ 1,313,900	\$ 3,720,000	\$ 11,200		\$ 5,045,100
	<u>1,398,700</u>	<u>6,180,300</u>	<u>23,800</u>		<u>7,602,800</u>
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	<u>\$ 1,517,900</u>	<u>\$ 3,978,000</u>	<u>\$ 11,200</u>		<u>\$ 5,507,100</u>
	<u>1,602,700</u>	<u>6,438,300</u>	<u>23,800</u>		<u>8,064,800</u>
(2) IDAHO STATE CORRECTIONAL INSTITUTION - BOISE					
FROM:					
General					
Fund	\$ 8,992,700	\$ 1,106,600	\$ 300,000		\$ 10,399,300
	<u>8,415,200</u>	<u>1,085,000</u>			<u>9,800,200</u>
Penitentiary					
Endowment Fund		1,087,600			1,087,600
		<u>1,187,600</u>			<u>1,187,600</u>
Miscellaneous					
Revenue					
Fund	283,200	22,100			305,300
TOTAL	<u>\$ 9,275,900</u>	<u>\$ 2,216,300</u>	<u>\$ 300,000</u>		<u>\$ 11,792,200</u>
	<u>8,698,400</u>	<u>2,294,700</u>			<u>11,293,100</u>
(3) IDAHO CORRECTIONAL INSTITUTION - OROFINO:					
FROM:					
General					
Fund	\$ 3,943,900	\$ 1,275,100	\$ 129,800	\$ 49,700	\$ 5,398,500
	<u>3,805,800</u>	<u>1,270,900</u>			<u>5,256,200</u>
Inmate Labor					
Fund	251,500	238,500			490,000
Miscellaneous					
Revenue					
Fund	75,200	5,400			80,600
TOTAL	<u>\$ 4,270,600</u>	<u>\$ 1,519,000</u>	<u>\$ 129,800</u>	<u>\$ 49,700</u>	<u>\$ 5,969,100</u>
	<u>4,132,500</u>	<u>1,514,800</u>			<u>5,826,800</u>

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
(4) NORTH IDAHO CORRECTIONAL INSTITUTION - COTTONWOOD:					
FROM:					
General					
Fund	\$ <u>1,927,400</u>	\$ 757,600	\$ 74,600	\$ 145,000	\$ <u>2,904,600</u>
	<u>1,853,400</u>				<u>2,830,600</u>
Inmate Labor					
Fund	59,400	94,200			153,600
Miscellaneous					
Revenue					
Fund	<u>34,200</u>	<u>4,900</u>			<u>39,100</u>
TOTAL	\$ <u>2,021,000</u>	\$ 856,700	\$ 74,600	\$ 145,000	\$ <u>3,097,300</u>
	<u>1,947,000</u>				<u>3,023,300</u>
(5) SOUTH IDAHO CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General					
Fund	\$ <u>3,645,300</u>	\$ <u>1,121,900</u>	\$ 129,000		\$ <u>4,896,200</u>
	<u>3,438,300</u>	<u>1,117,900</u>			<u>4,685,200</u>
Inmate Labor					
Fund	<u>642,300</u>	<u>390,100</u>	<u>25,000</u>		<u>1,057,400</u>
TOTAL	\$ <u>4,287,600</u>	\$ <u>1,512,000</u>	\$ 154,000		\$ <u>5,953,600</u>
	<u>4,080,600</u>	<u>1,508,000</u>			<u>5,742,600</u>
(6) IDAHO MAXIMUM SECURITY INSTITUTION - BOISE:					
FROM:					
General					
Fund	\$ <u>6,792,800</u>	\$ <u>1,792,400</u>	\$ 66,900		\$ <u>8,652,100</u>
	<u>6,325,500</u>	<u>1,784,300</u>			<u>8,176,700</u>
Miscellaneous					
Revenue					
Fund	<u>34,200</u>	<u>2,100</u>			<u>36,300</u>
TOTAL	\$ <u>6,827,000</u>	\$ <u>1,794,500</u>	\$ 66,900		\$ <u>8,688,400</u>
	<u>6,359,700</u>	<u>1,786,400</u>			<u>8,213,000</u>
(7) ST. ANTHONY WORK CAMP:					
FROM:					
General					
Fund	\$ <u>1,286,100</u>	\$ 302,600	\$ 21,200		\$ <u>1,609,900</u>
	<u>1,261,100</u>	<u>301,400</u>			<u>1,583,700</u>
Inmate Labor					
Fund	302,600	<u>352,500</u>	12,400		<u>667,500</u>
		<u>452,500</u>			<u>767,500</u>
TOTAL	\$ <u>1,588,700</u>	\$ <u>655,100</u>	\$ 33,600		\$ <u>2,277,400</u>
	<u>1,563,700</u>	<u>753,900</u>			<u>2,351,200</u>
(8) POCATELLO WOMENS CORRECTIONAL CENTER:					
FROM:					
General					
Fund	\$ <u>2,473,200</u>	\$ <u>1,057,100</u>	\$ 43,400		\$ <u>3,573,700</u>
	<u>2,269,300</u>	<u>1,044,500</u>			<u>3,357,200</u>
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	<u>114,700</u>	<u>8,700</u>			<u>123,400</u>
TOTAL	\$ 2,619,500	\$ 1,075,000	\$ 43,400		\$ 3,737,900
	<u>2,415,600</u>	<u>1,062,400</u>			<u>3,521,400</u>
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		<u>297,700</u>			<u>297,700</u>
		<u>447,700</u>			<u>447,700</u>
Miscellaneous					
Revenue					
Fund	<u>13,600</u>	<u>36,800</u>			<u>50,400</u>
TOTAL	\$ 9,286,600	\$ 2,069,300	\$ 358,800		\$ 11,714,700
		<u>2,219,300</u>			<u>11,864,700</u>
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
	<u>42,845,900</u>	<u>20,277,400</u>	<u>1,247,000</u>	<u>7,973,500</u>	<u>72,343,800</u>

SECTION 2. That Section 2, Chapter 154, Laws of 1996, be, and the same is hereby amended to read as follows:

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~~ ninety-nine and forty-seven one-hundredths (1,157,001,099.47) 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. 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 13, 1997.

CHAPTER 66
(S.B. No. 1022)

AN ACT

RELATING TO THE NUMBER OF DISTRICT JUDGES IN THE FIRST JUDICIAL DISTRICT; AMENDING SECTION 1-802, IDAHO CODE, TO PROVIDE THAT THE FIRST JUDICIAL DISTRICT SHALL HAVE FIVE DISTRICT JUDGES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 1-802, Idaho Code, be, and the same is hereby amended to read as follows:

1-802. FIRST DISTRICT -- NUMBER OF JUDGES -- RESIDENT CHAMBERS.

(1) The first judicial district shall consist of the counties of Boundary, Bonner, Kootenai, Shoshone and Benewah.

(2) The first judicial district shall have ~~four~~ five (45) district judges.

(3) Resident chambers of the district judges of the first judicial district shall be established as follows:

(a) One (1) resident chambers shall be established in Bonner County;

(b) ~~Two~~ Three (23) resident chambers shall be established in Kootenai County;

(c) One (1) resident chambers shall be established in Shoshone County.

SECTION 2. This act shall be in full force and effect on and after January 1, 1998.

Approved March 13, 1997.

CHAPTER 67
(S.B. No. 1024)

AN ACT

RELATING TO THE SALARY OF NONATTORNEY MAGISTRATES; AMENDING SECTION 1-2222, IDAHO CODE, TO REVISE THE SALARY STRUCTURE OF NONATTORNEY MAGISTRATES BY CLARIFYING LANGUAGE DESCRIBING THE BASE ANNUAL SALARY OF NONATTORNEY MAGISTRATES, TO TRANSFER THE ADDITIONAL JURISDICTIONAL SALARY CREDIT OF THREE THOUSAND FIVE HUNDRED DOLLARS FOR DISPOSING OF DRIVING UNDER THE INFLUENCE CASES INTO THE NONATTORNEY MAGISTRATE'S BASE ANNUAL SALARY AND TO PROVIDE THE ANNUAL SALARY LIMITATION ON NONATTORNEY MAGISTRATE SALARIES.

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 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	<u>\$28,00038,962</u>
Nonattorney Magistrate Judge II	3,000 to 4,500 cases	<u>25,00034,788</u>
Nonattorney Magistrate Judge III	1,750 to 3,000 cases	<u>22,00030,613</u>
Nonattorney Magistrate Judge IV	under 1,750 cases	<u>18,00025,047</u>

~~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%) before increasing the base annual salary by an additional sum of three thousand five hundred dollars (\$3,500), which sum shall thereafter remain as a permanent part of the annual salary base.

(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 beginning July 1, 1997, 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%) fifty-five thousand two hundred seventy-six dollars (\$55,276), and beginning July 1, 1998, there shall be no maximum salary limitation on nonattorney magistrate salaries.~~

(87) 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.

Approved March 13, 1997.

CHAPTER 68
(S.B. No. 1029)

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; AMENDING SECTION 23-1023, IDAHO CODE, TO PROVIDE THAT A PERSON WHO PROCURES BEER FOR A PERSON UNDER THE AGE OF TWENTY-ONE IS GUILTY OF A MISDEMEANOR PUNISHABLE AS PROVIDED BY SECTION 18-113, IDAHO CODE, AND TO PROVIDE THAT A PERSON UNDER THE AGE OF TWENTY-ONE WHO PURCHASES, ATTEMPTS TO PURCHASE, OR OTHERWISE CONSUMES OR POSSESSES BEER IS GUILTY OF A MISDEMEANOR PUNISHABLE ACCORDING TO THE SCHEDULE SET OUT IN SECTION 18-1502, IDAHO CODE.

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

SECTION 1. That Section 23-1023, Idaho Code, be, and the same is hereby amended to read as follows:

23-1023. BEER -- PROCURING FOR OR SELLING TO PERSON UNDER TWENTY-ONE YEARS OF AGE A MISDEMEANOR. Any person who shall procure beer for any person under twenty-one (21) years of age or any person under twenty-one (21) years of age who shall purchase, attempt to purchase or otherwise procure, consume or possess beer, shall be guilty of a misdemeanor. Any person who shall procure beer for any person under twenty-one (21) years of age shall be punished according to the provisions of section 18-113, Idaho Code. Any person under twenty-one (21) years of age who shall purchase, attempt to purchase, or otherwise consume or possess beer shall be punished according to the schedule set out in section 18-1502, Idaho Code. This section does not apply to possession by a person under the age of twenty-one (21) years making a delivery of beer in pursuance of the order of his parent or in pursuance of his employment, or when such person under the age of twenty-one (21) years is in a private residence accompanied by his parent or guardian and with such parent's or guardian's consent.

Approved March 13, 1997.

CHAPTER 69
(S.B. No. 1030)

AN ACT

RELATING TO DOMESTIC VIOLENCE CRIME PREVENTION ACT; AMENDING SECTION 39-6310, IDAHO CODE, TO PROVIDE THAT A COPY OF THE PETITION FOR A PROTECTION ORDER SHALL ALSO BE FURNISHED TO A RESPONDENT WHEN A COURT ORDER UNDER THE ACT IS SERVED UPON A RESPONDENT UNLESS THE RESPONDENT HAS PREVIOUSLY RECEIVED THE PETITION.

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 along with a copy of the petition for a protection order, if the respondent has not previously received the petition, 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 and a copy of the petition for a protection order, if the respondent has not previously received the petition, 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 13, 1997.

CHAPTER 70
(S.B. No. 1031)

AN ACT

RELATING TO ARRESTS FOR SERIOUS TRAFFIC OFFENSES; AMENDING SECTION 49-1405, IDAHO CODE, TO PROVIDE THAT AN ARREST MAY BE MADE FOR DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR OTHER INTOXICATING BEVERAGE.

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

SECTION 1. That Section 49-1405, Idaho Code, be, and the same is hereby amended to read as follows:

49-1405. ARRESTS FOR SERIOUS OFFENSES. (1) The authority to make an arrest is the same as upon an arrest for a felony when any person is charged with any of the following offenses:

(a) Negligent homicide.

(b) Driving, or being in actual physical control, of a vehicle while under the influence of alcohol or other intoxicating liquor beverage.

(c) Driving a vehicle while under the influence of any narcotic drug, or driving a vehicle while under the influence of any other drug to a degree which renders the person incapable of safely driving a vehicle.

(d) Failure to stop, or failure to give information, or failure to render reasonable assistance, in the event of an accident resulting in death or personal injuries.

(e) Failure to stop, or failure to give information, in the event of an accident resulting in damage to a vehicle or to fixtures or other property legally upon or adjacent to a highway.

(f) Reckless driving.

(g) Fleeing or attempting to elude a peace officer.

(2) Whenever any person is arrested as authorized in this section, he shall be taken without unnecessary delay before the proper magistrate as provided by law, except that in the case of either of the offenses designated in paragraphs (e), (f) and (g), a peace officer shall have the same discretion as is provided by law.

Approved March 13, 1997.

CHAPTER 71
(S.B. No. 1041)

AN ACT

RELATING TO THE IDAHO BOARD OF COSMETOLOGY; AMENDING SECTION 54-802, IDAHO CODE, TO FURTHER DEFINE ELECTROLOGY.

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

SECTION 1. That Section 54-802, Idaho Code, be, and the same is hereby amended to read as follows:

54-802. DEFINITIONS. For the purpose of this chapter, the following definitions shall apply:

(a) "Cosmetology" shall constitute any one (1) or combination of the following practices when done upon the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

1. Cutting, trimming, arranging, dressing, curling, waving by any method, cleansing, singeing, bleaching, coloring, or similar work upon the hair.

2. Applying cosmetic preparations, antiseptics, tonics, lotions or creams, or massaging, cleansing, exercising, beautifying, or similar applications or work upon the scalp, face, neck, arms,

hands, busts, or other parts of the body.

3. Manicuring, pedicuring the nails, and the application of artificial nails.

(b) "Registered cosmetologist" shall mean any person licensed to practice cosmetology.

(c) "Nail technology" shall constitute any one (1) or more of the following practices when done upon the human body:

1. Manicuring, pedicuring the nails, and the application of all forms of artificial nails.

2. Massage of the hands and feet.

(d) "Nail technician" shall mean any person whose practice of cosmetology is limited to nail technology.

(e) "Apprentice" shall mean any person who is engaged in learning or acquiring of any or all of the practices of cosmetology, and while so learning performs or assists in any of the practices of cosmetology.

(f) "Student" shall mean any person who is engaged in the learning or acquiring of any or all of the practices of cosmetology in a registered school of cosmetology, and while so learning performs or assists in any of the practices of cosmetology.

(g) "Instructor" shall mean a cosmetologist who teaches cosmetology or any practices thereof in a school of cosmetology or school or college of barbering.

(h) "Student instructor" shall mean a cosmetologist who is receiving training to teach cosmetology.

(i) "Cosmetological establishment" shall mean any place or part thereof other than a school of cosmetology wherein cosmetology is practiced.

(j) "School of cosmetology" shall mean any place or part thereof wherein cosmetology is taught to students.

(k) "Board" means the Idaho board of cosmetology.

(l) "Department" means the Idaho department of self-governing agencies.

(m) "Chapter" as used in this act refers to title 54, chapter 8, Idaho Code.

(n) "Electrology/esthetics" shall constitute any one (1) or combination of the following practices, when done upon the human body:

1. The permanent removal of hair by ~~any method except the use of X-rays, radium, radon, radioactive isotopes or any other radiation capable of producing ionization in human tissue~~ the insertion of a probe, needle, or filament, inserted below the skin.

2. Applying cosmetic preparations, antiseptics, tonics, lotions or creams, or massaging, cleansing, stimulating, manipulating, exercising, beautifying, or similar applications or work upon the human body.

(o) "Electrologist/esthetician" means any person licensed to practice electrology/esthetics and who is skilled in the permanent removal of unwanted hair and in the practice of skin care.

(p) "Esthetics" shall constitute any one (1) or combination of the following practices when done on the human body:

1. Applying cosmetic preparations, antiseptics, tonics, lotions or creams, or massaging, cleansing, exercising, beautifying or similar applications of work to the human body.

2. Nonpermanent hair removal by tweezing or waxing.

(q) "Esthetician" means any person licensed to practice esthetics.

(r) "Electrologist/esthetician instructor" means an electrologist/esthetician who teaches electrology/esthetics or any practices thereof in a school of cosmetology approved to teach electrology/esthetics.

(s) "Student electrologist/esthetician instructor" shall mean an electrologist/esthetician who is receiving training to teach electrology/esthetics.

(t) "Makeover or glamour photography business" means any business engaged in the offering of photographic services to the general public and whose employees engage in the facial application of cosmetic products or the arranging of the hair of customers in connection with the sale, or attempted sale, of photographic services.

(u) "Retail cosmetics dealer" means a fixed retail business which offers cosmetic products for sale at retail to members of the general public and whose employees engage in the facial application of cosmetic products to customers in connection with the sale, or attempted sale, of the products without compensation from the customer other than the regular price of the merchandise.

Approved March 13, 1997.

CHAPTER 72
(S.B. No. 1043)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1302, IDAHO CODE, TO FURTHER DEFINE SALARY BY EXCLUDING CERTAIN LUMP SUM PAYMENTS 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 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' Worker's 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) consecutive 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) (aA) "Salary" means:

(a) The total salary or wages paid to a person who meets the definition of employee by an employer for personal services currently performed and reported by the employer for income tax purposes, including the cash value of all remuneration in any medium other than cash, in the amount reported by the employer for income tax purposes, also including the

(b) The total 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.

(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(1)(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.

(C) "Salary" does not include:

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.

~~(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.~~ Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(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 13, 1997.

CHAPTER 73
(S.B. No. 1059)

AN ACT

RELATING TO DISHONORED CHECK FEES; AMENDING SECTION 28-42-308, IDAHO CODE, TO PROVIDE A CROSS-REFERENCE TO ESTABLISH DISHONORED CHECK FEES.

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

SECTION 1. That Section 28-42-308, Idaho Code, be, and the same is hereby amended to read as follows:

28-42-308. DISHONORED CHECK FEES. With respect to a regulated credit transaction, a dishonored check fee ~~of fifteen dollars-(\$15.00)~~ in the amount allowed as a set collection fee under section 28-22-105, Idaho Code, may be charged and collected by a creditor, for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft, offered by a debtor in full or partial repayment of a regulated credit transaction, and, provided that the fee is contracted for between the parties.

Approved March 13, 1997.

CHAPTER 74
(S.B. No. 1076)

AN ACT

RELATING TO PUBLIC WRITINGS; AMENDING SECTION 9-328; IDAHO CODE, TO PROVIDE CRITERIA FOR RETENTION OF PAPER RECORDS IN DIGITAL FORM, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 9-328, Idaho Code, be, and the same is hereby amended to read as follows:

9-328. PHOTOGRAPHIC OR DIGITAL RETENTION OF RECORDS -- DISPOSITION OF ORIGINALS. Any state officer may receive or retain documents 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 state officer may receive, file or record documents in his office in paper form. When permitted by law or administrative rule, a state officer may alternatively 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~~ is secure against 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 state 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 it must be secure against unauthorized or undetected alteration or deletion. If the medium itself does not 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 deletion, the custodial state officer must insure that a document can be restored from a backup medium which may or may not be digital.

(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 back-up 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 state 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 or an administrative rule promulgated under section 67-5751, Idaho Code.

(6) A document retained by a state 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 state 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 March 13, 1997.

CHAPTER 75
(S.B. No. 1086, As Amended)

AN ACT

RELATING TO THE PAY-PER-TELEPHONE CALL ACT; STATING LEGISLATIVE FINDINGS; AMENDING SECTION 48-1102, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING CHAPTER 11, TITLE 48, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 48-1108, IDAHO CODE, TO REQUIRE THAT CHARGES FOR ADULT ENTERTAINMENT PAY-PER-TELEPHONE CALLS BE EVIDENCED BY A PRESUBSCRIPTION AGREEMENT TO BE ENFORCEABLE; AND DECLARING AN EMERGENCY.

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

SECTION 1. FINDINGS. The Legislature finds that with respect to pay-per-telephone call complaints received by state agencies, the overwhelming majority of them involve disputes over whether the con-

sumer called or did not place an adult entertainment pay-per-telephone call. The legislature finds that, in a significant number of instances, the consumer being charged did not place the call in question. Nevertheless, these citizens have been subjected to various collection efforts, some unconscionable, which seek to coerce consumers into paying the charges regardless of their authenticity. These consumers are faced with the threat of lawsuits, notoriety, and embarrassment if they decline to pay. Therefore, this state's policy shall be as stated in a new Section 48-1108, Idaho Code, which is that, unless excepted, charges for any adult entertainment pay-per-telephone call shall be void and unenforceable if the consumer has not first entered into a presubscription or comparable agreement, as defined in Section 48-1102, Idaho Code, to purchase the adult entertainment pay-per-telephone call. Also, any effort by the provider of the adult entertainment pay-per-telephone call to collect the charges absent an agreement shall be considered a false and deceptive practice in violation of the Idaho Consumer Protection Act.

SECTION 2. That Section 48-1102, Idaho Code, be, and the same is hereby amended to read as follows:

48-1102. DEFINITIONS. In this chapter:

(1) "Adult entertainment pay-per-telephone call" means any pay-per-telephone call service that is of a sexually prurient nature. For the purpose of this section, sexually prurient is any comment, request, suggestion, proposal, image, or other communication that, in context, is obscene, lewd, lascivious, or indecent.

(2) "Information provider" means any person, company, or corporation that controls the content of a pay-per-telephone call service. Any telephone corporation that provides basic local exchange service or message-telecommunication service, as defined in section 62-603, Idaho Code, which transmits pay-per-telephone call service but does not control the content of the information transmitted is not included within this definition.

(23) "Pay-per-telephone call service" means any telecommunications service which permits simultaneous calling by a number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription relationship or comparable agreement and for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.

(4) "Presubscription or comparable agreement" means an agreement to purchase any pay-per-telephone call service and is evidenced by:

(a) A written contractual agreement between an information provider and a legally competent person that is executed for the sole purpose of arranging purchase of pay-per-telephone call services and is separate or easily severable from any promotions or inducements, and in which:

(i) The information provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the information provider's name and address, a business telephone num-

ber which the company may use to obtain additional information or to register a complaint, and the rates of service;

(ii) The information provider agrees to notify the consumer at least one (1) billing cycle in advance of any future rate changes;

(iii) The consumer agrees to use the services on the terms and conditions disclosed by the information provider; and

(iv) The information provider requires the use of an identification number or other means to prevent unauthorized access to the service by the nonsubscribers; or

(b) Disclosure of a pre-existing credit, prepaid account, debit, charge, or calling card number, along with authorization to bill that number, provided that the card:

(i) Is subject to the dispute resolution procedures of the federal truth-in-lending and fair credit reporting acts;

(ii) Has, upon request or application, been delivered to the person to be billed prior to assessment of charges; and

(iii) Does not operate to assess charges through automatic number identification.

(5) "Telephone corporation" means any person or corporation that provides basic local exchange service or message telecommunication service.

SECTION 3. That Chapter 11, Title 48, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 48-1108, Idaho Code, and to read as follows:

48-1108. ADULT ENTERTAINMENT PAY-PER-TELEPHONE CALLS. (1) Except as provided in subsection (2) of this section, no charge of any nature for any adult entertainment pay-per-telephone call is valid and enforceable unless the consumer has first entered into a presubscription or comparable agreement to purchase the adult entertainment pay-per-telephone call. Any adult entertainment pay-per-telephone call charges incurred absent a presubscription or comparable agreement are void and unenforceable.

(2) The second and successive time a consumer receives a telephone bill that includes charges for an adult entertainment pay-per-telephone call, the charges, if incurred absent a presubscription or comparable agreement, are void and unenforceable if:

(a) The charges were incurred as the result of third-party fraud; or

(b) The bill is sent to the consumer by a telephone corporation as a holder in due course and, upon written notification to the applicable telephone corporation of the disputed charge, the telephone corporation is able to recourse the bill back to the information provider or its agent.

(3) Any information provider which, on its own, or through an agent, assign, or successor who seeks to collect a charge of any nature for an adult entertainment pay-per-telephone call that does not have a presubscription or comparable agreement evidencing the consumer's agreement to purchase the call, has committed an unfair, unlawful and deceptive act or practice in trade and commerce for pur-

poses of applying the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

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 13, 1997.

CHAPTER 76
(S.B. No. 1106)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-520, IDAHO CODE, TO AUTHORIZE DETENTION FOR A JUVENILE STATUS OFFENDER WHO VIOLATES THE COURT'S SENTENCING DECREE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 20-515, IDAHO CODE, TO PROVIDE CORRECT NOMENCLATURE.

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

SECTION 1. That Section 20-520, Idaho Code, be, and the same is hereby amended to read as follows:

20-520. SENTENCING. (1) Upon the entry of an order finding the juvenile is within the purview of the act, the court shall then hold a sentencing hearing in the manner prescribed by the Idaho juvenile rules to determine the sentence that will promote accountability, competency development and community protection. Prior to the entry of an order disposing of the case, other than an order of discharge or dismissal, the court shall request and shall receive a report containing the results of an inquiry into the home environment, past history, competency development, prevention or out of home placement services provided, and the social, physical and mental condition of the juvenile. The court shall not consider or review the report prior to the entry of an order of adjudication. Upon presentation and consideration of the report by the court, the court may proceed to sentence the juvenile as follows:

(a) Place the juvenile on formal probation for a period not to exceed three (3) years from the date of the order;

(b) Sentence the juvenile to detention pursuant to this act for a period not to exceed thirty (30) days for each act, omission or status which is prohibited by the federal, state, local or municipal law or ordinance by reason of minority only. The sentence shall not be executed unless the act, omission or status is in violation of section 922(x) of title 18, United States Code, or the court finds that the juvenile has violated the court's decree imposing the sentence as provided below.

If the court, after notice and hearing, finds that a juvenile has violated the court's decree imposing the sentence under circumstances that brings the violation under the valid court order

exception of the federal juvenile justice and delinquency prevention act of 1974, as amended, the court may commit the juvenile to detention for the period of detention previously imposed at sentencing;

(c) Commit the juvenile to a period of detention, pursuant to this act, for a period of time not to exceed ninety (90) days for each unlawful or criminal act the juvenile is found to have committed, if the unlawful or criminal act would be a misdemeanor if committed by an adult, or where the juvenile has been adjudicated as an habitual status offender;

(cd) If the juvenile has committed an unlawful or criminal act which would be a felony if committed by an adult, the court may commit the juvenile to detention for a period not to exceed one hundred eighty (180) days for each unlawful or criminal act;

(de) Whenever a court commits a juvenile to a period of detention it shall notify the school district where the detention facility is located. No juvenile who is found to come within the purview of the act for the commission of a status offense shall be sentenced to detention in a jail facility unless an adjudication has been made that the juvenile is an habitual status offender;

(ef) Commit the juvenile to detention and suspend the sentence on specific probationary conditions;

(fg) Commit the juvenile to the legal custody of the department of juvenile corrections for an indeterminate period of time not to exceed the juvenile's twenty-first birthday, unless extended jurisdiction is necessary to complete the competency development and accountability goals of the department;

(gh) The court may suspend or restrict the juvenile's driving privileges for such periods of time as the court deems necessary, and the court may take possession of the juvenile's driver's license. The juvenile may request restricted driving privileges during a period of suspension, which the court may allow if the juvenile shows by a preponderance of evidence that driving privileges are necessary for his employment or for family health needs;

(hi) The court may order that the juvenile be examined or treated by a physician, surgeon, psychiatrist or psychologist, or that he receive other special care, or that he submit to an alcohol or drug evaluation, if needed, and for such purposes may place the juvenile in a hospital or other suitable facility;

(ij) In support of an order under the provisions of this section, the court may make an additional order setting forth reasonable conditions to be complied with by the parents, the juvenile, his legal guardian or custodian, or any other person who has been made a party to the proceedings, including, but not limited to, restrictions on visitation by the parents or one (1) parent, restrictions on the juvenile's associates, occupation and other activities, and requirements to be observed by the parents, guardian or custodian;

(jk) The court may make any other reasonable order which is in the best interest of the juvenile or is required for the protection of the public, except that no person under the age of eighteen (18) years may be committed to jail, prison or a secure facility which does not meet the standards set forth in section

20-518, Idaho Code, unless jurisdiction over the individual is in the process of being waived or has been waived pursuant to section 20-508 or 20-509, Idaho Code. The court may combine several of the above-listed modes of disposition where they are compatible;

(kl) An order under the provisions of this section for probation or placement of a juvenile with an individual or an agency may provide a schedule for review of the case by the court;

(lm) Order the proceeding expanded or altered to include consideration of the cause pursuant to chapter 16, title 16, Idaho Code;

(mn) Order the case and all documents and records connected therewith transferred to the magistrate division of the district court for the county where the juvenile and/or parents reside if different than the than the county where the juvenile was charged and found to have committed the unlawful or criminal act, for the entry of a dispositional order;

(no) Order such other terms, conditions, care or treatment as appears to the court will best serve the interests of the juvenile and the community;

(op) The court shall assess a ten dollar (\$10.00) charge against the juvenile for every petition filed where there has been an adjudication that the juvenile is within the purview of this chapter. All moneys raised pursuant to this subsection shall be transmitted by the court for deposit in the juvenile corrections account which is created in section 20-542, Idaho Code;

(pq) Additionally, the court shall assess a fee of sixty cents (60¢) per hour of community service against the juvenile for every petition filed where there has been an adjudication that the juvenile is within the purview of this chapter and the court is ordering community service. Such fee is to be remitted by the court to the state insurance fund for purposes of providing worker's compensation insurance for persons performing community service pursuant to this chapter;

(qr) Notwithstanding any other provision of this section, a court may not commit a juvenile offender under the age of ten (10) years to a period of detention or to the custody of the department of juvenile corrections for placement in secure confinement.

(2) When an order is entered pursuant to this section, the juvenile shall be transported to the facility or program so designated by the court or the department, as applicable, by the sheriff of the county where the juvenile resides or is committed, or by an appointed agent. Any order of commitment to the department to a program other than a secure facility shall be subject to review at least once every six (6) months. When committing a juvenile to the department, or another entity, the court shall at once forward to the department or entity a certified copy of the order of commitment.

(3) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order the juvenile or his parents or both to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile's conduct in accordance with the standards and requirements of sections 19-5304 and 19-5305, Idaho Code. The amount of restitution which may be ordered by the court shall not be subject to the limitations of section 6-210, Idaho Code.

(4) Any parent, legal guardian or custodian violating any order of the court entered against the person under the provisions of this chapter shall be subject to contempt proceedings under the provisions of chapter 6, title 7, Idaho Code.

SECTION 2. That Section 20-515, Idaho Code, be, and the same is hereby amended to read as follows:

20-515. FAILURE TO OBEY SUMMONS, A CONTEMPT -- WARRANT. If any person summoned as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of court. In case the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual, or that the welfare of the juvenile requires that he be brought forthwith into the custody of the court, a warrant or a copy capias may be issued for the parent, guardian or the juvenile.

Approved March 13, 1997.

CHAPTER 77
(H.B. No. 1)

AN ACT

RELATING TO ESCAPE BY A JUVENILE; AMENDING SECTIONS 18-2505 AND 18-2506, IDAHO CODE, TO INCLUDE AN ESCAPE BY A JUVENILE FROM A NONSECURE FACILITY WITHIN THE APPLICATION OF EACH SECTION AND TO CORRECT CODE REFERENCES.

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

SECTION 1. That Section 18-2505, Idaho Code, be, and the same is hereby amended to read as follows:

18-2505. ESCAPE BY ONE CHARGED WITH, CONVICTED OF, OR ON PROBATION FOR A FELONY -- ESCAPE BY JUVENILE. (1) Every prisoner charged with, convicted of, or on probation for a felony who is confined in any jail or prison including the state penitentiary, or who while outside the walls of such jail or prison in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such jail or prison, who escapes or attempts to escape from such officer or person, or from such jail or prison, or from such factory, farm or other place without the walls of such jail or prison, shall be guilty of a felony, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged.

(2) Any person under the age of eighteen (18) charged with, found to have committed, or on probation for an offense which would be a felony if committed by an adult who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful

custody of any officer or person shall be subject to proceedings under chapter ~~185~~, title ~~1620~~, Idaho Code, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to sections ~~16-1806~~ 20-508 or ~~16-1806A~~ 20-509, Idaho Code, the juvenile shall be guilty of a felony for a violation of this section and shall be subject to adult criminal proceedings.

SECTION 2. That Section 18-2506, Idaho Code, be, and the same is hereby amended to read as follows:

18-2506. ESCAPE BY ONE CHARGED WITH OR CONVICTED OF A MISDEMEANOR -- ESCAPE BY A JUVENILE.

(1) (a) Every prisoner charged with or convicted of a misdemeanor who is confined in any county jail or other place or who is engaged in any county work outside of such jail or other place, or who is in the lawful custody of any officer or person, who escapes or attempts to escape therefrom, is guilty of a misdemeanor.

(b) In cases involving escape or attempted escape by use of threat, intimidation, force, violence, injury to person or property other than that of the prisoner, or wherein the escape or attempted escape was perpetrated by use or possession of any weapon, tool, instrument or other substance, the prisoner shall be guilty of a felony.

(2) Any person under the age of eighteen (18) charged with, found to have committed, or on probation for an offense which would be a misdemeanor if committed by an adult who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of an officer or person, shall be subject to proceedings under the provisions of chapter ~~185~~, title ~~1620~~, Idaho Code, for an act which would be a misdemeanor if committed by an adult, or, if the escape or attempted escape was undertaken as provided in subsection (1)(b) of this section, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to sections ~~16-1806~~ 20-508 or ~~16-1806A~~ 20-509, Idaho Code, the juvenile shall be guilty of a misdemeanor, or if subsection (1)(b) of this section applies, of a felony and, in either case, shall be subject to adult criminal proceedings.

Approved March 13, 1997.

CHAPTER 78
(H.B. No. 9)

AN ACT

RELATING TO THE PRACTICE OF DENTISTRY; AMENDING SECTION 54-903, IDAHO CODE, TO STRIKE A REQUIREMENT THAT A DENTAL SPECIALIST POSSESS A GENERAL LICENSE.

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

SECTION 1. That Section 54-903, Idaho Code, be, and the same is hereby amended to read as follows:

54-903. GENERAL DEFINITIONS. As used in this chapter:

(1) "Association" means the Idaho state dental association and the Idaho dental hygienists' association.

(2) "Board" means the state board of dentistry.

(3) "Dental assistant" is a person who need not be licensed under this chapter, but who is regularly employed by a dentist at his office, who works under the dentist's direct supervision, and is adequately trained and qualified according to standards established by the board to perform the dental services permitted to be performed by assistants by this chapter and applicable rules of the board.

(4) "Dental hygienist" is a person both qualified and annually licensed by the laws of Idaho to practice dental hygiene.

(5) "Dental specialist" is a dentist who limits his practice to a specialty recognized by the American dental association, ~~who possesses a general license for the practice of dentistry~~, who has graduated from a board approved post-graduate program in his specialty and is a person both qualified and annually licensed by the laws of Idaho to practice a dental specialty.

(6) "Dentist" is a person both qualified and annually licensed by the laws of Idaho to practice dentistry.

(7) "Direct supervision" is supervision of a dental assistant or dental hygienist requiring that a dentist diagnose the condition to be treated, a dentist authorize the procedure to be performed, a dentist remain in the dental office while the procedure is performed, and that before dismissal of the patient, a dentist approves the work performed by the dental assistant or dental hygienist.

(8) "General supervision" is supervision of a dental hygienist requiring that a dentist authorize the procedure which is carried out, but not requiring that a dentist be in the office when the authorized procedure is performed.

(9) "Indirect supervision" is supervision of a dental hygienist requiring that a dentist authorize a procedure and that a dentist be in the dental office while the procedure is performed by the hygienist.

Approved March 13, 1997.

CHAPTER 79
(H.B. No. 10)

AN ACT

RELATING TO THE IDAHO COMMISSION ON WOMEN'S PROGRAMS; AMENDING SECTION 67-6001, IDAHO CODE, TO CHANGE THE NAME OF THE COMMISSION AND TO SPECIFY AN ADDITIONAL PURPOSE; AMENDING SECTION 67-6002, IDAHO CODE, TO LIMIT MEMBERSHIP OF THE COMMISSION; AND AMENDING CHAPTER 60, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6007, IDAHO CODE, TO AUTHORIZE APPOINTMENT OF A DIRECTOR OF THE COMMISSION.

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

SECTION 1. That Section 67-6001, Idaho Code, be, and the same is hereby amended to read as follows:

67-6001. ESTABLISHMENT AND PURPOSE OF THE COMMISSION. There is hereby established in the office of the governor the Idaho women's commission on women's programs. The purposes of the commission shall be: (1) to encourage and stimulate women to increase their participation in and contributions, whether paid or unpaid, to the social, political and economic progress of the local communities, the state and the nation, acting independently or in cooperation with similar commissions and committees established by the president of the United States and the governors of other states; and (2) to engage in activities that encourage and stimulate the development of strong families.

SECTION 2. That Section 67-6002, Idaho Code, be, and the same is hereby amended to read as follows:

67-6002. MEMBERS -- APPOINTMENT -- VACANCIES -- OFFICERS. The commission shall consist of not more than thirty-five (35) members to be appointed by the governor, not more than thirty (30) of whom shall be women. Of the members first to be appointed, eleven (11) shall be appointed for terms of one (1) year, twelve (12) shall be appointed for terms of two (2) years, and twelve (12) shall be appointed for terms of three (3) years, beginning on July 1, 1970. All subsequent appointments shall be for terms of three (3) years. Vacancies a vacancy in an unfulfilled term of office shall be filled in the same manner as the original appointments and for the balance of the unexpired term. Consideration should be given to representing the racial, ethnic and gender diversity of the state on the commission. The governor shall designate a chairman and a vice-chairman from the members of the commission. The chairman shall be the chief executive officer of the commission. The commission may appoint such other officers from its membership as it deems necessary.

SECTION 3. That Chapter 60, 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 67-6007, Idaho Code, and to read as follows:

67-6007. DIRECTOR -- APPOINTMENT AND TERM. An administrator of the commission, to be known as the director of the Idaho women's commission, shall be appointed by the governor after considering recommendations from the commission, and shall be subject to removal by the governor. Compensation shall be fixed by the governor within the limits of appropriations to the commission.

Approved March 13, 1997.

CHAPTER 80
(H.B. No. 12, As Amended)

AN ACT

RELATING TO PROTECTION OF PERSONAL INFORMATION IN DRIVER AND MOTOR VEHICLE RECORDS; AMENDING SECTION 9-338, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE LIMITS PLACED ON A CUSTODIAN OF PUBLIC RECORDS FROM MAKING INQUIRIES OF THE PERSON REQUESTING A RECORD; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE THAT PERSONAL INFORMATION ON PUBLIC DRIVING AND MOTOR VEHICLE RECORDS IS EXEMPT FROM DISCLOSURE; AMENDING SECTION 49-105, IDAHO CODE, TO DEFINE "DISCLOSE" AND "DRIVER RECORD"; AMENDING SECTION 49-110, IDAHO CODE, TO DEFINE "INDIVIDUAL RECORD"; AMENDING SECTION 49-114, IDAHO CODE, TO DEFINE "MOTOR VEHICLE RECORD"; AMENDING SECTION 49-117, IDAHO CODE, TO DEFINE "PERSONAL INFORMATION"; AMENDING SECTION 49-202, IDAHO CODE, TO PROVIDE THAT CERTAIN INFORMATION IN DRIVER AND MOTOR VEHICLE RECORDS IS EXEMPT FROM DISCLOSURE OR SUBJECT TO SPECIFIED RESTRICTIONS ON DISCLOSURE; AMENDING CHAPTER 2, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-203, IDAHO CODE, TO PROVIDE PROHIBITIONS ON RELEASE AND USE OF PERSONAL INFORMATION CONTAINED IN MOTOR VEHICLE AND DRIVER RECORDS; AMENDING CHAPTER 2, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-203A, IDAHO CODE, TO PROVIDE RULES, POLICIES AND WAIVER PROCEDURES ON DISCLOSURE OF PERSONAL INFORMATION; AMENDING CHAPTER 2, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-204, IDAHO CODE, TO PROVIDE A PENALTY FOR MISREPRESENTATION TO OBTAIN RECORDS; AMENDING SECTION 49-306, IDAHO CODE, TO PROVIDE THAT INFORMATION ON APPLICATIONS FOR A DRIVER LICENSE OR DRIVING PERMIT IS EXEMPT FROM DISCLOSURE EXCEPT AS PROVIDED IN STATE AND FEDERAL LAW; AMENDING SECTION 49-1202, IDAHO CODE, TO PROVIDE THAT PERSONAL INFORMATION CONTAINED IN A DRIVER'S OPERATING RECORD IS EXEMPT FROM DISCLOSURE EXCEPT AS PROVIDED IN CHAPTER 2, TITLE 49, IDAHO CODE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 9-338, Idaho Code, be, and the same is hereby amended to read as follows:

9-338. PUBLIC RECORDS -- RIGHT TO EXAMINE. (1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or using equipment designated by the custodian.

(3) Additionally, the custodian of any public record shall give the person, on demand, a certified copy of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity

to inspect or copy such record.

(4) The custodian shall make no inquiry of any person who applies for a public record, except that the person may be required to make a written request and provide a mailing address and telephone number, and except as required for purposes of protecting personal information from disclosure under chapter 2, title 49, Idaho Code, and federal law.

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

(6) Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

(7) Examination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours. In this event, the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public agency having custody of such records, out of funds provided in advance by the person examining such records, at other than regular office or working hours.

(8) A public agency or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law. The actual cost shall not include any administrative or labor costs resulting from locating and providing a copy of the public record. For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:

- (a) The agency's direct cost of copying the information in that form;
- (b) The standard cost, if any, for selling the same information in the form of a publication.

The custodian may require advance payment of the cost of copying. Any money received by the public agency shall be credited to the account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund.

(9) A public agency shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.

(10) Nothing contained herein shall prevent a public agency from disclosing statistical information that is not descriptive of an identifiable person or persons.

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 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 or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations 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.

(44) 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.

(45) Voluntarily prepared environmental audits, and voluntary dis-

closures 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.

(47) Personal information contained in motor vehicle and driver records that are exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

SECTION 3. That Section 49-105, Idaho Code, be, and the same is hereby amended to read as follows:

49-105. DEFINITIONS -- D.

(1) "Dealer" means every person in the business of buying, selling or exchanging five (5) or more new or used vehicles, new or used motorcycles, snow machines or motor scooters, travel trailers, all-terrain vehicles or motor homes in any calendar year, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, or who has an established place of business for the sale, lease, trade, or display of these vehicles. No insurance company, bank, finance company, public utilities company, or other person coming into possession of any vehicle, as an incident to its regular business, who shall sell that vehicle under any contractual rights it may have, shall be considered a dealer. See also "salvage pool", section 49-120, Idaho Code.

(2) "Dealer's selling agreement." (See "Franchise", section 49-107, Idaho Code)

(3) "Department" means the Idaho transportation department acting directly or through its duly authorized officers and agents, except in chapters 6 and 9, title 49, Idaho Code, where the term means the Idaho department of law enforcement, except as otherwise specifically provided.

(4) "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a vehicle dealership who, in the event of the owner's death, is entitled to inherit the ownership interest in the dealership under the same terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a dealership, has been appointed by a court as the legal representative of the dealer's property.

(5) "Director" means the director of the Idaho transportation department, except in chapters 6, 9 and 22, title 49, Idaho Code, where the term means the director of the Idaho department of law enforcement.

(6) "Disclose" means to engage in any practice or conduct to make available and make known personal information contained in records of the department about a person to any other person, organization or entity, by any means of communication.

(7) "Disqualification" as defined in 49 CFR part 383, means withdrawal by the department of commercial vehicle driving privileges.

(78) "Distributor" means any person, firm, association, corpora-

tion or trust, resident or nonresident, who has a franchise from a manufacturer of vehicles to distribute vehicles in this state, and who in whole or in part sells or distributes new vehicles to dealers or who maintains distributor representatives.

(89) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

(910) "Distributor representative" means any person, firm, association, corporation or trust, and each officer and employee thereof engaged as a representative of a distributor or distributor branch of vehicles for the purpose of making or promoting the sale of vehicles, or for supervising or contacting dealers or prospective dealers.

(101) "District" means:

(a) Business district. The territory contiguous to and including a highway when within any six hundred (600) feet along the highway there are buildings in use for business or industrial purposes, including hotels, banks or office buildings, railroad stations and public buildings which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the highway.

(b) Residential district. The territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred (300) feet or more is in the main improved with residences, or residences and buildings in use for business.

(c) Urban district. The territory contiguous to and including any highway which is built up with structures devoted to business, industry or dwelling houses. For purposes of establishing speed limits in accordance with the provisions of section 49-654, Idaho Code, no state highway or any portion thereof lying within the boundaries of an urban district is subject to the limitations which otherwise apply to nonstate highways within an urban district.

(112) "Documented vessel" means a vessel having a valid marine document as a vessel of the United States.

(123) "Drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one (1) or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicles within a certain distance or time limit.

(134) "Driver" means every person who drives or is in actual physical control of a vehicle.

(145) "Driver's license" means a license or permit issued by the department or by any other jurisdiction to an individual which authorizes the individual to operate a motor vehicle or commercial motor vehicle on the highways in accordance with the requirements of title 49, Idaho Code.

(156) "Driver's license -- classes of" are issued for the operation of a vehicle based on the size of the vehicle or the type of load and mean:

(a) Class A. This license shall be issued and valid for the oper-

ation of any combination of motor vehicles with a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds, provided the manufacturer's gross vehicle weight rating (GVWR) of the vehicle(s) being towed is in excess of ten thousand (10,000) pounds. Persons holding a valid class A license may also operate vehicles requiring a class B, C, or D license.

(b) Class B. This license shall be issued and valid for the operation of any single vehicle with a manufacturer's gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds, or any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds manufacturer's gross vehicle weight rating (GVWR). Persons holding a valid class B license may also operate vehicles requiring a class C license or a class D license.

(c) Class C. This license shall be issued and valid for the operation of any single vehicle or combination of vehicles that does not meet the definition of class A or class B, as defined in this section, but that either is designed to transport sixteen (16) or more people including the driver, or is of any size which does not meet the definition of class A or class B and is used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F. Persons holding a valid class C license may also operate vehicles requiring a class D license.

(d) Class D. This license shall be issued and valid for the operation of a motor vehicle that is not a commercial vehicle as defined in section 49-123, Idaho Code.

(e) "Seasonal driver's license" means a special restricted class B or C driver's license to operate certain commercial vehicles in farm-related industries under restrictions imposed by the department. As used in this definition, "farm-related industry" shall mean custom harvesters, farm retail outlets and suppliers, agricultural businesses and livestock feeders. Seasonal driver's licenses are not valid for driving vehicles carrying any quantities of hazardous material requiring placarding, except for diesel fuel in quantities of one thousand (1,000) gallons or less, liquid fertilizers, i.e., plant nutrients, in vehicles or implements of husbandry with total capacities of three thousand (3,000) gallons or less, and solid fertilizers, i.e., solid plant nutrients, that are not mixed with any organic substance.

(17) "Driver record" means any record that pertains to an individual's driver's license, driving permit, driving privileges, driving history, identification documents or other similar credentials issued by the department.

(168) "Driver's license endorsements" means special authorizations that are required to be displayed on a driver's license which permit the driver to operate certain types of commercial vehicles or commercial vehicles hauling certain types of cargo, or to operate a motorcycle.

(a) "Endorsement T -- Double/triple trailer" means this endorsement is required on a class A license to permit the licensee to operate a vehicle authorized to tow more than one (1) trailer.

(b) "Endorsement H -- Hazardous material" means this endorsement is required on a class A, B or C license if the driver is operating a vehicle used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F.

(c) "Endorsement P -- Passenger" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle designed to transport sixteen (16) or more people including the driver.

(d) "Endorsement N -- Tank vehicle" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle which is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in federal regulations 49 CFR part 171. This definition does not include portable tanks having a rated capacity under one thousand (1,000) gallons.

(e) "Endorsement M -- Motorcycle" means this endorsement is required on a driver's license to permit the driver to operate a motorcycle.

(179) "Driveway" means a private road giving access from a public way to a building on abutting grounds.

(1820) "Dromedary tractor" means every motor vehicle designed and used primarily for drawing a semitrailer and so constructed as to carry manifested cargo in addition to a part of the weight of the semitrailer.

SECTION 4. That Section 49-110, Idaho Code, be, and the same is hereby amended to read as follows:

49-110. DEFINITIONS -- I.

(1) "Identifying number" means:

(a) Motor number. That identifying number stamped on the engine of a vehicle.

(b) Vehicle identification number. The numbers and letters, if any, placed on a vehicle by the manufacturer for the purpose of identifying the vehicle.

(2) "Implements of husbandry" means every vehicle including self-propelled units, designed or adapted and used exclusively in agricultural, horticultural, dairy and livestock growing and feeding operations when being incidentally operated. Such implements include, but are not limited to, combines, discs, dry and liquid fertilizer spreaders, cargo tanks, harrows, hay balers, harvesting and stacking equipment, pesticide applicators, plows, swathers, mint tubs and mint wagons, and farm wagons. A farm tractor when attached to or drawing any implement of husbandry shall be construed to be an implement of husbandry. "Implements of husbandry" do not include semitrailers, nor do they include motor vehicles or trailers, unless their design limits their use to agricultural, horticultural, dairy or livestock growing and feeding operations.

(3) "Incidentally operated" means the transport of the implement of husbandry from one (1) farm operation to another.

(4) "Individual record" means a record containing personal information about a designated person who is the subject of the record as identified in a request for information.

(5) "Infraction" means a civil public offense, not constituting a crime, which is not punishable by incarceration and for which there is no right to a trial by jury or right to court-appointed counsel, and which is punishable by only a penalty not exceeding one hundred dollars (\$100) and no imprisonment.

(56) "Instructor" means any person, whether acting for himself as operator of a commercial driver training school or for such a school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises practice of, persons learning to operate or drive motor vehicles.

(67) "Insurer" means any insurer, public or private, which shall include, but not be limited to, insurance companies domiciled in the state of Idaho, agents, adjuster or any other person acting on behalf of any insurance not domiciled in the state of Idaho and any self-insured entity operating under Idaho insurance laws or rules.

(78) "Intersection" means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway shall be regarded as a separate intersection. In the event an intersecting highway also includes two (2) roadways thirty (30) feet or more apart, then every crossing of two (2) roadways of the highways shall be regarded as a separate intersection.

(c) The junction of an alley with a street or highway shall not constitute an intersection.

SECTION 5. That Section 49-114, Idaho Code, be, and the same is hereby amended to read as follows:

49-114. DEFINITIONS -- M.

(1) "Major component part" means a rear clip, cowl, frame or inner structure forward of the cowl, body, cab, front end assembly, front clip or such other part which is critical to the safety of the vehicle.

(2) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste or material identification code and destination of hazardous material or hazardous waste during any transportation within, through, or to any destination in this state.

(3) "Manufactured home." (See section 39-4105, Idaho Code)

(4) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered at an established place of business in this state. The term, for

purposes of sections 49-1613 through 49-1615, 49-1617, 49-1622 and 49-1623, Idaho Code, shall include a distributor and other factory representatives.

(5) "Manufacturer's year designation" means the model year designated by the vehicle manufacturer, and not the year in which the vehicle is, in fact, manufactured.

(6) "Maximum gross weight" means the scale weight of a vehicle, equipped for operation, to which shall be added the maximum load to be carried as declared by the owner in making application for registration. When a vehicle against which a registration or use fee is assessed is a combination of vehicles, the term "maximum gross weight" means the combined maximum gross weights of all vehicles in the combination.

(7) "Metal tire." (See "Tires," section 49-121, Idaho Code)

(8) "Moped" means a limited-speed motor-driven cycle which is not capable of propelling the vehicle at a speed in excess of thirty (30) miles per hour on level ground, whether two (2) or three (3) wheels are in contact with the ground during operation. If an internal combustion engine is used, the displacement shall not exceed fifty (50) cubic centimeters and the moped shall have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

(9) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor and moped.

(10) "Motor home" means a vehicular unit designed to provide temporary living quarters, built into an integral part or permanently attached to a self-propelled motor vehicle chassis. The vehicle must contain permanently installed independent life support systems which meet the American National Standards Institute (ANSI) All9.7 Standard for Recreational Vehicles, and provide at least four (4) of the following facilities: cooking, refrigeration or ice box, self-contained toilet, heating and/or air conditioning, a portable water supply system, including a faucet and sink, separate 110-125 volt electrical power supply and/or LP-gas supply.

(11) "Motorized wheelchair" means a motor vehicle with a speed not in excess of eight (8) miles per hour, designed for and used by a handicapped person.

(12) "Motor number." (See "Identifying number", section 49-110, Idaho Code)

(13) "Motor vehicle." (See "Vehicle", section 49-123, Idaho Code)

(14) "Motor vehicle liability policy" means an owner's or operator's policy of liability insurance, certified as provided in section 49-1210 or 49-1211, Idaho Code, as proof of financial responsibility, and issued, except as otherwise provided in section 49-1211, Idaho Code, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(15) "Motor vehicle record" means any record that pertains to a motor vehicle registration, motor vehicle title or identification documents or other similar credentials issued by the department or other state or local agency.

SECTION 6. That Section 49-117, Idaho Code, be, and the same is hereby amended to read as follows:

49-117. DEFINITIONS -- P.

(1) "Park" or "parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(2) "Park trailer." (See "Trailer", section 49-121, Idaho Code)

(3) "Part-time salesman" means any person employed as a vehicle salesman on behalf of a dealer less than thirty (30) hours per week.

(4) "Peace officer." (See section 19-5101(d), Idaho Code)

(5) "Pedestrian" means any person afoot and any person operating a wheelchair or a motorized wheelchair.

(6) "Pedestrian path" means any path, sidewalk or way set-aside and used exclusively by pedestrians.

(7) (a) "Person" means every natural person, firm, fiduciary, copartnership, association, corporation, trustee, receiver or assignee for the benefit of creditors, political subdivision, state or federal governmental department, agency, or instrumentality, and for the purposes of chapter 22 of this title shall include a private, common or contract carrier operating a vehicle on any highway of this state.

(b) "Person with a disability" means:

(i) A person who is unable to walk two hundred (200) feet or more unassisted by another person;

(ii) A person who is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair; or

(iii) A person who is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments: neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb.

(8) "Personal information" means information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving or equipment-related violations, the five-digit zip code of the person's address, or status of the driver's license or motor vehicle registration.

(9) "Pneumatic tire." (See "Tires", section 49-121, Idaho Code)

(910) "Pole trailer." (See "Trailer", section 49-121, Idaho Code)

(101) "Possessory lien" means a lien dependent upon possession for compensation to which a person is legally entitled for making repairs or performing labor upon, and furnishing supplies or materials for, and for the towing, storage, repair, or safekeeping of, any vehicle of a type subject to registration.

(112) "Possessory lienholder" means any person claiming a lien, that lien claimed to have accrued on a basis of services rendered to the vehicle which is the subject of the lien.

(123) "Preceding year" means, for the purposes of section 49-435, Idaho Code, a period of twelve (12) consecutive months fixed by the

department, prior to July 1 of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department in fixing the period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangement for the proportional registration of vehicles.

(134) "Pressure regulator valve" means a device or system which governs the load distribution and controls the weight borne by a variable load suspension axle in accordance with a predetermined valve setting.

(145) "Principal place of business" means an enclosed commercial structure located within the state, easily accessible and open to the public at all reasonable times, with an improved display area large enough to display five (5) or more vehicles of the type the dealer is licensed to sell, immediately adjoining the building, and at which the business of a dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances, and in which building the public shall be able to contact the dealer or his salesmen in person or by telephone at all reasonable times, and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business. The principal place of business shall display an exterior sign permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. In no event shall a room or rooms in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house be considered a "principal place of business" within the terms and provisions of this title unless the entire ground floor of that hotel, apartment house, or rooming house building or dwelling house be devoted principally to and occupied for commercial purposes, and the office or offices of the dealer be located on the ground floor. In no event shall premises devoted principally to the business of a gasoline service station be considered a "principal place of business" within the terms and provisions of this title.

(156) "Private property open to the public" means real property not owned by the federal government or the state of Idaho or any of its political subdivisions, but is available for vehicular traffic or parking by the general public with the permission of the owner or agent of the real property.

(167) "Private road" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(178) "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one (1) person in any one (1) accident, and, subject to the limit for one (1) person, in the amount of fifty thousand dollars (\$50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and in the amount of fifteen thousand dollars (\$15,000) because of injury to or destruction of property of

others in any one (1) accident.

(189) "Proper authority" means a public highway agency.

(1920) "Public highway agency" means the state transportation department, any city, county, highway district or any other state agency which has jurisdiction over public highway systems and public rights-of-way.

(201) "Public right-of-way" means a right-of-way open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic.

(212) "Public road jurisdiction" means a public highway agency.

(223) "Purchase." (See "Sell," "sold," and "buy," section 49-120, Idaho Code)

SECTION 7. That Section 49-202, Idaho Code, be, and the same is hereby amended to read as follows:

49-202. DUTIES OF DEPARTMENT. (1) All registration and driver's license records in the office of the department shall be public records and open to inspection by the public during normal business hours, except for those records declared by law to be for the confidential use of the department, or those records containing personal information subject to restrictions or conditions regarding disclosure. If the department has contracted for a service to be provided by another entity, an additional fee shall be charged by that contractor whether the service is rendered during normal business hours, other than normal business hours or on weekends.

(2) In addition to other fees required by law to be collected by the department, the department shall collect the following:

- (a) For certifying a copy of any record pertaining to any vehicle license, any certificate of title, or any driver's license . \$8.00
- (b) For issuing every Idaho certificate of title \$8.00
- (c) For furnishing a duplicate copy of any Idaho certificate of title \$8.00
- (d) For issuance or transfer of every certificate of title on a new or used vehicle or other titled vehicle in an expedited manner (rush titles), in addition to any other fee required by this section \$15.00
- (e) For furnishing a replacement of any receipt of registration \$3.00
- (f) For answering inquiries as to registration or ownership of motor vehicles or driver's license records, per vehicle registration, accident report records, title or per driver's license record \$4.00
- Additional contractor fee, not to exceed \$4.00
- (g) For services in furnishing copies of files of vehicle or other registrations, vehicle titles, or driver's licenses per hour \$10.00
- (h) Placing "stop" cards in vehicle registration or title files, each \$12.00
- (i) For issuance of an assigned or replacement vehicle identification number (VIN)\$10.00
- (j) For a vehicle identification number (VIN) inspection whether

conducted by a city or county peace officer or any other peace officer or designated agent of the state of Idaho, per inspection

..... \$3.00

(k) For all replacement registration stickers, each

..... \$1.00

(l) For issuing letters of temporary vehicle clearance to Idaho based motor carriers

..... \$10.00

(m) For all sample license plates, each

..... \$12.00

(n) For filing release of liability statements

..... \$2.00

(3) The fees required in this section shall not apply when the service is furnished to any federal, state, county or city peace officer when such service is required in the performance of their duties as peace officers.

(4) The department may enter into agreements with private companies or public entities to provide the services for which a fee is collected in subsection (2)(f) of this section. Such private contractor shall collect the fee prescribed and remit the fee to the department. The contractor shall also collect and retain the additional fee charged for his services.

(5) The department shall pay three dollars (\$3.00) of the fee collected by a county assessor or other agent of the department as provided in subsection (2)(a) through (f) of this section, to the county assessor of the county or agent collecting such fee, which shall be deposited with the county treasurer and credited to the county current expense fund. The remainder of the fees collected as provided in that subsection shall be paid by the department to the state treasurer and placed in the state highway account. The fee collected under subsection (2)(j) of this section for a VIN inspection shall be placed in the city general fund if conducted by a city peace officer, in the county current expense fund if conducted by a county peace officer, shall be retained by the special agent authorized to perform the inspection, or paid to the state treasurer and placed to the credit of the department of law enforcement if conducted by the Idaho state police division or in the state highway account if conducted by the department.

(6) The department as often as practicable may provide to law enforcement agencies the record of stolen and recovered motor vehicles and suspensions and revocations of driver licenses via the Idaho law enforcement telecommunications system (ILETS).

(7) The department shall provide the forms prescribed in chapter 5 of this title, shall receive and file in its office in Boise, Idaho, all instruments required in chapter 5 of this title to be filed with the department, shall prescribe a uniform method of numbering certificates of title, and maintain in the department indices for such certificates of title. All indices shall be by motor or identification number and alphabetical by name of the owner, and the department shall maintain two (2) separate files on each vehicle, one, a motor or identification number file, the other a file by the name of the owner.

(8) The department shall file each registration received under a distinctive registration number assigned to the vehicle and to the owner thereof, alphabetically under the name of the owner, and numerically and alphabetically under the name of the vehicle.

(9) The department shall not renew a driver's license when fees required by law have not been paid or where fees for past periods are

due, owing and unpaid including nonsufficient fund checks.

(10) The department shall not grant the registration of a vehicle when:

(a) The applicant is not entitled to registration under the provisions of this title; or

(b) The applicant has neglected or refused to furnish the department with the information required in the appropriate form or reasonable additional information required by the department, or has failed to comply with the provisions of section 49-436, Idaho Code, in past registration periods; or

(c) The fees required by law have not been paid, or where fees for past registration periods are due, owing and unpaid including nonsufficient fund checks.

(11) The department has the authority to request any person, based upon evidence, to submit to medical, highway, or written examinations, to protect the safety of the public upon the highways.

(12) The department shall revoke the registration of any vehicle:

(a) Which the department shall determine is unsafe or unfit to be operated or is not equipped as required by law;

(b) Whenever the person to whom the registration card or registration plate has been issued shall make or permit to be made any unlawful use of the same or permit their use by a person not entitled thereto;

(c) For any violation of vehicle registration requirements by the owner or operator in the current or past registration periods;

(d) Whenever a motor carrier as defined in section 61-801, Idaho Code, has his permit revoked for any cause except at the request of the permit holder, as provided in section 61-808, Idaho Code, or whenever an interstate carrier has his registration revoked by reason of a revocation of his interstate commerce commission operating authority;

(e) For nonpayment by the owner or operator of the vehicle of use fees computed under sections 49-434 and 49-435, Idaho Code;

(f) For failure of the owner or operator to file the reports required or nonpayment of fees assessed against the owner by the department pursuant to audit under the provisions of section 49-436, Idaho Code;

(g) Identified by any city or county administering a program established by ordinance for the inspection and readjustment of motor vehicles (which program is part of an approved state implementation plan adopted by both the state and federal governments under 42 USC section 7410) as having failed to comply with an ordinance requiring motor vehicle emission inspection and readjustment; provided that no vehicle shall be identified to the department under this subsection (g) unless (i) the city or county certifies to the department that the owner of the motor vehicle has been given notice and had the opportunity for a hearing concerning compliance with the ordinance and has exhausted all remedies and appeals from any determination made at such hearing; and (ii) the city or county reimburses the department for all direct costs associated with the registration revocation procedure.

(13) The department shall not reregister or permit a vehicle to operate on a special trip permit until all fees, penalties and inter-

est have been paid.

(14) The department shall institute educational programs, demonstrations, exhibits and displays;

(15) The department shall cancel a driver's license when fees required by law have not been paid or where fees for past periods are due, owing and unpaid including nonsufficient fund checks;

(16) The department shall examine persons and vehicles by written, oral and physical tests without compulsion except as provided by law;

(17) The department shall employ expert and special help as needed in the department;

(18) The department shall compile accident statistics and disseminate information relating to those statistics;

(19) The department shall cooperate with the United States in the elimination of road hazards, whether of a physical, visual or mental character.

(20) The department shall place and maintain traffic-control devices, conforming to the board's manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this title or to regulate, warn, or guide traffic. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the department except by the latter's permission.

(21) The department may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall find that the structure cannot with safety to itself withstand vehicles traveling at a speed otherwise permissible under this title, shall determine and declare the maximum speed of vehicles which the structure can safely withstand, and shall cause or permit suitable signs stating the maximum speed to be erected and maintained before each end of the structure.

(22) Whenever the department shall determine on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the department may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, and that limit shall be effective when posted upon appropriate fixed or variable signs.

(23) The department shall regulate or prohibit the use of any controlled-access highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(24) The department shall erect and maintain traffic-control devices on controlled-access highways on which any prohibitions are applicable.

(25) Wherever a highway crosses one or more railroads at grade, the department or local authorities within their respective jurisdictions shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when in the determination of public highway agencies the existence of stop signs at a given crossing would constitute a greater hazard than their absence based on a recognized engineering study.

Nothing in this subsection shall be construed as granting immunity to any railroad company as to liability, if any, for an accident which might occur at a crossing where stop signs are erected and in place, but liability, if any, shall be determined as provided by law. Liability on the part of governmental authorities on account of absence of any stop sign at a crossing shall be determined as provided by law.

(26) The department and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of those zones and when signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey those directions.

(27) The department and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this title or title 40, Idaho Code.

(28) The department and local highway authorities within their respective jurisdictions may place official traffic-control devices prohibiting, limiting or restricting the stopping, standing or parking of vehicles on any highway where such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles unduly interferes with the free movement of traffic thereon.

(29) On any informational material printed after July 1, 1995, by or at the order of the department and distributed to counties, school districts or individuals for the purpose of assisting a person to successfully pass a driver's license test, the department shall include material about the state's open range law and responsibilities, liabilities and obligations of drivers driving in the open range.

SECTION 8. That Chapter 2, 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 49-203, Idaho Code, and to read as follows:

49-203. PROHIBITION ON RELEASE AND USE OF PERSONAL INFORMATION CONTAINED IN MOTOR VEHICLE AND DRIVER RECORDS. (1) Except as otherwise provided, the department and any officer, employee, agent or contractor thereof, shall not knowingly disclose to any person or entity personal information about any individual when such information was obtained from a motor vehicle or driver record.

(2) Personal information shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act (15 USC 1231 et

seq.), the Motor Vehicle Information and Cost Savings Act (49 USC 32101 et seq.), the National Traffic and Motor Vehicle Safety Act of 1966, the Anti Car Theft Act of 1992, and the Clean Air Act (42 USC 7401 et seq., as amended.)

(3) Personal information may be disclosed if the requesting person demonstrates in such form and manner as the department prescribes, that he has obtained the written consent of the individual to whom the personal information pertains.

(4) Personal information may be disclosed on proof of the identity of the person requesting a record, and representation by such person that the use of the personal information will be strictly limited to any of the following described uses:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.

(b) For use in matters of motor vehicle or driver safety and theft; motor vehicle emissions, motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original records of motor vehicle manufacturers.

(c) For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only:

(i) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

(ii) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purpose of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, state or local court or agency or before any self-regulatory body, including the services of process, investigation, and anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state or local court.

(e) For use in research activities, and for use in producing statistical reports, so long as personal information is not published, redisclosed or used to contact individuals.

(f) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees or contractors, in connection with claims investigation activities, rating or underwriting.

(g) For use in providing notice to the owners of towed or impounded vehicles.

(h) For use by any licensed private investigative agency or licensed security service for any purpose permitted under the provisions of title 49, Idaho Code.

(i) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety

Act of 1986 (49 USC 31101 et seq.).

(j) For bulk distribution for surveys, marketing, or solicitations if the department has implemented methods and procedures to ensure that:

(i) Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

(ii) The information will be used, rented, or sold solely for bulk distribution for surveys, marketing and solicitations, and that surveys, marketing and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them.

(k) For any other use specifically authorized under Idaho Code, if such use is related to public safety or the operation of a motor vehicle.

(1) For use in connection with the operation of private toll transportation facilities, including companies that operate parking facilities for the purpose of providing notice to the owners of vehicles who have used the facility.

(5) Personal information obtained in an individual record shall be disclosed in response to requests for individual motor vehicle or driver records without regard to the intended use of such personal information if the department has:

(a) Provided in a clear and conspicuous manner on forms for issuance or renewal of driver's licenses or permits, identification cards, motor vehicle titles or motor vehicle registrations that personal information collected by the department may be disclosed to any business or person; and

(b) Provided in a clear and conspicuous manner on such forms an opportunity for the individual to prohibit such disclosure.

(6) Authorized recipients of personal information may redisseminate such information only for those purposes set forth in paragraphs (a) through (1) of subsection (4) of this section. For the purposes of this subsection (6), "authorized recipients" means an individual, organization or entity who receives personal information for uses permitted in paragraphs (a) through (1) of subsection (4) of this section and includes record redisseminators who agree to redisseminate such information only for the purposes set forth in paragraphs (a) through (1) of subsection (4) of this section.

SECTION 9. That Chapter 2, 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 49-203A, Idaho Code, and to read as follows:

49-203A. RULES, POLICIES AND WAIVER PROCEDURES ON DISCLOSURE OF PERSONAL INFORMATION. (1) The department is authorized to adopt rules in compliance with Idaho's motor vehicle and driver record disclosure requirements. The rules may include procedures under which the department, upon receiving a request for personal information that is not subject to disclosure as provided in section 49-203, Idaho Code, may mail a copy of such request to each individual who is the subject of the personal information, informing the individual of the request, together with a statement to the effect that disclosure is prohibited

and will not be made unless the individual affirmatively elects to waive such individual's right to privacy in the requested personal information.

(2) Disclosure of personal information permitted under the provisions of chapter 2, title 49, Idaho Code, shall be subject to payment by the requesting person to the department of all fees for the information required by statute, rule or the terms of any contract with the requesting person, on such terms for payment as may be required or agreed.

SECTION 10. That Chapter 2, 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 49-204, Idaho Code, and to read as follows:

49-204. MISREPRESENTATION TO OBTAIN RECORDS. Any person requesting disclosure of personal information from department records who misrepresents his identity or makes a false statement to the department on any application required to be submitted to obtain records shall be guilty of perjury.

SECTION 11. That Section 49-306, Idaho Code, be, and the same is hereby amended to read as follows:

49-306. APPLICATION FOR DRIVER'S LICENSE OR INSTRUCTION PERMIT.

(1) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths. Officers and employees of the department and sheriffs and their deputies are authorized to administer the oaths without charge. Every application for a permit or driver's license shall be accompanied by the following fee, none of which is refundable:

- (a) Class A, B, C license with endorsements \$24.50
- (b) Class D license \$20.50
- (c) Class A, B, C instruction permit \$15.50
- (d) Class D instruction permit \$11.50
- (e) Duplicate driver's license or permit issued under section 49-318, Idaho Code \$11.50
- (f) Driver's license extension issued under section 49-319, Idaho Code \$ 6.50
- (g) License classification change (upgrade) \$15.50
- (h) Endorsement addition \$11.50
- (i) Class A, B, C skills tests \$35.00
- (j) Class D skills test \$ 3.00
- (k) Motorcycle endorsement skills test \$ 5.00
- (l) Knowledge test \$ 3.00
- (m) Seasonal driver's license..... \$23.50
- (n) One time motorcycle "M" endorsement \$11.50
- (o) Motorcycle endorsement instruction permit \$11.50

(2) Every application shall state the full name, date of birth, place of birth, sex, Idaho residence address and mailing address, if different, of the applicant, height, weight, hair color, and eye color, and for a class A, B, or C driver's license or seasonal

driver's license the applicant's social security number as verified by the applicant's social security card. A driver's license or instruction permit issued on and after January 1, 1993, shall not contain an applicant's social security number. Applications on file shall be exempt from disclosure ~~except for inquiries from agencies or institutions authorized to obtain such information by federal law or regulation; from peace officers or from jury commissioners~~ as provided in sections 49-202, 49-203, 49-203A and 49-204, Idaho Code. Every application shall also state whether the applicant has previously been licensed as a driver, and if so, when and by what state or country, and whether a driver's license or privileges have ever been suspended, revoked, denied, disqualified, cancelled or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, denial, disqualification, cancellation or refusal and the applicant's oath that all information is correct as signified by the applicant's signature. The applicant may be required to submit proof of identity and date of birth as set forth in a certified copy of his birth certificate and other satisfactory evidence to satisfy the issuing officer or the department. If an applicant for a driver's training instruction permit cannot provide a certified copy of his birth certificate at the time of application, the department may issue a temporary driver's training instruction permit in accordance with the provisions of section 49-305, Idaho Code.

(3) Whenever an application is received from a person previously licensed in another jurisdiction, the department shall request a copy of the driver's record from the other jurisdiction and shall contact the national driver register. When received, the driver's record from the previous jurisdiction shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(4) Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

(5) The department shall contact and notify the commercial driver license information system of the proposed application for a class A, B or C driver's license to insure identification of the person and to obtain clearance to issue the license.

(6) When the fees required under this section are collected by a county officer, they shall be paid over to the county treasurer not less often than monthly, who shall immediately:

(a) Deposit an amount equal to five dollars (\$5.00) from each driver's license or instruction permit application fees, application for a duplicate driver's license or permit, classification change, seasonal driver's license and additional endorsement in the current expense fund; and

(b) Deposit two dollars and fifty cents (\$2.50) from each motorcycle endorsement and motorcycle endorsement instruction permit fee in the current expense fund; and

(c) Deposit an amount equal to three dollars (\$3.00) from each fee for a knowledge test or class D skills test in the current expense fund; and

(d) Deposit an amount equal to five dollars (\$5.00) from each fee for a motorcycle endorsement skills test in the current expense

fund; provided however, if a contractor administers the skills test he shall be entitled to the five dollar (\$5.00) fee; and

(e) Remit the remainder to the state treasurer.

(7) When the fees required under this section are collected by a state officer or agency, they shall be paid over to the state treasurer.

(8) The state treasurer shall distribute the moneys received from fees imposed by the provisions of this section, whether collected by a county officer or by a state officer or agency as follows:

(a) Two dollars (\$2.00) of each fee for a driver's license or seasonal driver's license shall be deposited in the emergency medical services account II created in section 39-146A, Idaho Code; and

(b) Sixteen dollars and fifty cents (\$16.50) of each fee for a seasonal or class A, B, or C driver's license shall be deposited in the state highway account; and

(c) Ten dollars and fifty cents (\$10.50) of each fee for a class A, B, or C instruction permit or driver's license classification change shall be deposited in the state highway account; and

(d) Six dollars and fifty cents (\$6.50) of each fee for a duplicate seasonal or class A, B, or C driver's license, class A, B, or C driver's license extension, or additional endorsement shall be deposited in the state highway account; and

(e) Four dollars (\$4.00) of each fee for a motorcycle endorsement and motorcycle endorsement instruction permit shall be deposited in the state highway account; and

(f) Five dollars and thirty cents (\$5.30) of each fee for a class D driver's license shall be deposited in the driver training account; and

(g) Seven dollars and twenty cents (\$7.20) of each fee for a class D driver's license shall be deposited in the highway distribution account; and

(h) Two dollars and sixty cents (\$2.60) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the driver training account; and

(i) Three dollars and ninety cents (\$3.90) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the highway distribution account; and

(j) Five dollars (\$5.00) of each fee for a class A, B, or C skills test shall be deposited in the state highway account; and

(k) One dollar (\$1.00) for each fee for a class A, B, C or D driver's license shall be deposited in the motorcycle safety program fund established in section 33-4804, Idaho Code.

(9) The contractor administering the skills test shall be entitled to thirty dollars (\$30.00) of the skills test fee. A contractor administering the skills test may collect an additional fee for the use of the contractor's vehicle for the skills test.

(10) The department may issue seasonal class B or C driver's licenses that:

(a) Will only be valid for driving commercial vehicles that normally require class B or C commercial driver's licenses;

(b) Will be valid for seasonal periods that begin on the date of issuance and that are not to exceed one hundred eighty (180) days in a twelve (12) month period;

(c) May only be obtained twice in a driver's lifetime;

(d) Are valid only within a one hundred fifty (150) mile radius of the place of business or farm being serviced; and

(e) Will be valid only in conjunction with valid Idaho class D driver's licenses.

(11) The department may issue seasonal class B or C driver's licenses to drivers who:

(a) Have not violated the single license provisions of 49 CFR part 383;

(b) Have not had any license suspensions, revocations or cancellations;

(c) Have not had any convictions in any vehicle for any offense listed in section 49-335(1) or 49-335(2), Idaho Code, or any one (1) serious traffic offense;

(d) Have at least one (1) year of driving experience with a class D or equivalent license in any type motor vehicle; and

(e) Are at least sixteen (16) years old.

SECTION 12. That Section 49-1202, Idaho Code, be, and the same is hereby amended to read as follows:

49-1202. DEPARTMENT TO FURNISH OPERATING RECORD. The department shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter providing fees have been paid pursuant to section 49-202, Idaho Code. Personal information contained in the operating record shall be exempt from disclosure as provided in chapter 2, title 49, Idaho Code. The abstract shall also fully designate the motor vehicles, if any, registered in the name of the person. If there is no record of any conviction of the person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by that person, the department shall so certify. These abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.

SECTION 13. This act shall be in full force and effect on and after September 13, 1997.

Approved March 13, 1997.

CHAPTER 81
(H.B. No. 26)

AN ACT

RELATING TO DENTAL HYGIENISTS; AMENDING SECTION 54-916A, IDAHO CODE, TO ALLOW TWO YEARS TO HAVE ACCUMULATED THE NECESSARY HOURS OF PRACTICE FOR RECIPROCAL LICENSING AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-916A, Idaho Code, be, and the same is hereby amended to read as follows:

54-916A. DENTAL HYGIENE APPLICANTS LICENSED IN OTHER STATES. The board may issue a license to applicants licensed to practice dental hygiene in another state upon evidence that:

(1) The applicant is currently an active dental hygienist who holds a valid license in another state.

(2) The applicant has been licensed for at least one (1) year and the hygienist has practiced a minimum of one thousand (1,000) hours in the two (2) years immediately preceding the date of application.

(3) No disciplinary proceeding or unresolved complaint is pending at the time a license is to be issued by this state.

(4) The applicant has successfully completed a clinical examination which is at least equivalent to that required by this state, as determined by the board.

Approved March 13, 1997.

CHAPTER 82
(H.B. No. 37)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-508, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND CORRECT TERMINOLOGY; AND AMENDING SECTION 20-524, IDAHO CODE, TO DELETE AN OBSOLETE REFERENCE.

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

SECTION 1. That Section 20-508, Idaho Code, be, and the same is hereby amended to read as follows:

20-508. WAIVER OF JURISDICTION AND TRANSFER TO OTHER COURTS. (1) After the filing of a petition and after full investigation and hearing, the court may waive jurisdiction under the juvenile corrections act over the juvenile and order that the juvenile be held for adult criminal proceedings when:

(a) A juvenile is alleged to have committed any of the crimes enumerated in section ~~16-1806A~~ 20-509, Idaho Code; or

(b) A ~~child~~ juvenile is alleged to have committed an act other than those enumerated in section ~~16-1806A~~ 20-509, Idaho Code, after the child became fourteen (14) years of age which would be a crime if committed by an adult; or

(c) An adult at the time of the filing of the petition is alleged to have committed an act prior to his having become eighteen (18) years of age which would be a felony if committed by an adult, and the court finds that the adult is not committable to an institution for the mentally deficient or mentally ill, is not treatable

in any available institution or facility available to the state designed for the care and treatment of juveniles, or that the safety of the community requires the adult continue under restraint; or

(d) An adult already under the jurisdiction of the court is alleged to have committed a crime while an adult.

(2) A motion to waive jurisdiction under the juvenile corrections act and prosecute a juvenile under the criminal law may be made by the prosecuting attorney, the juvenile, or by motion of the court upon its own initiative. The motion shall be in writing and contain the grounds and reasons in support thereof.

(3) Upon the filing of a motion to waive jurisdiction under the juvenile corrections act, the court shall enter an order setting the motion for hearing at a time and date certain and shall order a full and complete investigation of the circumstances of the alleged offense to be conducted by county probation, or such other agency or investigation officer designated by the court.

(4) Upon setting the time for the hearing upon the motion to waive jurisdiction, the court shall give written notice of said hearing to the juvenile, and the parents, guardian or custodian of the juvenile, and the prosecuting attorney, at least ten (10) days before the date of the hearing, or a lesser period stipulated by the parties, and such notice shall inform the juvenile and the parents, guardian or custodian of the juvenile of their right to court appointed counsel. Service of the notice shall be made in the manner prescribed for service of a summons under section 20-512, Idaho Code.

(5) The hearing upon the motion to waive jurisdiction shall be held in the same manner as an evidentiary hearing upon the original petition and shall be made part of the record.

(6) If as a result of the hearing on the motion to waive jurisdiction the court shall determine that jurisdiction should not be waived, the petition shall be processed in the customary manner as a juvenile corrections act proceeding. However, in the event the court determines, as a result of the hearing, that juvenile corrections act jurisdiction should be waived and the juvenile should be prosecuted under the criminal laws of the state of Idaho, the court shall enter findings of fact and conclusions of law upon which it bases such decision together with a decree waiving juvenile corrections act jurisdiction and binding the juvenile over to the authorities for prosecution under the criminal laws of the state of Idaho.

(7) No motion to waive juvenile corrections act jurisdiction shall be recognized, considered, or heard by the court in the same case once the court has entered an order or decree in that case that said juvenile has come within the purview of the juvenile corrections act, and all subsequent proceedings after the decree finding the juvenile within the purview of the act must be under and pursuant to the act and not as a criminal proceeding.

(8) In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(a) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(b) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(c) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(d) The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(e) The juvenile's record and previous history of contacts with the juvenile corrections system;

(f) The likelihood that the juvenile will develop competency and life skills to become a contributing member of the community by use of facilities and resources available to the court;

(g) The amount of weight to be given to each of the factors listed in subsection (8) of this section is discretionary with the court, and a determination that the juvenile is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one (1) or a combination of the factors set forth above, which shall be recited in the order of waiver.

(9) If the court does not waive jurisdiction and order a juvenile or adult held for criminal proceedings, the court in a county other than the juvenile's or adult's home county, after entering a decree that the juvenile or adult is within the purview of this chapter, may certify the case for sentencing to the court of the county in which the juvenile or adult resides upon being notified that the receiving court is willing to accept transfer. In the event of a transfer, which should be made unless the court finds it contrary to the interest of the juvenile or adult, the jurisdiction of the receiving court shall attach to the same extent as if the court had original jurisdiction.

SECTION 2. That Section 20-524, Idaho Code, be, and the same is hereby amended to read as follows:

20-524. SUPPORT OF JUVENILE -- REIMBURSEMENT FOR COSTS INCURRED -- PAYMENT OF DETENTION COSTS. (1) Whenever a juvenile is placed by the court in custody other than that of the juvenile's parents, guardian or custodian, after due notice to the parent, guardian or other persons legally obligated to care for and support the juvenile, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the juvenile. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

(2) If the juvenile is detained, the court may order that the parents or other legal guardian of the juvenile contribute to the costs of detention in an amount to be set by the court. The order may be filed and shall have the effect of a civil judgment. It is the intent of the legislature that foster parents or a parent or legal guardian receiving public assistance relating to that juvenile should not benefit from the continued receipt of payments or public assistance from any state or federal agency while the juvenile is detained. The department of health and welfare is directed to promulgate a rule

implementing this intent.

(3) Any child support order or decree issued or modified shall contain a provision allowing the obligee to enforce the order or decree 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 or decree by means of a mandatory income withholding order issued pursuant to this chapter without further notice to the obligor.

(4) Failure to include these provisions does not affect the validity of the support order or decree. 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.

(5) If the juvenile is committed to the custody of the department of ~~health--and-welfare~~ juvenile corrections pursuant to chapter ~~185~~, title ~~1620~~, Idaho Code, the department shall reimburse the county for the period of time in excess of five (5) days during which the juvenile is housed at a detention facility. The time period shall begin to run from the day the department receives a copy of the order of commitment executed by the court. Facsimile transmissions of the order are acceptable.

Approved March 13, 1997.

CHAPTER 83
(H.B. No. 40)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-502, IDAHO CODE, TO AMEND THE DEFINITION OF COMMUNITY-BASED PROGRAM AND JUVENILE CORRECTIONS CENTER; AMENDING SECTION 20-504, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF JUVENILE CORRECTIONS SHALL ADMINISTER ALL STATE JUVENILE CORRECTIONS CENTERS; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-504A, IDAHO CODE, TO PROVIDE THE PURPOSES OF A STATE JUVENILE CORRECTIONS CENTER AND TO PROVIDE THE POWERS AND DUTIES OF THE DEPARTMENT AND THE DIRECTOR WITH RESPECT TO STATE JUVENILE CORRECTIONS CENTERS; AND REPEALING SECTIONS 20-543, 20-545 AND 20-546, IDAHO CODE.

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

SECTION 1. That Section 20-502, Idaho Code, be, and the same is hereby amended to read as follows:

20-502. DEFINITIONS. When used in this chapter, unless the context otherwise requires:

- (1) "Adult" means a person eighteen (18) years of age or older.
- (2) "Commit" means to transfer legal custody.
- (3) "Community-based program" means an in-home detention confine-

ment program or a nonsecure or staff secure residential or nonresidential program operated to supervise and provide competency development to juvenile offenders in the least restrictive setting, consistent with public safety, operated by the state or under contract with the state or by the county.

(4) "Court" means any district court within the state of Idaho, or magistrate's division thereof.

(5) "Department" means the state department of juvenile corrections.

(6) "Detention" means the temporary placement of juveniles who require secure custody for their own or the community's protection in physically restricting facilities.

(7) "Detention center" means a facility established pursuant to sections 20-517 and 20-518, Idaho Code.

(8) "Director" means the director of the department of juvenile corrections.

(9) "Diversion" means the utilization of local community resources, churches, counseling for the juvenile and/or family, substance abuse counseling, informal probation, community service work, voluntary restitution, or any other available service or program as an alternative to the filing of a petition with the juvenile court.

(10) "Judge" means a district judge or a magistrate.

(11) "Juvenile" means a person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of this chapter.

(12) "Juvenile corrections center" means the any state-operated secure facility wherever located ~~at--St.-Anthony, Idaho, or Nampa, Idaho.~~

(13) "Juvenile offender" means a person under the age of eighteen (18), committed by the court to the custody, care and jurisdiction of the department for confinement in a secure facility following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult.

(14) "Legal custody" means the relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care.

(15) "Legal guardian" means a person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender.

(16) "Observation and assessment program" means any state-operated or purchased service program responsible for temporary custody of juvenile offenders for observation and assessment.

(17) "Secure facility" means any state-operated facility or facility operated under contract with the state which provides twenty-four (24) hour supervision and confinement for juvenile offenders committed to the custody of the department.

(18) "Work program" means a public service work project which employs juvenile offenders at a reasonable wage for the purpose of reimbursing victims of the juvenile offender's delinquent behavior.

SECTION 2. That Section 20-504, Idaho Code, be, and the same is hereby amended to read as follows:

20-504. DUTIES OF THE DEPARTMENT OF JUVENILE CORRECTIONS. (1) The department shall have jurisdiction over all juveniles committed to it pursuant to chapter 5, title 20, Idaho Code.

(2) The department is responsible for all juvenile offenders committed to it by the courts of this state for confinement. The department shall also establish minimum standards for detention, care and certification of approved detention facilities based upon such standards.

(3) The department shall establish and administer all secure residential facilities including ~~the~~ all state juvenile corrections centers.

(4) The department shall place juvenile offenders committed to it in the most appropriate program for supervision and treatment.

(5) The department shall establish an observation and assessment process for juvenile offenders committed to it by a court.

(6) The department shall establish liaison services with the counties.

(7) The department may establish and operate work programs designed to employ juvenile offenders in public service work projects for the purpose of reimbursing victims of the juvenile offender's delinquent behavior.

(8) The department is hereby authorized and may place juveniles committed to it pursuant to this chapter on a ranch, in a forestry camp or similar facility for care and for work, if possible; provided, that the person, agency or association operating the facility has been approved and has otherwise complied with all applicable state and local laws. A juvenile placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads and on other works on or off the grounds of such facility and may be paid wages.

(9) The department shall establish minimum standards for the operation of all private residential and nonresidential facilities and programs which provide services to juvenile offenders. The standards shall be no more stringent than standards imposed for facilities operated by the department or for detention facilities operated by counties.

(10) The department shall assist counties in establishing meaningful programs for juveniles who either have been found to come under the purview of this chapter or who have had their case informally diverted pursuant to section 20-511, Idaho Code, and who have not been committed to the legal custody of the department.

(11) The department shall have authority to adopt such administrative rules pursuant to the procedures provided in chapter 52, title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of this act.

(12) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with a private association or organization or other public agency or organization for the inspection and licensure of detention facilities.

(13) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with private providers or local governmental agencies for the confinement or other permanent or temporary placement of juveniles committed to its custody.

(14) The department shall have authority to apply for, receive and expend federal funds, subject to appropriation by the legislature. The department shall have authority to establish guidelines for and administer the distribution of state block grant funds to counties for the employment and training of county probation officers, the establishment of secure and nonsecure residential or nonresidential facilities and programs for juvenile offenders. The department may require that a county provide matching funds as a condition of receiving a block grant. The department, by rule, in cooperation with the courts and the counties, shall establish uniform standards, criteria and operating procedures for county juvenile probation services, as well as qualifications for and standards for the training of juvenile probation officers.

(15) All of the powers and duties imposed upon or granted to the director of the department of health and welfare or the board of health and welfare pursuant to chapter 18, title 16, Idaho Code, are hereby transferred to the director of the department of juvenile corrections. The director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law with respect to chapter 18, title 16, Idaho Code, and shall be the successor in law to all contractual obligations entered into by his predecessor in law.

SECTION 3. That Chapter 5, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-504A, Idaho Code, and to read as follows:

20-504A. STATE JUVENILE CORRECTIONS CENTERS -- PURPOSES -- POWERS AND DUTIES OF THE DEPARTMENT AND THE DIRECTOR. (1) The purposes of a juvenile corrections center shall be:

- (a) The care, control and competency development of adjudicated juvenile offenders meeting standards for admission as adopted by the Idaho supreme court;
- (b) The provision pursuant to agreement with the counties of detention services for juveniles subject to administrative or court order;
- (c) The provision of observation and assessment services for juveniles committed to the department of juvenile corrections; and
- (d) To accept for placement those individuals sentenced to a state juvenile corrections center by a district court, or pursuant to agreement with the board of correction, subsequent to waiver of juvenile court jurisdiction.

(2) The department shall administer and provide general oversight of all state juvenile corrections centers and any other secure or nonsecure facilities as required by the juvenile corrections act.

(3) The department shall assure that the educational programs of state juvenile corrections centers are in compliance with educational standards for secure juvenile facilities which are approved by the Idaho state board of education or an accrediting association recognized by the Idaho state board of education.

(4) The department shall have the power to promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, for the administration and operation of state juvenile corrections centers.

(5) The director shall have the power:

(a) To employ, fix the salary and prescribe the duties of a superintendent for each juvenile corrections center. The superintendent shall be a nonclassified employee and shall serve at the pleasure of the director. With the advice of the director, the superintendent may appoint and prescribe the duties of assistants, instructors, specialists and other employees required for the operation of the center;

(b) To remove any employee of a juvenile corrections center for cause;

(c) To ensure that all teachers, except specialists, hold teaching certificates issued under the authority of the state board of education which are valid for the grades and subjects taught. All specialists shall hold diplomas from an accredited school of their specialty;

(d) To have, at all times, general supervision and control of all property, real and personal, appertaining to the center, and to insure the same; and

(e) To expend tax moneys appropriated, or otherwise placed to the credit of the center for maintenance and operation and to account for the same as prescribed by law.

(6) Wherever the term "State Youth Training Center" or "State Youth Services Center" shall appear in the Idaho Code it shall mean any state juvenile corrections center.

SECTION 4. That Sections 20-543, 20-545 and 20-546, Idaho Code, be, and the same are hereby repealed.

Approved March 13, 1997.

CHAPTER 84
(H.B. No. 74)

AN ACT

RELATING TO PEACE OFFICER STANDARDS AND TRAINING; AMENDING SECTION 19-5101, IDAHO CODE, TO DEFINE COUNTY DETENTION OFFICER; AMENDING SECTION 19-5109, IDAHO CODE, TO REQUIRE THE POST COUNCIL TO ESTABLISH MINIMUM TRAINING AND CERTIFICATION REQUIREMENTS FOR COUNTY DETENTION OFFICERS; AMENDING SECTION 19-5116, IDAHO CODE, TO

ENABLE POST TO PAY FOR TRAINING OF COUNTY DETENTION OFFICERS; AMENDING CHAPTER 51, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-5117, IDAHO CODE, TO PROVIDE STANDARDS AND CERTIFICATION OF COUNTY DETENTION OFFICERS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 19-5101, Idaho Code, be, and the same is hereby amended to read as follows:

19-5101. DEFINITIONS. As used in this act:

(a) "Council" means the Idaho peace officer standards and training council.

(b) ~~"Political subdivision" means any city or county~~ "County detention officer" means an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates.

(c) "Law enforcement" means any and all activities pertaining to crime prevention or reduction and law enforcement, including police, courts, prosecution, corrections, rehabilitation, and juvenile delinquency.

(d) "Peace officer" means any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho.

(e) "Political subdivision" means any city or county.

SECTION 2. That Section 19-5109, Idaho Code, be, and the same is hereby amended to read as follows:

19-5109. POWERS OF THE COUNCIL -- STANDARDS OF TRAINING, EDUCATION AND EMPLOYMENT OF PEACE OFFICERS -- CERTIFICATION -- PENALTIES.

(a) It shall be the duty of and the council shall have the power:

(1) To establish the requirements of minimum basic training which peace officers shall complete in order to be eligible for permanent employment as peace officers, and the time within which such basic training must be completed.

(2) To establish the requirements of minimum education and training standards for employment as a peace officer in probationary, temporary, part-time, and/or emergency positions.

(3) To establish the length of time a peace officer may serve in a probationary, temporary, and/or emergency position.

(4) To approve, deny approval or revoke the approval of any institution or school established by the state or any political subdivision or any other party for the training of peace officers.

(5) To establish the minimum requirements of courses of study, attendance, equipment, facilities of all approved schools, and the

scholastic requirement, experience and training of instructors at all approved schools.

(6) To establish such other requirements for employment, retention and promotion of peace officers, including minimum age, physical and mental standards, citizenship, moral character, experience and such other matters as relate to the competence and reliability of peace officers.

(7) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state.

(8) To receive and file for record copies of merit regulations or local ordinances passed by any political subdivision.

(9) To maintain permanent files and transcripts for all peace officers certified by the council to include any additional courses or advance courses of instruction successfully completed by such peace officers while employed in this state.

(10) To receive applications for financial assistance from the state and from political subdivisions and disburse available state funds to the state and to political subdivisions for salaries and allowable living expenses or any part thereof, as authorized by the council, incurred while in attendance at approved training programs and schools. The annual reimbursements authorized by this section shall not exceed the funds available for such purpose and authorized by section 31-3201B, Idaho Code.

(11) To allow a police officer of a federally recognized Indian tribe within the boundaries of this state to attend the peace officer standards and training academy if said police officer meets minimum physical and educational requirements of the academy. The Indian tribal law enforcement agency shall reimburse the peace officer standards and training academy for the officer's training. Upon satisfactory completion of the peace officer standards and training academy, the tribal police officer shall receive a certificate of satisfactorily completing the academy.

(b) After January 1, 1974, any peace officer as defined in section 19-5101(d), Idaho Code, employed after January 1, 1974, except any elected official, any deputy sheriff working as a detention officer in the county jail, or serving civil process, the superintendent of the Idaho state police, or any person serving under a temporary commission with any law enforcement agency in times of natural or man-caused disaster declared to be an emergency by the board of county commissioners or by the governor of the state of Idaho, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, or any peace officer acting under a special deputy commission from the department of law enforcement, shall be certified by the council within one (1) year of employment; provided, however, that the council may establish criteria different than that required of other peace officers for certification of city police chiefs or administrators within state agencies having law enforcement powers, who, because of the number of full-time peace officers they supervise, have duties which are primarily administrative. Any such chief of police or state agency administrator employed in such capacity prior to July 1, 1987, shall be exempt from certification.

(c) No peace officer shall have or exercise any power granted by any statute of this state to peace officers unless such person shall have been certified by the council within one (1) year of the date upon which such person commenced employment as a peace officer, except in cases where the council, for good cause and in writing, has granted additional time to complete such training. The council shall also have the power to withdraw the certification of any peace officer who is convicted or found guilty of any crime punishable by one (1) year in the county jail or any term of imprisonment in the state prison, or who is convicted of any crime of dishonesty. All proceedings taken by the council shall be done in accordance with chapter 52, title 67, Idaho Code.

(d) Any law enforcement agency as defined in section 19-5101(c), Idaho Code, in which any peace officer shall resign as a result of any disciplinary action or in which a peace officer's employment is terminated as a result of any disciplinary action, shall, within thirty (30) days of such action, make a report to the council.

(e) The council shall, pursuant to the requirements of this section, establish minimum basic training and certification standards for county detention officers that can be completed within one (1) year of employment as a county detention officer.

SECTION 3. That Section 19-5116, Idaho Code, be, and the same is hereby amended to read as follows:

19-5116. PEACE OFFICERS STANDARDS AND TRAINING ACCOUNT. (a) There is hereby established in the state operating fund, the peace officers standards and training account. All moneys deposited to the account shall be expended by the peace officers standards and training council for the following purposes:

(1) Training peace officers, county detention officers, and self-sponsored students, within the state of Idaho, including, but not limited to, sheriffs and their deputies, officers of the Idaho department of law enforcement and conservation officers of the Idaho department of fish and game, and city and county prosecutors and their deputies.

(2) Salaries, costs and expenses relating to such training as provided in subsection (1) of this section;

(3) Such capital expenditures as the peace officers standards and training council may provide, for the acquisition, construction and/or improvement of a peace officers standards and training academy; and

(4) Such expenditures as may be necessary to aid approved peace officers training programs or county detention officer programs certified as having met the standards established by the peace officers standards and training council.

(b) The peace officers standards and training account shall be funded as provided in section 31-3201B, Idaho Code.

(c) All contributions and other moneys and appropriations which are designated for peace officers standards and training shall be deposited in the peace officers standards and training account.

(d) Moneys received into the account as provided in subsection (c) of this section, shall be accounted for separately.

(e) If the fiscal year-end balance in the account pursuant to section 31-3201B, Idaho Code, exceeds five hundred fifty thousand dollars (\$550,000) the excess shall revert to the general account.

SECTION 4. That Chapter 51, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-5117, Idaho Code, and to read as follows:

19-5117. POWERS OF THE COUNCIL -- STANDARDS OF TRAINING, EDUCATION AND EMPLOYMENT OF COUNTY DETENTION OFFICERS -- CERTIFICATION -- PENALTIES. (1) It shall be the duty of and the council shall have the power:

(a) To establish the requirements of minimum basic training which county detention officers shall complete in order to be eligible for permanent employment as a county detention officer;

(b) To establish such basic training and certification so that it can be completed within one (1) year of employment as a county detention officer;

(c) To establish the requirements of minimum training standards for employment as a county detention officer in probationary, temporary, part-time and/or emergency situations;

(d) To certify county detention officers as having completed all requirements established by the council in order to be eligible for permanent employment as a county detention officer;

(e) To receive applications for financial assistance from counties and disburse available state funds to the counties for salaries and allowable living expenses or any part thereof, incurred while in attendance at approved training programs and schools, as authorized by the council. The annual reimbursement authorized by this section shall not exceed the funds available for such purpose and authorized by section 31-3201B, Idaho Code.

(2) Any county detention officer employed after July 1, 1997, shall be trained and certified within one (1) year of employment. Current county detention officers, who were employed prior to July 1, 1997, shall comply with the training and certification provisions of this section by July 1, 1999.

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 13, 1997.

CHAPTER 85
(H.B. No. 87)

AN ACT

RELATING TO MOTOR FUELS TAXES; AMENDING SECTION 63-2403, IDAHO CODE, TO INCLUDE SPECIAL FUEL IN THE DEFINITION OF RECEIPT OF MOTOR FUEL IN THIS STATE AND TO CLARIFY THE DEFINITION.

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

SECTION 1. That Section 63-2403, Idaho Code, be, and the same is hereby amended to read as follows:

63-2403. RECEIPT OF GASOLINE, ~~AND/~~ SPECIAL FUELS OR AIRCRAFT ENGINE FUEL -- DETERMINATION. Gasoline, ~~and/~~ special fuels or aircraft engine fuel is ~~deemed-to-be~~ received as follows:

(1) (a) Gasoline, ~~and/~~ special fuels or aircraft engine fuel produced, refined, manufactured, blended or compounded by any person or stored at a pipeline terminal in this state by any person is received by that person when it is loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment or when it is placed into any tank or other container from which sales or deliveries not involving transportation are made.

(b) Gasoline, special fuels or aircraft engine fuel is received by a person other than the person designated in subsection (1)(a) of this section in the following circumstances:

(i) ~~When, however, the~~ Gasoline, and/ special fuels or aircraft engine fuel ~~is shipped or delivered from a pipeline terminal in this state to another person a licensed as a distributor under this chapter, then it is received by the first licensed distributor to whom it is first delivered.~~

(ii) ~~When the~~ Gasoline, and/ special fuels or aircraft engine fuel ~~is shipped or delivered to another a person who is not a licensed as a distributor under this chapter for the account of a person that is so licensed, it is received by the licensed distributor for whose account it is shipped.~~

(2) Notwithstanding the provisions of subsection (1) above, ~~when gasoline, and/ special fuels or aircraft engine fuel is shipped or delivered from a refinery or pipeline terminal to another refinery or pipeline terminal, that gasoline and/or aircraft engine fuel is not received by reason of that shipment or delivery.~~

(3) Any product other than gasoline, special fuels or aircraft engine fuel that is blended to produce gasoline, ~~and/~~ special fuels or aircraft engine fuel other than at a refinery or pipeline terminal in this state is received by the person who is the owner of the blended fuel at the time and place after the blending is completed.

(4) (a) Gasoline, ~~and/~~ special fuels or aircraft engine fuel imported into this state, other than ~~that fuel~~ placed in storage at a refinery or pipeline terminal in this state, ~~shall be deemed to be~~ is received at the time the fuels arrives in this state and by the person who is, at the time of arrival, the owner of the ~~gasoline and/or aircraft engine fuel when the fuels arrive in this state.~~

(b) ~~Where~~ Gasoline, and/ special fuels or aircraft engine fuel ~~brought imported into this state by a licensed distributor is shipped or and delivered directly to a person not a licensed as a distributor, then the fuels shall be deemed to be~~ is received by the licensed distributor importing ~~those that~~ fuels into this state at the time the fuel arrives in this state.

(c) Fuel arrives in this state at the time it crosses the border of this state.

CHAPTER 86
(H.B. No. 88)

AN ACT

RELATING TO MOTOR FUELS; AMENDING SECTION 63-2401, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 63-2421, IDAHO CODE, TO DELETE REFERENCE TO SPECIAL FUEL TAX PERMIT AND ADD REFERENCE TO TRIP PERMITS AND IFTA LICENSE; AMENDING SECTION 63-2430, IDAHO CODE, TO CLARIFY PROCEDURE FOR REVOKING DISTRIBUTOR AND IFTA LICENSES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-2438, IDAHO CODE, TO CLARIFY REQUIREMENTS FOR POSSESSION OF AN IFTA LICENSE; AMENDING SECTION 63-2439, IDAHO CODE, TO PROVIDE FOR REPORTS AND PAYMENTS BY LICENSE HOLDERS; AMENDING SECTION 63-2440, IDAHO CODE, TO CLARIFY EXEMPTIONS; AMENDING SECTION 63-2441, IDAHO CODE, TO APPLY PENALTIES; AMENDING SECTION 63-2442A, IDAHO CODE, TO PROVIDE APPLICATION OF THE INTERNATIONAL FUEL TAX AGREEMENT AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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) "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) "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) "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) "Commission" means the state tax commission of the state of Idaho.

(5) "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) "Dyed fuel" means diesel fuel that is dyed pursuant to requirements of the internal revenue service, or the environmental protection agency.

(7) "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) "Gasohol" means gasoline containing a mixture of no more than ten percent (10%) blend anhydrous ethanol.

(9) "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) "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, operates motor vehicles over twenty-six thousand (26,000) pounds maximum gross weight on that roadway 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) "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) "International fuel tax agreement" and "IFTA" mean the international fuel tax agreement required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, including subsequent amendments to that agreement.

(13) "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada.

(134) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code.

(145) "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.

(156) "Motor vehicle" means every self-propelled vehicle designed for operation, or required to be licensed for operation, upon a highway.

(167) "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.

(178) "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.

(189) "Retail dealer" means any person engaged in the retail sale of motor fuels to the public or for use in the state.

(1920) "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.

(201) "Special fuels dealer" means "distributor" under subsection (5) of this section.

(212) "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.

(223) "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 63-2421, Idaho Code, be, and the same is hereby amended to read as follows:

63-2421. RETURNS AND PAYMENT OF USE TAX BY CONSUMERS. (1) Any person who consumes special fuels in a motor vehicle licensed or required to be licensed by the laws of this state, except for motor vehicles ~~displaying a valid special fuels permit under this chapter and licensed under IFTA or operating with a temporary trip permit under section 49-432, Idaho Code, which~~ is subject to the tax imposed by section 63-24176, Idaho Code, shall report the amount of tax liability and pay the taxes due in conjunction with his income or franchise tax return due under the provisions of chapter 30, title 63, Idaho Code, in the manner and form prescribed by the commission. Payment of special fuels taxes shall be made in conjunction with any other taxes due on that return and special fuels taxes due may be offset against refunds of any other taxes shown on the return to be due the taxpayer.

(2) In the case of a person other than one who consumes special fuels in a motor vehicle ~~displaying a valid special fuels permit under this chapter~~ described in the exception in subsection (1) of this section and not required to file a return under chapter 30, title 63,

Idaho Code, who is subject to the tax imposed by section 63-2416, Idaho Code, the tax shall be paid annually, on a calendar year basis, in the manner and form required by the commission. The return and payment for each calendar year shall be due on or before April 15 of the immediately succeeding calendar year.

SECTION 3. That Section 63-2430, Idaho Code, be, and the same is hereby amended to read as follows:

63-2430. REVOCATION OR CANCELLATION OF LICENSE. (1) The commission may revoke the license of a distributor or a ~~special-fuels-dealer~~ carrier licensed in Idaho under the international fuel tax agreement in any of the following circumstances:

(a) The licensee refuses or neglects to comply with the provisions of this chapter or rules ~~and regulations~~ of the commission promulgated pursuant to this chapter;

(b) When, upon investigation, the commission ascertains or finds that the person to whom the license was issued is no longer engaged in business as a distributor or ~~special-fuels-dealer~~ an Idaho IFTA carrier and has not been so engaged for a period of six (6) months prior to the cancellation; or

(c) The licensee files a written request with the commission asking that the license be revoked and the commission determines upon investigation, that the licensee is no longer a person required to be a licensed distributor or ~~a licensed special-fuels-dealer~~ required to have an IFTA license.

(2) In the case of a cancellation under paragraph (c) of subsection (1) of this section, the cancellation shall not be effective nor shall the licensee's surety be discharged from any bond unless the licensee has paid to the state of Idaho all taxes imposed under this chapter together with all penalties, interest and additional amounts which have accrued.

(3) In the case of revocation of a license under paragraph (a) or (b) of subsection (1) of this section, prior to revoking the license the commission shall notify give notice of the proposed revocation to the licensee to show cause within thirty (30) days of the date of the notice why the license should not be revoked. Revocation shall be by certified mail addressed to the licensee at his last known address and shall state the reasons for the cancellation. The cancellation shall become effective without further notice or hearing if, within thirty (30) days from the mailing date of the notice, the licensee has not made good the default or delinquency or has not requested a hearing on the cancellation. If within the thirty (30) day period the licensee requests a hearing on the cancellation, the commission shall schedule a hearing and provide the licensee with at least ten (10) days' notice of the time and place of the hearing. The provisions of chapter 52, title 67, Idaho Code, shall apply to hearings in the manner provided in section 63-3045, Idaho Code, which shall be subject to review as provided in section 63-3045, Idaho Code. If a petition for redetermination of the license revocation is not filed within the time period allowed, the determination becomes final as provided in section 63-3045B, Idaho Code. The state tax commission shall not issue a new license after the revocation of a license unless the commission is

satisfied that the former holder of the license has filed all returns and reported and paid all taxes, penalty and interest required by this chapter and corrected any other violations of this chapter upon which the revocation was based.

SECTION 4. That Section 63-2438, Idaho Code, be, and the same is hereby amended to read as follows:

63-2438. SPECIAL-FUELS-PERMIT INTERNATIONAL FUEL TAX AGREEMENT (IFTA) LICENSE. (1) It shall be unlawful for any person to consume special fuels in the operation or propulsion of a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight on the highways of this state unless each such motor vehicle displays ~~a valid special-fuels-permit issued by the commission; a permit issued under the provisions of section 63-2442A, Idaho Code; or a valid special fuels-trip permit under section 63-2440(2), Idaho Code~~ is:

(a) Licensed under the provisions of the international fuels tax agreement; or

(b) Operating under a temporary trip permit under section 49-432, Idaho Code; or

(c) Not a vehicle proportionally registered under section 49-435, Idaho Code.

(2) The application for an special-fuels-permit Idaho IFTA license shall be made to the commission upon a form prepared and furnished by the commission and containing such information as the commission deems necessary. Carriers based in other IFTA jurisdictions must apply to their base jurisdiction to obtain an IFTA license.

~~(3) Upon receipt of the application in proper form, the commission shall issue to the applicant a special-fuels-permit unless the applicant:~~

~~(a) Is a person who formerly held a permit under the provisions of this chapter or any predecessor statute, which permit, prior to the time of filing the application, had been revoked for cause; or~~

~~(b) Who is not the real party in interest and the real party in interest is a person described in subsection (3)(a) of this section;~~

~~(4) A special-fuels-permit shall be valid until suspended or revoked for cause, or otherwise canceled;~~

~~(5) No special-fuels-permit IFTA license shall be transferable.~~

~~(6) The special-fuels-permit may be in the form of a decal or a cab-card. It may show the special-fuels-tax-account-number of the applicant but shall not be assigned to a specific motor vehicle. The commission may collect a fee for issuance of the special-fuels-permit IFTA license and decal, which fee shall not exceed the cost of issuance.~~

SECTION 5. That Section 63-2439, Idaho Code, be, and the same is hereby amended to read as follows:

63-2439. RETURNS REPORTS AND PAYMENT BY HOLDERS OF SPECIAL-FUELS PERMITS AN IDAHO INTERNATIONAL FUEL TAX AGREEMENT (IFTA) LICENSE. (1) ~~For the purpose of reporting the amount of tax due and payable under section 63-2416, Idaho Code; e~~Each person issued an special-fuels-per-

mit Idaho IFTA license as required under section 63-2438, Idaho Code, shall file with the commission in the manner and form prescribed by it, a the tax return. The return may be filed annually, semiannually, quarterly or monthly, as permitted by the tax commission report required by the IFTA. Such return report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return report and shall be in lieu of such verification. The return report shall show such information as the commission may reasonably require for the proper administration and enforcement of this chapter. ~~The return shall be filed on or before the last day of the next calendar month following the period to which it relates.~~

(2) The tax return report shall be accompanied by the remittance covering the total tax, penalty and interest due hereunder, for use of special fuels during the preceding reporting period. The tax due shall be calculated by multiplying the tax rate per gallon provided in ~~section 63-2405, Idaho Code,~~ for each IFTA jurisdiction by the number of taxable gallons of special fuels ~~consumed in the operation or propulsion of a motor vehicle upon the highways of this state, which displays a special fuels permit taxable in each IFTA jurisdiction,~~ less any tax already paid under section 63-2416, Idaho Code upon purchases of fuel in that jurisdiction. The taxable gallons consumed shall be calculated by dividing the taxable miles traveled ~~on the public highways of this state in each jurisdiction~~ by such motor vehicles by the fleet average miles per gallon of such motor vehicles.

SECTION 6. That Section 63-2440, Idaho Code, be, and the same is hereby amended to read as follows:

63-2440. EXEMPTIONS FROM SPECIAL FUELS PERMITS INTERNATIONAL FUEL TAX AGREEMENT LICENSE AND RETURNS REPORTS AND TEMPORARY TRIP PERMITS.

(1) In lieu of obtaining an special fuels permit pursuant to this chapter IFTA license, any person operating a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight, propelled by special fuels in this state, shall secure a temporary trip permit under section 49-432, Idaho Code, authorizing the operation of such vehicle in the state for a period not to exceed ninety-six (96) hours. The temporary trip permit shall be obtained through the Idaho transportation department. The fees shall be those provided by section 49-432, Idaho Code, and the revenues shall be distributed as provided by section 40-701, Idaho Code.

(2) A motor vehicle owned or operated by another state of the United States or an agency or political subdivision thereof shall be exempt from the requirements of sections 63-2438 and 63-2439, Idaho Code, if the state where the vehicle is owned grants a substantially similar exemption to vehicles owned by the state of Idaho, its agencies or political subdivisions.

(3) Recreational vehicles, as defined in section 63-2401, Idaho Code, and buses used exclusively for personal pleasure by an individual shall be exempt from the requirements of sections 63-2438 and 63-2439, Idaho Code. A recreational vehicle used in connection with any business or institutional endeavor shall not qualify for the

exemption under this subsection.

SECTION 7. That Section 63-2441, Idaho Code, be, and the same is hereby amended to read as follows:

63-2441. PENALTIES. It shall be unlawful for any person to consume any special fuels in the propulsion of a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight on the highways of this state ~~unless such motor vehicle displays a valid special fuel permit issued by the commission or a valid special fuel trip permit under section 63-2440(2)~~ except as provided in section 63-2438, Idaho Code, unless such person is exempt from such requirement under section 63-2440, Idaho Code, or other provision of state or federal law or, in the case of vehicles using gaseous fuel, has complied with section 63-2424, Idaho Code. Such unlawful operation or the display of any fictitious or counterfeit ~~special fuel permit~~ IFTA cab card or decal or any fictitious or counterfeit ~~special temporary trip permit~~ or display of an permit IFTA cab card or decal issued to a person other than the owner or operator or lessee of the vehicle on which it is displayed shall be a misdemeanor and any person convicted thereof may be punished in the manner provided by law.

SECTION 8. That Section 63-2442A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2442A. COOPERATIVE INTERNATIONAL FUEL TAX AGREEMENT AND OTHER AGREEMENTS BETWEEN STATES. (1) The commission may enter into cooperative agreements with other states for exchange of information and auditing of distributors, ~~special-fuels~~ dealers and users of motor fuels. The commission shall participate in the international fuel tax agreement as required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, including subsequent amendments to that agreement.

(2) Any person operating a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight which is (a) based in this state and (b) operated in this state and in any other jurisdiction which is a member of the international fuels tax agreement shall report and pay all fuel use taxes due to any IFTA member jurisdiction, together with any other charges due to any such jurisdiction which are reportable on the IFTA report, in the manner required by IFTA. If the provisions set forth in the international fuel tax agreement are in conflict with any provision of this chapter, the agreement provisions shall prevail. An agreement, arrangement, declaration or amendment thereto is not effective until stated, in writing, and filed with the commission.

(23) An agreement may provide for determining the base state for users, users records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuels taxes, and penalties or interest to another jurisdiction, and other provisions as will facilitate the administration of the agreement.

(34) The commission may, as required by the terms of an agreement, forward to officers of another state any information in the commission's possession relative to the manufacture, receipts, sale, use, transportation, or shipment of motor fuels by any person. The commission may disclose to officers of another state, the location of officers, motor vehicles, and other real and personal property of users of motor fuels.

(45) An agreement may provide for each state to audit the records of persons based in the state, to determine if the motor fuels taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of motor fuels. For persons not based in this state and who have taxable use of motor fuels in this state, the commission may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the commission.

(56) The commission may enter into additional cooperative agreements with other states for mutual enforcement of taxes on gasoline and special fuels not subject to collection pursuant to the international fuel tax agreement. Such agreements may provide for collection and enforcement of the motor fuels taxes of all signatory states pursuant to the law, rules, and regulations of the state in which a person liable for such taxes maintains his principal place of business. An agreement may provide for any or all of the following: determining the base state of persons liable for taxes, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, determining if bonding is required, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuels taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.

(67) Any agreement entered into pursuant to this section does not preclude the commission from auditing the records of any person covered by the provisions of this chapter.

(78) The legal remedies for any person served with an order or assessment under this section are as prescribed in this chapter.

(89) If the commission enters into any agreement under the authority of this section, and the provisions set forth in the agreement are in conflict with any rules or regulations promulgated by the commission, the agreement provisions prevail.

SECTION 9. This act shall be in full force and effect on and after January 1, 1998.

Approved March 13, 1997.

CHAPTER 87
(H.B. No. 97)

AN ACT
RELATING TO CRIMES; AMENDING SECTION 18-1401, IDAHO CODE, TO CLARIFY

THE DEFINITION OF A BURGLARY.

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

SECTION 1. That Section 18-1401, Idaho Code, be, and the same is hereby amended to read as follows:

18-1401. BURGLARY DEFINED. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, closed vehicle, closed trailer, airplane or railroad car, with intent to commit any theft or any felony, is guilty of burglary.

Approved March 13, 1997.

CHAPTER 88
(H.B. No. 135)

AN ACT

RELATING TO THE CERTIFIED SHORTHAND REPORTERS ACT; AMENDING SECTION 54-3113, IDAHO CODE, TO REMOVE THE ATTORNEY GENERAL AS CHAIRMAN OF THE HEARING BOARD FOR CONTESTED CASES, ELIMINATING PROCEDURES THAT DO NOT COMPLY WITH THE ADMINISTRATIVE PROCEDURE ACT, AND PROVIDING FOR REVOCATION OF CERTIFICATES OF SHORTHAND REPORTERS AND OTHER DISCIPLINARY MEASURES.

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

SECTION 1. That Section 54-3113, Idaho Code, be, and the same is hereby amended to read as follows:

54-3113. INVESTIGATION OF VIOLATIONS -- HEARING ~~---ATTORNEY-GENERAL-AS-CHAIRMAN-OF-HEARING-BOARD----~~NOTICE. The board shall, upon a verified complaint in writing by any member of the board or by a certified shorthand reporter or any person claiming to have been injured or defrauded, investigate the actions of any certified shorthand reporter alleged to have committed a violation of this act or any of the grounds for revocation or suspension of a certificate. ~~For--the purposes--of--such--investigation-and-hearing; the attorney general of the state of Idaho, or one (1) of his assistants--designated--by--him, shall sit with the board with all of the powers as a member of the board and shall act as chairman of the hearing board.~~ For the purpose of such investigations and hearings, each member of the board is empowered to administer oaths and affirmations, subpoena witnesses, and hear and receive evidence anywhere in the state. ~~Upon receiving a complaint against a certified shorthand reporter, the board shall immediately notify such reporter of the filing of the complaint by mailing a certified copy thereof to the reporter at his address--indicated in the records of the board. The hearing board shall determine a date for a hearing on the complaint for the purpose of receiving oral and documentary evidence and shall give notice thereof--by--certified~~

~~mail--to--the--certified--shorthand--reporter--charged--in--the--complaint--at--his--address--listed--in--the--records--of--the--board--at--least--twenty--(20)~~ days--before--such--hearing. The hearing board shall have power to continue its hearings from time to time and from place to place as justice may require. Upon conclusion of the hearings, the hearing board shall determine by majority vote whether the certified of the certified shorthand reporter should be revoked or suspended for a stated period of time, or should be revoked whether such disciplinary action short of suspension or revocation should be imposed (including, but not limited to, conditional probationary periods and the imposition of fines and costs), or whether the complaint should be dismissed. The proceedings and hearings under this paragraph shall be governed by chapter 52, title 67, Idaho Code.

Approved March 13, 1997.

CHAPTER 89
(H.B. No. 170)

AN ACT

RELATING TO CRIMINAL PROCEDURES; AMENDING SECTION 19-603, IDAHO CODE, TO ENABLE LAW ENFORCEMENT OFFICERS TO DEVELOP PROBABLE CAUSE WHENEVER THEY MAY FIND IT AND ENABLE THE PERSON TO BE ARRESTED WITHOUT A WARRANT.

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

SECTION 1. That Section 19-603, Idaho Code, be, and the same is hereby amended to read as follows:

19-603. WHEN PEACE OFFICER MAY ARREST. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1. For a public offense committed or attempted in his presence.
2. When a person arrested has committed a felony, although not in his presence.
3. When a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.
4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.
5. At night, when there is reasonable cause to believe that he has committed a felony.
6. When ~~at--the--scene--of--a--domestic--disturbance--there--is--reasonable--cause--to--believe,--based--upon--physical--evidence--observed--by--the--officer--or--statements--made--in--the--presence--of--the--officer~~ upon immediate response to a report of a commission of such a crime there is probable cause to believe, that the person arrested has committed a violation of section 18-902 (assault), 18-903 (battery), 18-918 (domestic assault or battery), 18-7905 (stalking), or 39-6312 (violation of a protection order).
7. When there is reasonable cause to believe, based upon physical

evidence observed by the officer or statements made in the presence of the officer upon immediate response to a report of a commission of a crime aboard an aircraft, that the person arrested has committed such a crime.

Approved March 13, 1997.

CHAPTER 90
(H.B. No. 175)

AN ACT

RELATING TO PAYMENTS FROM THE PUBLIC SCHOOL INCOME FUND; AMENDING SECTION 33-1009, IDAHO CODE, TO CHANGE THE DATES FOR REPORTING AVERAGE DAILY ATTENDANCE FOR CALCULATION OF DISTRIBUTION OF SCHOOL FUNDS.

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

SECTION 1. That Section 33-1009, Idaho Code, be, and the same is hereby amended to read as follows:

33-1009. PAYMENTS FROM THE PUBLIC SCHOOL INCOME FUND.

1. a. Payments of the state general account appropriation for public school support shall be made each year by the state board of education to the public school districts of the state in five (5) payments. Payments to the districts shall be made not later than the fifteenth day of August, the first day of October, the fifteenth day of November, the fifteenth day of February, and the fifteenth day of May each year. Each payment by the state board of education shall be approximately twenty percent (20%) of the total general account appropriation for the fiscal year. Amounts apportioned due to a special transfer to the public school income fund to restore or reduce a deficiency in the prior year's transfer pursuant to subsection 4. of this section shall not be subject to this limitation.
 - b. Payments of moneys, other than the state general account appropriation, that accrue to the public school income fund shall be made by the state board of education to the school districts of the state on the fifteenth day of November, February, May and July each year. The total amount of such payments shall be determined by the state department of education and shall not exceed the amount of moneys available and on deposit in the public school income fund at the time such payment is made.
 - c. Amounts apportioned due to a special transfer to the public school income fund to restore or reduce a deficiency in the prior year's transfer pursuant to subsection 4. of this section shall not be subject to the limitation imposed by paragraphs a. and b.
2. Payments made to the school districts in August, October and November are advance payments for the current year and will be based upon payments from the public school income fund for the preceding school year. Each school district shall receive its proportionate

share of the advance payments in the same ratio that its total payment for the preceding year was to the total payments to all school districts for the preceding year.

3. No later than the fifteenth day of February in each year, the state department of education shall compute the state distribution factor based on the total average daily attendance ~~for--the--first semester--of--the--then--current--school--year~~ through the first Friday in November. The factor will be used in payments of state funds in February and May. Attendance shall be reported in a format and at a time specified by the state department of education.

As of the thirtieth day of June of each year the state department of education shall determine final payments to be made on July fifteenth next succeeding to the several school districts from the public school income fund for the school year ended June 30. The July payments shall take into consideration:

- a. the average daily attendance of the several school districts for the twenty-eight (28) best weeks of the school year completed not later than the thirtieth of June,
- b. all funds available in the public school income fund for the fiscal year ending on the thirtieth of June,
- c. all payments distributed for the current fiscal year to the several school districts,
- d. payments made or due for the transportation support program and the exceptional education support program. The state department of education shall apportion and direct the payment to the several school districts the moneys in the public school income fund in each year, taking into account the advance made under subsection 2. of this section, in such amounts as will provide in full for each district its support program, and not more than therefor required, and no school district shall receive less than fifty dollars (\$50.00).

4. If the full amount appropriated from the general account by the legislature is not transferred to the public school income fund by the end of the fiscal year, the deficiency resulting therefrom shall either be restored or reduced through a special transfer from the general account in the first sixty (60) days of the following fiscal year, or shall be calculated in computing district levies, and any additional levy shall be certified by the state superintendent of public instruction to the board of county commissioners and added to the district's maintenance and operation levy. If the deficiency is restored or reduced by special transfer, the amount so transferred shall be in addition to the amount appropriated to be transferred in such following fiscal year, and shall be apportioned to each school district in the same amount as each would have received had the transfer been made in the year the deficiency occurred. The state department of education shall distribute to the school district the full amount of the special transfer as soon as practical after such transfer is made. In making the levy computations required by this subsection the state department of education shall take into account and consider the full amount of money receipted into the public school income fund from all sources for the given fiscal year. Deficits in the transfer of the appropriated amount of general account revenue to the public school income fund shall be reduced by the amount, if any,

that the total amount received from other sources into the public school income fund exceeds the official estimated amount from those sources. The official estimate of receipts from other sources shall be the total amount stated by the legislature in the appropriation bill.

5. Any apportionments in any year, made to any school district, which may within the succeeding three (3) year period be found to have been in error either of computation or transmittal, may be corrected during the three (3) year period by reduction of apportionments to any school district to which over-apportionments may have been made or received, and corresponding addition to apportionments to any school district to which under-apportionments may have been made or received.

Approved March 13, 1997.

CHAPTER 91
(H.B. No. 179)

AN ACT

RELATING TO LIVESTOCK DEALER LICENSING; AMENDING CHAPTER 33, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-3311, IDAHO CODE, TO PROVIDE THAT A LIVESTOCK DEALER SHALL BE RESPONSIBLE FOR ANY LIVESTOCK TRANSACTION CONDUCTED BY HIS AGENT REPRESENTATIVE IF THE NATURE OF THAT TRANSACTION WOULD OTHERWISE REQUIRE A LIVESTOCK DEALER'S LICENSE.

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

SECTION 1. That Chapter 33, 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 25-3311, Idaho Code, and to read as follows:

25-3311. LIVESTOCK DEALER -- TRANSACTIONS OF AGENT OR REPRESENTATIVE. A livestock dealer shall be responsible for any livestock transaction conducted by his agent or representative, if the nature of that transaction would otherwise require a livestock dealer's license.

Approved March 13, 1997.

CHAPTER 92
(H.B. No. 207)

AN ACT

RELATING TO MEDICAL INDIGENCY; AMENDING SECTION 31-3504, IDAHO CODE, TO REVISE PROCEDURES REGARDING LIENS ON REAL AND PERSONAL PROPERTY WHEN AN APPLICATION FOR FINANCIAL ASSISTANCE HAS BEEN FILED.

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

SECTION 1. That Section 31-3504, Idaho Code, be, and the same is hereby amended to read as follows:

31-3504. APPLICATION FOR FINANCIAL ASSISTANCE. (1) An applicant requesting assistance under this chapter from the state or any county in this state shall complete a written application on a uniform form agreed to by the Idaho association of counties and the Idaho hospital association prior to June 30, 1996. The truth of the matters contained in the application shall be sworn to by the applicant. The application shall be signed by the applicant or on the applicant's behalf and filed in the clerk's office.

(2) If a third party application is filed, the application shall be as complete as practical and presented in the same form and manner as set forth above.

(3) Follow-up necessary medical services based on a treatment plan, for the same condition, preapproved by the board, may be provided for a maximum of six (6) months from the date of the original application without requiring an additional application; however, a request for additional treatment not specified in the approved treatment plan shall be filed with the clerk ten (10) days prior to receiving services. Beyond the six (6) months, requests for additional treatment related to an original diagnosis in accordance with a preapproved treatment plan shall be filed ten (10) days prior to receiving services and an updated application may be requested by the board.

(4) Upon application for financial assistance pursuant to this chapter an automatic lien shall attach to all real and personal property of the applicant and on insurance benefits to which the applicant may become entitled. The lien shall also attach to any additional resources to which it may legally attach not covered above. The lien created by this section may be, in the discretion of the board, perfected upon as to real property and fixtures by recording, in any county recorder's office in this state in which the applicant and obligated party own property and with the secretary of state; a notice of application for medical indigency benefits on a uniform form agreed to by the Idaho association of counties and the Idaho hospital association prior to June 30, 1996, which form shall be recorded as provided herein within thirty (30) days from receipt of an application, and such lien, if so recorded, shall have a priority date as of the date the necessary medical services were provided. The lien created by this section may also be, in the discretion of the board, perfected as to personal property by filing with the secretary of state within thirty (30) days of receipt of an application, a notice of application in substantially the same manner as a filing under chapter 9, title 28, Idaho Code, except that such notice need not be signed and no fee shall be required, and, if so filed, such lien shall have the priority date as of the date the necessary medical services were provided. An application for assistance pursuant to this chapter shall waive any confidentiality granted by state law to the extent necessary to carry out the intent of this section.

Approved March 13, 1997.

CHAPTER 93
(H.B. No. 210)

AN ACT

RELATING TO THE UNDERGROUND STORAGE TANK TECHNICIAN CERTIFICATION ACT;
REPEALING SECTIONS 41-276 THROUGH 41-285, IDAHO CODE.

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

SECTION 1. That Sections 41-276 through 41-285, Idaho Code, be, and the same are hereby repealed.

Approved March 13, 1997.

CHAPTER 94
(H.B. No. 266)

AN ACT

RELATING TO THE CONSIDERATION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS IN IMPOSING OR COMPUTING MONETARY PENALTIES IN SETTLEMENT OF ENVIRONMENTAL ENFORCEMENT ACTIONS; AMENDING SECTION 39-4414, IDAHO CODE, TO DEFINE SUPPLEMENTAL ENVIRONMENTAL PROJECT, TO AUTHORIZE CONSIDERATION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS IN THE IMPOSITION OR COMPUTATION OF MONETARY PENALTIES AND TO CLARIFY WHICH MONEYS SHALL BE PAID INTO THE HAZARDOUS WASTE EMERGENCY ACCOUNT; AND AMENDING SECTION 39-108, IDAHO CODE, TO DEFINE SUPPLEMENTAL ENVIRONMENTAL PROJECT AND TO AUTHORIZE CONSIDERATION OF SUPPLEMENTAL PROJECTS IN THE IMPOSITION OR COMPUTATION OF MONETARY PENALTIES.

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

SECTION 1. That Section 39-4414, Idaho Code, be, and the same is hereby amended to read as follows:

39-4414. REMEDIES. The remedies specified in this section are cumulative and nonexclusive.

(1) MONETARY PENALTIES.

(a) Any person who makes a false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for the purpose of complying with the provisions of this chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each separate violation or for each day of a continuing violation.

(b) Any person who violates this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each separate violation or for each day of a continuing violation.

(c) The imposition or computation of monetary penalties may take

into account the seriousness of the violation, and good faith efforts to comply with the law, and an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For purposes of this section, "supplemental environmental project" means a project which the person is not otherwise required to perform and which prevents pollution, reduces the amount of pollutants reaching the environment, contributes to public awareness of environmental matters, or enhances the quality of the environment. In evaluating a particular supplemental environmental project proposal, preference may be given to those projects with an environmental benefit, which relates to the violation or the objectives of the underlying statute which was violated, or which enhances the quality of the environment in the general geographic location where the violation occurred.

(2) ASSESSMENT OF COSTS. Any person who violates this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter may be assessed for:

(a) The state's costs for any nonroutine investigations, inspections, monitoring, or surveys which lead to evidence of the violation;

(b) The state's costs, including the reasonable value of attorneys' services, for preparing and litigating the case;

(c) The state's costs for mitigating, removing, correcting or terminating adverse effects upon soil, air, or water quality resulting from the violation;

(d) The state's costs for impounding, storing, and disposing of contaminated property;

(e) Compensation for damages to publicly held resources including but not limited to, land, water, recreational uses, wildlife, fish and aquatic life to restore the resource to its highest previous use;

(f) Compensation for damages to privately held resources including, but not limited to, livestock, land, water, or other personal property, and compensation for court costs allowed by statute, reasonable attorney's fees for trial preparation and trial of the case, and all other reasonable costs of trial preparation and trial of the case;

(g) Compensation for damages to personal health and compensation for court costs allowed by statute, reasonable attorney's fees for trial preparation and trial of the case, and all other reasonable costs of trial preparation and trial of the case;

(h) The imposition or computation of costs may take into account the seriousness of the violation and good faith efforts to comply with the law.

(3) RESTRAINING ORDERS, INJUNCTIONS AND OTHER RELIEF.

(a) Any person who violates any provision of this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter shall be subject to a permanent or temporary injunction, restraining order, or other relief deemed appropriate. Upon a showing to the court that a violation is causing an imminent hazard to the

public health, the public safety, or to the environment, the department need not allege or prove at any stage of the proceeding that long-term irreparable damage will occur should the injunction or order not be issued or that the remedy at law is inadequate.

(b) A receiver may be appointed to oversee or operate any hazardous waste facility or site which is established or operated in violation of this chapter or any standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter.

(4) PAYMENT TO HAZARDOUS WASTE EMERGENCY ACCOUNT. All moneys recovered collected by the department pursuant to subsections (1), (2), and (3) of this section ~~and any moneys paid to settle to resolve~~ any enforcement proceeding instituted under section 39-4413, Idaho Code, shall be paid into the hazardous waste emergency account created by section 39-4417, Idaho Code.

SECTION 2. That Section 39-108, Idaho Code, be, and the same is hereby amended to read as follows:

39-108. INVESTIGATION -- INSPECTION -- RIGHT OF ENTRY -- VIOLATION -- ENFORCEMENT -- PENALTY -- INJUNCTIONS. 1. The director shall cause investigations to be made upon the request of the board or upon receipt of information concerning an alleged violation of this act or of any rule, regulation, permit or order promulgated thereunder, and may cause to be made such other investigations as the director shall deem advisable.

2. For the purpose of enforcing any provision of this chapter or any rule ~~or regulation~~ authorized in this chapter, the director or the director's designee shall have the authority to:

a. Conduct a program of continuing surveillance and of regular or periodic inspection of actual or potential health hazards, air contamination sources, water pollution sources, noise sources, and of solid waste disposal sites;

b. Enter at all reasonable times upon any private or public property, upon presentation of appropriate credentials, for the purpose of inspecting or investigating to ascertain possible violations of this act or of rules, regulations, permits or orders adopted and promulgated by the director or the board;

c. All inspections and investigations conducted under the authority 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 section 17, article I, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or occupier or exigent circumstances such as a public health or environmental emergency;

d. Any district court in and for the county in which the subject property is located is authorized to issue a search warrant to the director upon a showing of (i) probable cause to suspect a violation, or (ii) the existence of a reasonable program of inspection. Any search warrant issued under the authority of this chapter shall be limited in scope to the specific purposes for which it is

issued and shall state with specificity the manner and the scope of the search authorized.

3. Whenever the director determines that any person is in violation of any provision of this act or any rule, regulation, permit or order issued or promulgated pursuant to this act, the director may commence either of the following:

a. Administrative Enforcement Action

i. Notice. The director may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the act, rule, regulation, permit or order which has been violated, and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed.

ii. Scheduling compliance conference. If a recipient of a notice of violation contacts the department within fifteen (15) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the date of receipt of the notice, unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in paragraph b. of this subsection.

iii. Compliance conference. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance.

iv. Consent order. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty.

v. Effect of consent order. A consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain, in any appropriate district court, specific performance of the consent order and such other relief as authorized in this chapter.

vi. Failure to reach consent order. If the parties cannot reach agreement on a consent order within sixty (60) days after the receipt of the notice of violation or if the recipient does not request a compliance conference as per subsection a.(ii) of this section, the director may commence and

prosecute a civil enforcement action in district court, in accordance with subsection b. of this section.

b. Civil enforcement action. The director may initiate a civil enforcement action through the attorney general as provided in section 39-109, Idaho Code. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this act or any rule, regulation, permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any rule, regulation, permit or order promulgated hereunder and for any relief or remedies authorized in this act. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

4. No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, regulation, permit or order issued or promulgated pursuant to this chapter, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

5. Monetary penalties. (a). Any person determined in a civil enforcement action to have violated any provision of this act or any rule, regulation, permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation, whichever is greater or ten thousand dollars (\$10,000) for each separate air violation and day of continuing air violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this act shall be paid into the general fund of the state. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(b) The imposition or computation of monetary penalties may take into account the seriousness of the violation, good faith efforts to comply with the law, and an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For purposes of this section, "supplemental environmental project" means a project which the person is not otherwise required to perform and which prevents pollution, reduces the amount of pollutants reaching the environment, contributes to public awareness of environmental matters, or enhances the quality of the environment. In evaluating a particular supplemental environmental project proposal, preference may be given to those projects with an environmental benefit which relates to the violation or the objectives of the underlying statute which was violated or which enhances the quality of the environment in the general geographic location where the violation occurred.

6. In addition to such civil penalties, any person who has been determined to have violated the provisions of this act or the rules,

regulations, permits or orders promulgated thereunder, shall be liable for any expense incurred by the state in enforcing the act, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness, or health hazard.

7. No action taken pursuant to the provisions of this act or of any other environmental protection or health law shall relieve any person from any civil action and damages that may exist for injury or damage resulting from any violation of this act or of the rules, regulations, permits and orders promulgated thereunder.

8. In addition to, and notwithstanding other provisions of this act, in circumstances of emergency creating conditions of imminent and substantial danger to the public health or environment, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any discharge, emission or other activity in violation of provisions of this act or rules, regulations, permits and orders promulgated thereunder. In such action the court may issue an ex parte restraining order.

Approved March 13, 1997.

CHAPTER 95
(H.B. No. 278)

AN ACT

RELATING TO THE PRACTICE OF DENTISTRY; AMENDING CHAPTER 9, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-916B, IDAHO CODE, TO PROVIDE AUTHORITY TO LICENSE WITHOUT EXAMINATION FOR DENTAL APPLICANTS LICENSED IN ANOTHER STATE.

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

SECTION 1. That Chapter 9, 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 54-916B, Idaho Code, and to read as follows:

54-916B. DENTAL APPLICANTS LICENSED IN OTHER STATES. The board may issue a license to applicants licensed to practice dentistry in another state without the examination required by section 54-915(4), Idaho Code, upon evidence that:

(1) The applicant is currently an active dentist who holds a valid unrestricted license in another state;

(2) The applicant has been in clinical practice at least five (5) years immediately preceding the date of application for a minimum of one thousand (1,000) hours in each year;

(3) The applicant has successfully completed the national board dental examination parts one (1) and two (2);

(4) The applicant has successfully completed a clinical examination which is at least equivalent to that required by this state, as determined by the board;

(5) At the discretion of the board, the applicant may be required

to present case histories of patients treated by the applicant in the last five (5) years including appropriate x-rays, study models, treatment plans and treatment records;

(6) At the discretion of the board, the applicant may be required to appear for a personal interview conducted by the board;

(7) The applicant meets all other qualifications for a license in this state; and

(8) The applicant has paid the application fee as set by the board of not more than one thousand dollars (\$1,000).

Approved March 13, 1997.

CHAPTER 96
(H.B. No. 286, As Amended)

AN ACT

RELATING TO THE IDAHO BEEF COUNCIL; AMENDING SECTION 25-2901, IDAHO CODE, TO INCREASE THE MEMBERSHIP OF THE BEEF COUNCIL AND TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING SECTION 25-2903, IDAHO CODE, TO PROVIDE THAT THE GOVERNOR SHALL APPOINT ALL MEMBERS OF THE COUNCIL FOR A TERM OF THREE YEARS; AMENDING SECTION 25-2904, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING SECTION 25-2907, IDAHO CODE, TO DELETE LANGUAGE CONCERNING THE AMOUNT OF ASSESSMENT COLLECTED ON ALL CATTLE CONSIGNED FOR IMMEDIATE SALE TO AN IDAHO PUBLIC LIVESTOCK MARKET; AND AMENDING SECTION 25-2908, IDAHO CODE, TO PROVIDE THAT FUNDS COLLECTED SHALL BE EXPENDED BY THE COUNCIL TO A NATIONAL BEEF PROMOTION PROGRAM FOR USE IN PROMOTION, RESEARCH AND EDUCATIONAL ACTIVITIES.

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

SECTION 1. That Section 25-2901, Idaho Code, be, and the same is hereby amended to read as follows:

25-2901. BEEF COUNCIL CREATED. There is hereby created in the department of self-governing agencies the Idaho beef council, which shall be composed of ~~seven~~ eight (78) members appointed by the governor. The membership of the ~~board~~ beef council shall consist of ~~one-(1) dairyman~~ two (2) dairymen, three (3) beef producers, two (2) cattle feeders and one (1) marketman. In making the appointments, the governor shall take into consideration recommendations made to him by organizations who represent or who are engaged in the same type of production as the proposed member of the council.

SECTION 2. That Section 25-2903, Idaho Code, be, and the same is hereby amended to read as follows:

25-2903. MEMBERS -- APPOINTMENT -- TERMS. ~~On July 1, 1967, the~~ The governor shall appoint ~~three-(3) members for a term of one-(1) year;~~ two-(2) members for a term of two-(2) years and two-(2) all members of the council for a term of three (3) years. At the end of each of the

above terms the governor shall appoint all successors in office for a term of three (3) years.

Vacancies in any unexpired term shall be filled by the governor for the remainder of the unexpired term. The member appointed to fill the vacancy shall represent the same interests as the person whose office has become vacant.

SECTION 3. That Section 25-2904, Idaho Code, be, and the same is hereby amended to read as follows:

25-2904. COUNCIL OFFICERS -- MEETINGS -- EXPENSES. The council shall elect annually a chairman, vice chairman and a ~~secretary~~secretary-treasurer ~~secretary-treasurer~~ from among its members. The council shall meet regularly once each six (6) months, and at such other times as called by the chairman or when requested by two (2) or more members of the council. Members shall be compensated as provided by section 59-509(f), Idaho Code.

SECTION 4. That Section 25-2907, Idaho Code, be, and the same is hereby amended to read as follows:

25-2907. ASSESSMENTS -- COLLECTION. (1) There is hereby levied and imposed upon all cattle an assessment of not more than fifty cents (50¢) per head, to be paid by the owner.

(2) The assessment imposed by this section shall be collected:

(a) Each time a change in ownership of cattle occurs.

(b) When Idaho cattle leave the state permanently even though no change in ownership occurs.

(3) The state brand inspector shall collect state or other beef promotion assessments in addition to, at the same time and in the same manner as the fee charged for the state brand inspection. Such assessment so collected belongs to and shall be paid to the Idaho beef council, either directly or later by remittance together with a report. The council shall reimburse the state brand inspector for the reasonable and necessary expenses incurred for such collection, in an amount determined by the council and the inspector.

~~(4) The amount of the assessment collected on all cattle consigned for immediate sale to an Idaho public livestock market shall be: (a) the full amount of the assessment if no assessment has been paid in any other state within the prior ninety-six (96) hours; or (b) the difference between the full assessment and the assessment paid in any other state within the prior ninety-six (96) hours, if such other assessment is less than Idaho's full assessment; or (c) none, if a similar assessment has been paid in any other state within the prior ninety-six (96) hours that is equal to or greater than Idaho's full assessment.~~

SECTION 5. That Section 25-2908, Idaho Code, be, and the same is hereby amended to read as follows:

25-2908. DISBURSEMENTS. A total of at least twenty per cent (20%) of all funds so collected by the council shall be paid expended by it to the a national livestock-and-meat-board and the beef industry coun-

and promotion program for their use in promotional, research and educational activities.

Approved March 13, 1997.

CHAPTER 97
(H.B. No. 317)

AN ACT

RELATING TO AD VALOREM TAXATION; AMENDING SECTION 63-802, IDAHO CODE, TO PROVIDE WITHIN A TAXING DISTRICT'S BUDGET REQUEST CONSIDERATION OF THE VALUE OF ANNEXATION AS CERTIFIED BY THE TAX COMMISSION FOR MARKET VALUES OF OPERATING PROPERTY OF PUBLIC UTILITIES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-802, Idaho Code, be, and the same is hereby amended to read as follows:

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 state tax commission for market values of operating property of public utilities and 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.

SECTION 2. This act shall be in full force and effect on and after January 1, 1998.

Approved March 13, 1997.

CHAPTER 98
(H.B. No. 333)

AN ACT

RELATING TO THE APPROPRIATION FOR THE STATE TREASURER; AMENDING SECTION 1, CHAPTER 321, LAWS OF 1996; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 321, Laws of 1996, 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, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	\$648,700	\$444,900 <u>428,300</u>	\$27,500	\$1,121,100 <u>1,104,500</u>
Professional Services Fund	68,300	20,700 <u>37,300</u>	5,100	94,100 <u>110,700</u>
Treasurer's Office-LGIP Fund	<u>85,700</u>	<u>63,400</u>	<u>6,300</u>	<u>155,400</u>
TOTAL	<u>\$802,700</u>	<u>\$529,000</u>	<u>\$38,900</u>	<u>\$1,370,600</u>

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 13, 1997.

CHAPTER 99
(H.B. No. 339)

AN ACT

APPROPRIATING MONEYS TO THE STATE INSURANCE FUND IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 157, LAWS OF 1996, AUTHORIZING AN ADDITIONAL FULL-TIME EQUIVALENT POSITION AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; SPECIFYING THE SCOPE OF THE APPROPRIATION; 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 157, Laws of 1996, there is hereby appropriated to the State Insurance Fund, the following amount to be expended for the designated program according to the designated standard classifications from the listed fund for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
A. PETROLEUM STORAGE TANK PROGRAM:			
FROM:			
Petroleum Clean Water Trust Fund	\$53,500	\$ 2,000	\$55,500

SECTION 2. In addition to the full-time positions previously authorized for fiscal year 1997, the State Insurance Fund is authorized one (1) 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 two hundred fourteen (214) full-time equivalent

positions at any point during the period July 1, 1996 to June 30, 1997.

SECTION 3. Moneys appropriated in Section 1 of this act for the Petroleum Storage Tank 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.

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 13, 1997.

CHAPTER 100
(H.B. No. 340)

AN ACT

RELATING TO THE APPROPRIATION FOR PUBLIC SCHOOL SUPPORT FOR FISCAL YEAR 1997; AMENDING SECTION 1, CHAPTER 77, LAWS OF 1996, TO EXPRESS LEGISLATIVE INTENT REGARDING EXPENDITURES FROM STATE SOURCES; AMENDING SECTION 2, CHAPTER 77, LAWS OF 1996, TO APPROPRIATE GENERAL FUND MONEYS TO BE TRANSFERRED TO THE PUBLIC SCHOOL INCOME FUND; AMENDING SECTION 3, CHAPTER 77, LAWS OF 1996, TO APPROPRIATE MONEYS FROM THE PUBLIC SCHOOL INCOME FUND TO BE EXPENDED FOR THE EDUCATIONAL SUPPORT PROGRAM; PROVIDING A TRANSFER FROM THE TIMBER LAND IMPROVEMENT FUND; PROVIDING 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 Section 1, Chapter 77, Laws of 1996, 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, 1996, through June 30, 1997:

FROM:		
General Fund		\$689,470,000
		<u>678,770,000</u>
Dedicated Funds:		
Endowment Funds Income	\$26,425,000	
	<u>33,525,000</u>	
Department of Lands	7,100,000	
<u>Timber Land Improvement Funds</u>		
<u>for Public Schools</u>	2,500,000	
Cigarette Tax	7,000,000	
Liquor Fund	1,200,000	
Miscellaneous Receipts	<u>775,000</u>	
	<u>5,275,000</u>	
Total Dedicated Funds		42,500,000
		<u>49,500,000</u>
TOTAL		\$731,970,000
		<u>728,270,000</u>

SECTION 2. That Section 2, Chapter 77, Laws of 1996, be, and the same is hereby amended to read as follows:

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 <u>678,770,000</u>

SECTION 3. That Section 3, Chapter 77, Laws of 1996, be, and the same is hereby amended to read as follows:

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 \$731,970,000 728,270,000 for the period July 1, 1996, through June 30, 1997.

SECTION 4. Notwithstanding Section 58-140, Idaho Code, the State Controller shall make a cash transfer of \$2,500,000 from the Timber Land Improvement Fund for Public Schools to the Public School Income Fund.

SECTION 5. If the unexpended and unencumbered balance in the General Fund as of June 30, 1997, is negative, the State Controller shall make a cash transfer of the amount of the negative balance or \$6,500,000, whichever is less, from the Budget Reserve Fund to the General Fund.

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 its passage and approval.

Approved March 13, 1997.

CHAPTER 101
(H.B. No. 5)

AN ACT

RELATING TO SAFE BOATING; AMENDING SECTION 67-7003, IDAHO CODE, TO PROVIDE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-7033, IDAHO CODE, TO PROVIDE PENALTIES AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 67-7034, IDAHO CODE, TO PROVIDE FOR PROSECUTION AND TO PROVIDE PROHIBITED INTOXICATION LEVELS FOR PERSONS UNDER TWENTY-ONE YEARS OF AGE.

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) "Boating law administrator" means the staff person of the Idaho department of parks and recreation appointed by the director and who supervises the boating program.

(5) "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.

(56) "Department" means the Idaho department of parks and recreation.

(67) "Director" means the director of the Idaho department of parks and recreation.

(78) "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.

(89) "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.

(910) "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.

(101) "Manufacturer" means any person who is engaged in the business of manufacturing or importing new and unused vessels for the pur-

pose of sale or trade.

(112) "Operate" means to navigate or otherwise use a vessel on the water of this state.

(123) "Operator" means any person who controls the direction or propulsion of any vessel on the water of this state.

(134) "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.

(145) "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.

(156) "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.

(167) "Personal watercraft" means a small vessel which uses an outboard motor or an inboard motor powering a water jet pump as its primary source of power and is designed to be operated by a person sitting, standing or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

(158) "Private label merchandiser" means any person engaged in the business of selling or distributing, under his own trade name, vessels manufactured by another.

(179) "Regatta," "Race," "Marine Event," "Tournament," or "Exhibition" means an organized water event of limited duration which is conducted according to a prearranged schedule.

(1820) "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.

(1921) "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.

(202) "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 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.

(213) "Water of this state" means any waters in the state of Idaho

over which the state has jurisdiction.

SECTION 2. That Section 67-7033, Idaho Code, be, and the same is hereby amended to read as follows:

67-7033. PENALTIES. (1) Unless otherwise specifically provided, any person who shall violate any of the provisions of this chapter or any rule ~~or regulation~~ promulgated by the department pursuant to this chapter shall be guilty of a misdemeanor and be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment.

(2) Any person who shall be convicted of any second or subsequent violation of any of the provisions of law in addition to any other penalties authorized herein may, at the discretion of the court, be refused the privilege of operating any vessel on any of the waters of this state for a period not to exceed two (2) years.

(3) Any person who shall operate any vessel during the period when he has been denied the privilege to so operate by virtue of subsection (2) of this section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than three hundred dollars (\$300), or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment.

(4) Any manufacturer who shall violate the provisions of this chapter with respect to the obligation for the installation of capacity of certification plates shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment of not more than thirty (30) days, or both such fine and imprisonment and each failure to affix a capacity or certification plate as provided in this chapter shall constitute a separate offense for each vessel with respect to which the failure occurs.

(5) Any person who pleads guilty to or is found guilty of violating the provisions of section 67-7034, Idaho Code, shall be guilty of a misdemeanor and:

(a) May be fined an amount not to exceed one thousand dollars (\$1,000);

(b) May be imprisoned for a period not to exceed six (6) months;
and

(c) Shall be required to attend and successfully complete a course on safe boating approved by the designated state boating law administrator.

SECTION 3. That Section 67-7034, Idaho Code, be, and the same is hereby amended to read as follows:

67-7034. PERSONS UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY OTHER INTOXICATING SUBSTANCES.

(1) (a) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.10, as defined in subsection (5) of this section, or more, as shown by analysis of his blood, urine, breath, or other bodily substance, to operate or be in actual physical control of a vessel on the waters of the state of

Idaho.

(b) It is unlawful for any person under twenty-one (21) years of age who has an alcohol concentration of at least 0.02 but less than 0.10, as defined in subsection (5) of this section, to operate or be in actual physical control of a vessel on the waters of the state.

(2) Any person having an alcohol concentration of less than 0.10, as defined in subsection (5) of this section, as shown by analysis of his blood, urine, breath, or other bodily substance, by a test requested by an authorized law enforcement officer shall not be prosecuted for operating under the influence of alcohol, except as provided in subsection (1)(a) and subsection (3) of this section. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for operating or being in actual physical control of a vessel while under the influence of alcohol, drugs, or any other intoxicating substances, or other competent evidence.

(3) If the results of the test requested by an authorized law enforcement officer show a person's alcohol concentration of less than 0.10, as defined in subsection (5) of this section, such fact may be considered with other competent evidence of drug use other than alcohol in determining the guilt or innocence of the defendant. This subsection does not preclude prosecution for alcohol intoxication for persons described in subsection (1)(b) of this section.

(4) Persons authorized to withdraw blood for the purposes of determining content of alcohol or other intoxicating substances are those persons authorized in section 18-8003, Idaho Code. Immunity from liability in any civil proceeding for specified causes of action shall be extended to personnel as provided in section 18-8002, Idaho Code.

(5) For purposes of this chapter, an evidentiary test for alcohol concentration is a determination of the percent by weight of alcohol in blood and shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the blood alcohol concentration shall be performed by a laboratory operated by the Idaho department of law enforcement or by a laboratory approved by the Idaho department of law enforcement under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho department of law enforcement. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated or approved by the Idaho department of law enforcement or by any other method approved by the Idaho department of law enforcement shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(6) It is unlawful for any person who is an habitual user of, or under the influence of any narcotic drug, or who is under the influence of any other drug or any combination of alcohol and any drug to a degree which renders him incapable of safely operating a vessel to

operate or be in actual physical control of a vessel on the waters of the state of Idaho. The fact that any person charged with a violation of the provisions of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of a violation of the provisions of this subsection.

(7) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

Approved March 15, 1997.

CHAPTER 102
(H.B. No. 125, As Amended)

AN ACT

RELATING TO PRISONER REIMBURSEMENT TO THE COUNTY; AMENDING CHAPTER 6, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-607, IDAHO CODE, TO PROVIDE THAT PERSONS SENTENCED TO JAIL SHALL BE REQUIRED TO PAY THE COUNTY FOR THE EXPENSES OF INCARCERATION; AMENDING SECTION 9-340, IDAHO CODE, TO EXEMPT THE RECORDS OF FINANCIAL STATUS OF PRISONERS FROM DISCLOSURE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 6, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-607, Idaho Code, and to read as follows:

20-607. PRISONER REIMBURSEMENT TO THE COUNTY. (1) The county sheriff shall seek reimbursement for any expenses incurred by the county in relation to the charge or charges for which a person was sentenced to a county jail as follows:

- (a) From each person who is or was a prisoner, not more than twenty-five dollars (\$25.00) per day for the expenses of maintaining that prisoner up to a maximum of five hundred dollars (\$500), whichever is less, for the entire period of time the person was confined in the county jail, including any period of pretrial detention;
- (b) Any other expenses incurred by the county in order to collect payments under this section;
- (c) In pursuing reimbursement under this section the county may investigate the financial status of the person.
- (d) The county where the person was sentenced shall charge the person a daily maintenance cost according to paragraph (a) of this subsection and shall seek reimbursement once the debt has been

incurred.

(2) Before seeking any reimbursement under this section, the sheriff shall develop a form to be used for determining the financial status of prisoners. The form shall provide for obtaining the age and marital status of the prisoner, the number and ages of children of the prisoner, the number and ages of other dependents, type and value of real estate, type and value of real and personal property, type and value of investments, cash, bank accounts, pensions, annuities, salary, wages and any other personal property of significant cash value. The county shall use the form when investigating the financial status of a prisoner and when seeking reimbursement.

(3) (a) A prisoner in a county jail shall provide accurate information and cooperate with the county sheriff for purposes of satisfying subsection (2) of this section.

(b) A prisoner who willfully refuses to provide accurate information or cooperate as provided in paragraph (a) of this subsection shall not receive a reduction in his or her term under section 20-621, Idaho Code.

(4) At the request of the board of county commissioners, the sheriff of the county shall forward to the board a list containing the name of each sentenced prisoner, term of sentence and date of admission.

(5) (a) Within six (6) months of the release of a person as a sentenced prisoner from any county jail, an attorney for that county may file a civil action to seek reimbursement from that person for the cost of incarceration. A civil action may be filed only after determining from the financial status form, as required in subsection (2) of this section, that sufficient assets are available to justify further recovery efforts and that further action to collect the daily expense for maintaining the sentenced person by the county will not cause the sentenced person or his dependents to qualify for public assistance.

(b) A civil action brought under this section shall be instituted in the name of the county in which the jail is located and shall state the dates and places of sentence, the length of time set forth in the sentence, the length of time actually served, and the amount or amounts due to the county pursuant to this section.

(c) Before entering any order on behalf of the county against the defendant, the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, other dependents or provide victim restitution and any moral obligation to support dependents to whom the defendant is providing or has in fact provided support.

(6) The reimbursements secured under this section shall be credited to the justice fund or current expense fund of the county to be available for jail maintenance and operation purposes.

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 inter-

ests 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 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 or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations 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 admo-

dition 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.

(44) 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.

(45) 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.

(47) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

SECTION 3. This act shall be in full force and effect on and after October 1, 1997.

Approved March 15, 1997.

CHAPTER 103
(H.B. No. 143, As Amended)

AN ACT
RELATING TO MANSLAUGHTER; AMENDING SECTION 18-4006, IDAHO CODE, TO RE-DEFINE VEHICULAR MANSLAUGHTER BY PROVIDING A BROADER STANDARD OF PROOF.

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

SECTION 1. That Section 18-4006, Idaho Code, be, and the same is hereby amended to read as follows:

18-4006. MANSLAUGHTER DEFINED. Manslaughter is the unlawful killing of a human being, without malice. It is of three (3) kinds:

1. Voluntary -- upon a sudden quarrel or heat of passion.
2. Involuntary -- in the perpetration of or attempt to perpetrate any unlawful act, other than arson, rape, robbery, kidnapping, burglary, or mayhem; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; or in the operation of any firearm or deadly weapon in a reckless, careless or negligent manner which produces death.

3. Vehicular -- in which the operation of a motor vehicle causes is a significant cause contributing to the death because of:

- (a) the commission of an unlawful act, not amounting to a felony, with gross negligence; or
- (b) the commission of a violation of section 18-8004 or 18-8006, Idaho Code; or
- (c) the commission of an unlawful act, not amounting to a felony, without gross negligence.

Notwithstanding any other provision of law, any evidence of conviction under subsection 3.(b) shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of subsection 3.(b) means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

Approved March 15, 1997.

CHAPTER 104
(H.B. No. 173)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1349D, IDAHO CODE, TO PROVIDE THAT A PROFESSIONAL EMPLOYER MAY ELECT TO PAY CONTRIBUTIONS FOR ITS CLIENTS COLLECTIVELY USING THE PROFESSIONAL EMPLOYER'S CONTRIBUTION RATE OR TO PAY THE CONTRIBUTION USING THE INDIVIDUAL CLIENT'S CONTRIBUTION RATE AND TO PROVIDE SUCCESSION AND EXPERIENCE FACTORS.

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

SECTION 1. That Section 72-1349D, Idaho Code, be, and the same is hereby amended to read as follows:

72-1349D. FINANCING OF BENEFITS PAYMENTS BY PROFESSIONAL EMPLOYERS AND THEIR CLIENTS. (1) Nonprofit organizations and governmental entities excepted. Financing of benefits for workers assigned by a professional employer to a nonprofit organization, as defined in section 72-1349A(a), Idaho Code, shall be paid by the nonprofit organization, as provided in section 72-1349A, Idaho Code. Financing of benefits for workers assigned by a professional employer to a governmental entity shall be paid by the governmental entity, as provided in section 72-1349B, Idaho Code. Financing of benefits for workers assigned by a professional employer to any entity other than a nonprofit organization or governmental entity shall be made in accordance with the provisions of this section.

(2) Liability for contributions. Unless a professional employer meets the minimum requirements of this act, its client shall remain liable as a covered employer for any contributions owing on wages under the provisions of this act. During the term of a professional employer arrangement, a professional employer is liable, in accordance with the provisions of sections 72-1349, 72-1354 and 72-1360, Idaho Code, for the payment of contributions, penalties, and interest on wages paid to employees assigned to a client company, except compensation paid to sole proprietors or partners in the client company.

(3) Joint and several liability. A client is jointly and severally liable for any unpaid contributions, interest and penalties due under the provisions of this act from the professional employer for wages paid to workers assigned to the client.

(4) Reporting requirements. The professional employer shall report and pay all contributions under its state employer account number, ~~using its contribution rate~~. The professional employer shall keep separate records and submit separate quarterly wage reports for each of its clients. The professional employer shall pay contributions for its clients collectively using the professional employer's contribution rate unless it elects to pay the contribution for certain clients individually in which instance the contribution shall be paid using the individual client's contribution rate.

(5) Interested party. As between a professional employer and its client, the professional employer company shall be deemed to be the

interested party for purposes of section 72-1323, Idaho Code, and all proceedings to determine rights to benefits under the provisions of this act.

(6) Temporary workers. The provisions of this section do not apply to an entity that provides temporary workers on a temporary help basis, provided that the entity is liable as the employer for payment of contributions on wages paid to those temporary workers.

(7) Rebuttable presumption. When a professional employer assigns workers to only one (1) client and its affiliates, there is a rebuttable presumption that the client entered into a professional employer arrangement to avoid calculation of the proper contribution rate for payment of unemployment insurance contributions. If the professional employer fails to rebut this presumption, the director, pursuant to section 72-1353, Idaho Code, shall issue an administrative determination of coverage holding the client to be the covered employer for purposes of this act.

(8) A client ceasing to pay wages. Whenever a client ceases to pay wages, such client shall be subject to termination of its employer account and experience rating records in the same manner as any other employer, in accordance with the provisions of sections 72-1351 and 72-1352, Idaho Code. If a client which has ceased to pay wages subsequently becomes subject to this act because it resumes paying wages, it will be assigned the appropriate experience rate in accordance with the provisions of section 72-1351, Idaho Code.

(9) Succession of experience factors. Whenever a professional employer arrangement is entered, the separate account and experience factors of payroll and reserve shall be transferred to the professional employer for the purpose of determining the professional employer's contribution rate to be paid on behalf of the client. Upon the expiration or termination of the professional employer arrangement, so much of the professional employer's separate account and experience factors of payroll and reserve as is attributable to the client shall be transferred to the terminating client for the purpose of determining the client's subsequent rate of contribution. In the event the professional employer elects to pay the client's contribution separately as provided in subsection (4) of this section, then the client's experience factors of payroll and reserve shall remain with the client employer for the duration of the professional employer arrangement.

Approved March 15, 1997.

CHAPTER 105
(H.B. No. 180)

AN ACT
RELATING TO THE STATE BRAND BOARD; AMENDING SECTION 25-1120, IDAHO CODE, TO PROVIDE PENALTIES FOR TRANSFERRING TITLE TO LIVESTOCK WITHOUT FIRST OBTAINING A BRAND INSPECTION; AMENDING SECTION

25-1160, IDAHO CODE, TO PROVIDE A VEHICLE MILEAGE RATE FOR BRAND INSPECTORS CONDUCTING BRAND INSPECTIONS AND TO PROVIDE A PAY RATE FOR BRAND INSPECTORS CONDUCTING OUT OF STATE INVESTIGATIONS; AND AMENDING SECTION 25-1181, IDAHO CODE, TO PROVIDE PENALTIES FOR TRANSPORTING LIVESTOCK OUT OF STATE WITHOUT HAVING OBTAINED A BRAND INSPECTION.

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 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.

(3) Any person who transfers title to any livestock to another person without first obtaining a brand inspection, and who has not previously violated this section, is guilty of an infraction. Any subsequent violation of this section is a misdemeanor.

SECTION 2. That Section 25-1160, Idaho Code, be, and the same is hereby amended to read as follows:

25-1160. BRAND INSPECTION FEES. (1) The maximum fee which shall be charged by the state brand inspector and his deputies for brand inspection shall be:

- (a) One dollar (\$1.00) for each head of cattle;
- (b) One dollar and fifty cents (\$1.50) for each head of horses, mules and asses.

(2) A minimum fee of three dollars (\$3.00) shall be charged by the state brand inspector and his deputies for each brand inspection certificate issued, whether for cattle, horses, mules or asses, or a combination thereof. The minimum brand inspection fee shall apply only in those cases when a brand inspector must travel over one (1) mile from his assigned duty post.

(3) The minimum fee for brand inspection services at any normally scheduled livestock auction sale is fifty dollars (\$50.00) per day, and shall be paid by the livestock auction sale, whether or not the inspection fees received from the owners of livestock inspected equals the minimum fee. If the fees paid by the owners of livestock inspected at the sale exceed the minimum fee, the actual amount of fees collected shall be paid, rather than the minimum amount.

(4) The fee for brand inspection services at any livestock auction sale which is not a normally scheduled livestock auction sale shall be:

(a) Eighteen dollars (\$18.00) per hour for each hour that each brand inspector spends engaged in the performance of brand inspection services at the livestock auction sale;

(b) ~~Twenty-six cents--(26¢)~~ A mileage rate as established by the state board of examiners per mile per vehicle for each mile that said brand inspector(s) must travel to and from the sale from his assigned duty post.

The minimum fee, not including mileage, shall be the actual hours worked, or thirty-six dollars (\$36.00) per day, or the inspection fees as set forth in subsection (1) of this section, whichever is greater.

(5) The state brand board may adopt a schedule or schedules of fees which are below the maximum fees and may adjust such schedule or schedules from time to time whenever such board finds that the cost of administering and enforcing the laws of the state of Idaho for brand inspection of livestock can be maintained with such below-maximum fees. All such fees shall be paid by the owner of the cattle, horses, mules and asses and credited to the state brand account.

(6) All brand inspection fees, and all other fees required by law to be collected by the brand inspector, are due and payable at the time of inspection, but the brand board may, by rules and regulations, allow all of such fees to be paid on a schedule that requires payment at least monthly, after receiving a request for such delayed payment schedule and after such request is approved by the state brand inspector. The brand board may require a security deposit to insure the prompt payment of all fees owed to the state. Failure to pay as required shall be cause for the brand inspector to file an action in the district court of the county wherein the inspection was made for the amount of all fees owed, plus all costs and reasonable attorney fees associated with the action plus interest at the rate specified in section 28-22-104, Idaho Code, on the amount owed from the due date.

(7) Any brand inspector who must travel beyond the border of the state of Idaho to investigate a possible violation of this chapter is entitled to a mileage rate, as established by the state board of examiners, per mile per vehicle for each mile that the brand inspector must travel to and from his assigned duty post, and eighteen dollars (\$18.00) per hour for each hour that each brand inspector spends engaged in the investigation. The minimum fee for each brand inspector, not including mileage, shall be the actual hours worked, or thirty-six dollars (\$36.00) per day, or the hourly inspection fees, whichever is greater.

SECTION 3. 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. Any person who transports livestock within or without the state of Idaho without having had the brand inspection required by this chapter, and who has not previously violated this section, is guilty of an infraction. Any subsequent violation of this section is a misdemeanor, punishable by a fine not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not to exceed six (6) months, or by both a fine and imprisonment.

(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 15, 1997.

CHAPTER 106
(H.B. No. 186)

AN ACT

RELATING TO ARREST AND BAIL; AMENDING SECTION 8-120, IDAHO CODE, TO PROVIDE THAT A PERSON ON BEHALF OF A DEFENDANT MAY, INSTEAD OF GIVING BAIL DEPOSIT MONEY WITH THE SHERIFF, PROVIDE FOR DELIVERY OF CERTIFICATES EVIDENCING THE DEPOSIT TO THE PERSON WHO MADE THE DEPOSIT; AMENDING SECTION 8-121, IDAHO CODE, TO PROVIDE FOR DELIVERY OF CERTIFICATES OF PAYMENT OF THE DEPOSIT INTO COURT TO THE PERSON WHO MADE THE DEPOSIT; AMENDING SECTION 8-122, IDAHO CODE, TO PROVIDE THAT REFUNDS OF DEPOSITS BE MADE TO THE PERSON WHO MADE THE DEPOSIT; AND AMENDING SECTION 8-123, IDAHO CODE, TO PROVIDE THAT REFUNDS OF DEPOSITS BE MADE TO THE PERSON WHO MADE THE DEPOSIT.

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

SECTION 1. That Section 8-120, Idaho Code, be, and the same is hereby amended to read as follows:

8-120. DEPOSIT WITH SHERIFF. The defendant, or a person on behalf of the defendant, may at the time of his the defendant's arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of bail be reduced, as provided in this chapter, the defendant, or a person on behalf of the defendant, may deposit such amount instead of giving bail. In either case the sheriff must give the defendant person who made the deposit on behalf of the defendant, a certificate of the deposit made, and the defendant must be discharged from custody.

SECTION 2. That Section 8-121, Idaho Code, be, and the same is hereby amended to read as follows:

8-121. DEPOSIT -- PAYMENT INTO COURT BY SHERIFF. The sheriff must, immediately after the deposit, pay the same into court and take from the clerk receiving the same, two (2) certificates of such payment, the one of which he shall deliver to the plaintiff's attorney and the other to the defendant the person who made the deposit on behalf of the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited as in other cases of delinquency.

SECTION 3. That Section 8-122, Idaho Code, be, and the same is hereby amended to read as follows:

8-122. SUBSTITUTING BAIL FOR DEPOSIT. If money is deposited, as provided in the last two (2) sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited must be refunded to the defendant person who made the deposit.

SECTION 4. That Section 8-123, Idaho Code, be, and the same is hereby amended to read as follows:

8-123. SATISFACTION OF JUDGMENT FROM DEPOSIT -- REFUND. ~~TO DEFENDANT.~~ Where money has been deposited, if it remains on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk must, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the defendant person who made the deposit. If the judgment is in favor of the defendant, the clerk must, under the direction of the court refund to him the person who made the deposit the whole sum deposited and remaining unapplied.

Approved March 15, 1997.

CHAPTER 107
(H.B. No. 196)

AN ACT

RELATING TO SALES OF MANUFACTURED HOMES; AMENDING SECTION 44-2102, IDAHO CODE, TO PROVIDE FOR SALES OF MANUFACTURED HOMES BY LICENSED REAL ESTATE BROKERS AND REAL ESTATE SALESMEN AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 44-2102, Idaho Code, be, and the same is hereby amended to read as follows:

44-2102. ADMINISTRATION -- POWERS AND DUTIES. The administrator is charged with the administration of the provisions of this chapter and shall:

(1) In accordance with the provisions of chapter 52, title 67, Idaho Code, promulgate, adopt, amend, and repeal rules, not inconsistent with the provisions of this chapter and the laws of the state of Idaho, as he shall consider necessary, to provide for the licensing and bonding of manufactured home dealers and brokers, manufacturers and service firms, the licensing of manufactured home salesmen, and the establishment of a mandatory statewide manufactured home "set upsetup" code. The administrator shall also define and prohibit any practice which is found to be deceptive.

(2) (a) A used unit which has been determined to be or declared by the owner to be real property under the provisions of section 63-304, Idaho Code, may be offered for sale, listed, bought for resale, negotiated for, either directly or indirectly, by a

licensed real estate broker or a real estate salesman representing a licensed broker, but not a manufactured home dealer or manufactured home salesman.

(b) A used unit which has been determined to be and is carried on the tax rolls as personal property may be offered for sale, listed, bought for resale, negotiated for, either directly or indirectly, by a licensed real estate broker or a real estate salesman, pursuant to chapter 20, title 54, Idaho Code, or by a licensed manufactured home dealer, broker, or manufactured home salesman, but with respect to a licensed manufactured home dealer, broker or salesman only to the extent such sale does not involve the purchase or sale of an interest in real estate.

(c) A licensed real estate broker or real estate salesman representing a licensed broker pursuant to chapter 20, title 54, Idaho Code, may participate in new manufactured home sales that include real estate if the real estate broker or salesman has a valid, written agreement with a licensed manufactured home dealer to represent the interests of the manufactured home dealer in this type of transaction.

Approved March 15, 1997.

CHAPTER 108
(H.B. No. 197)

AN ACT

RELATING TO SURPLUS LINES INSURERS; AMENDING SECTION 41-1217, IDAHO CODE, TO REVISE DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF INSURANCE REGARDING ELIGIBLE SURPLUS LINES INSURERS; AMENDING SECTION 41-1219, IDAHO CODE, TO REVISE DUTIES OF BROKERS UPON PLACING A SURPLUS LINE COVERAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1224, IDAHO CODE, TO PROVIDE THAT IF A BROKER KNOWINGLY PLACES A SURPLUS LINE COVERAGE IN AN INSURER THAT IS IN UNSOUND FINANCIAL CONDITION THE DIRECTOR OF THE DEPARTMENT OF INSURANCE MAY SUSPEND OR REVOKE ANY SURPLUS LINE BROKER'S LICENSE; AND AMENDING SECTION 41-1225, IDAHO CODE, TO INCREASE THE AMOUNT OF THE BROKER'S BOND TO TEN THOUSAND DOLLARS AGGREGATE LIABILITY.

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

SECTION 1. That Section 41-1217, Idaho Code, be, and the same is hereby amended to read as follows:

41-1217. ELIGIBLE SURPLUS LINES INSURERS. (1) A broker shall not knowingly place surplus lines insurance with an insurer that is unsound financially, or that is ineligible under this section.

(2) The director ~~may~~ shall from time to time compile or approve a list of all surplus lines insurers deemed by him to be eligible currently, and ~~may--maint~~ shall cause to be sent a copy of such list to each broker at his office last of record with the director. This subsection shall not be deemed to require the director to determine the actual financial condition or claims practices of any unauthorized

insurer; and the status of eligibility, if granted by the director, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the director has no credible evidence to the contrary. While any such list is in effect the broker shall restrict to the insurers so listed all surplus lines business placed by him.

~~(3)--Subdivision--(c)--above--shall--not--be--deemed--to--place--upon--the--director--any--duty--or--responsibility--to--determine--the--actual--financial--condition--or--claims--practices--of--any--unauthorized--insurer;--and--the--eligibility--of--an--insurer--hereunder--shall--indicate--only--that--the--insurer--appears--to--be--sound--financially--and--to--have--satisfactory--claims--practices;--and--that--the--director--has--no--credible--evidence--to--the--contrary.~~

SECTION 2. That Section 41-1219, Idaho Code, be, and the same is hereby amended to read as follows:

41-1219. EVIDENCE OF THE INSURANCE -- CHANGES -- PENALTY. (1) Upon placing a surplus line coverage, the broker shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, ~~the surplus line broker's certificate. Such a certificate shall be executed by the broker and shall~~ showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the certificate shall state the name and address and proportion of the entire direct risk assumed by each such insurer.

(2) No broker shall issue any such certificate or any cover note, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer, unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(3) If after the issuance and delivery of any such certificate there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by an insurer as stated in the broker's original certificate, or in any other material respect as to the insurance coverage evidenced by the certificate, the broker shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

(4) If a policy issued by the insurer is not available upon placement of the insurance and the broker has issued and delivered his certificate as hereinabove provided, upon request therefor by the insured the broker shall as soon as reasonably possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the broker's certificate theretofore issued.

(5) Any surplus line broker who knowingly or negligently issues a

false certificate of insurance, or who knowingly fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as provided in subsection (3) of this section, shall upon conviction, be subject to the penalties provided by section 41-117, ~~of--this--code~~ Idaho Code, or to any greater applicable penalty otherwise provided by law.

SECTION 3. That Section 41-1224, Idaho Code, be, and the same is hereby amended to read as follows:

41-1224. SUSPENSION OR REVOCATION OF BROKER'S LICENSE. (1) The director may suspend or revoke any surplus line broker's license:

(a) If the broker fails to file his annual statement or to remit the tax as required by this law; or

(b) If the broker fails to maintain an office in this state, or to keep the records, or to allow the director to examine his records as required by this law, or if he removes his records from the state; or

(c) If the broker knowingly ~~or negligently~~ places a surplus line coverage in an insurer that is in unsound financial condition in violation of section 41-1217, Idaho Code; or

(d) For any other applicable cause for which a general lines agent's license may be suspended or revoked.

(2) The procedures provided by chapter 10, title 41, Idaho Code, for suspension or revocation of licenses shall apply to suspension or revocation of a surplus line broker's license.

(3) Upon suspending or revoking the broker's surplus line license the director shall also suspend or revoke all other licenses of the same individual under this code.

(4) No broker whose license has been so suspended or revoked shall again be so licensed until any fines or delinquent taxes owing by him have been paid, nor, in case of revocation, until after expiration of one (1) year from date revocation became final.

SECTION 4. That Section 41-1225, Idaho Code, be, and the same is hereby amended to read as follows:

41-1225. BROKER'S BOND. Prior to issuance of a license as a surplus line broker the applicant shall file with the director and thereafter for as long as the license remains in effect he shall keep in force a bond in favor of the state of Idaho in the penal sum of one ten thousand dollars (\$10,000), aggregate liability, with an authorized corporate surety approved by the director, conditioned that he will conduct business under the license in accordance with the provisions of this law and that he will promptly remit the taxes provided by section 41-1229, herein Idaho Code. The aggregate liability of the surety for any and all claims on any such bond shall in no event exceed the penal sum thereof. No such bond shall be terminated unless not less than thirty (30) days prior written notice thereof is given to the licensee and filed with the director.

Approved March 15, 1997.

CHAPTER 109
(H.B. No. 198)

AN ACT

RELATING TO THE IDAHO INSURANCE GUARANTY ASSOCIATION ACT; REPEALING SECTION 41-3602, IDAHO CODE; AMENDING SECTION 41-3603, IDAHO CODE, TO PROVIDE FOR SPECIFICATION OF WARRANTIES AND/OR SERVICE CONTRACTS; REPEALING SECTION 41-3604, IDAHO CODE; AMENDING SECTION 41-3605, IDAHO CODE, TO PROVIDE FOR FURTHER DEFINITION OF TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-3607, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE AND TO PROVIDE FOR ELECTION OF VACANT SEATS ON THE BOARD BY A VOTE OF THE MAJORITY OF THE MEMBERS SUBJECT TO APPROVAL BY THE DIRECTOR AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-3608, IDAHO CODE, TO REVISE OBLIGATIONS AND POWERS OF THE ASSOCIATION; AMENDING SECTION 41-3609, IDAHO CODE, TO PROVIDE FOR THE PROCEDURES FOR THE DISPOSITION OF LIQUIDATING ASSETS OR OTHER MONEYS RECEIVED FROM THE INSOLVENT INSURER; AMENDING SECTION 41-3610, IDAHO CODE, TO PROVIDE THAT THE ASSOCIATION BE ENTITLED TO A COPY OF ANY COMPLAINT IN REGARD TO AN ORDER OF LIQUIDATION WITH A FINDING OF INSOLVENCY AGAINST A MEMBER COMPANY AND TO DELETE THE RESPONSIBILITY OF NOTIFICATION OF INSOLVENCY; AMENDING SECTION 41-3611, IDAHO CODE, TO PROVIDE FOR CLEARER DEFINITION OF TERMINOLOGY, MAKING THE RECEIVER, LIQUIDATOR OR STATUTORY SUCCESSOR OF AN INSOLVENT INSURER ACCOUNTABLE TO THE DETERMINATIONS OF THE ASSOCIATION, WHILE NOT BINDING THE RECEIVER IN ANY WAY WHILE THERE ARE REMAINING CLAIMS AGAINST THE INSOLVENT INSURER; AMENDING SECTION 41-3612, IDAHO CODE, TO APPLY THE EXHAUSTION OF COVERAGE CLAUSE REGARDLESS OF MEMBERSHIP IN THE ASSOCIATION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-3613, IDAHO CODE, TO DELETE THE ABILITY TO RESPOND TO REQUESTS BY THE DIRECTOR TO DISCUSS AND RENDER RECOMMENDATIONS OF THE STATUS OF ANY MEMBER OF THE ASSOCIATION IN DANGER OF BECOMING INSOLVENT AND TO PROVIDE FOR THE BOARD OF DIRECTORS TO MAKE RECOMMENDATIONS RELATING TO THE IMPROVEMENT OF SOLVENCY REGULATIONS BY MAJORITY VOTE; AMENDING SECTION 41-3617, IDAHO CODE, TO FURTHER DEFINE LIABILITY TO PROTECT ANY PERSON ACTING IN REPRESENTATION OF ANY BOARD MEMBER AND TO PROTECT ACTIONS OF THE BOARD WHETHER TAKEN OR NOT TAKEN; AMENDING SECTION 41-3618, IDAHO CODE, TO PROVIDE FOR A STAY OF JUDGMENT SUBJECT TO A WRITTEN WAIVER FROM THE ASSOCIATION IN SPECIFIC CASES GOOD THROUGH THE DATE FIXED BY A COURT OF COMPETENT JURISDICTION AND TO MAKE THE LIQUIDATOR, RECEIVER OR STATUTORY SUCCESSOR RESPONSIBLE FOR PROVIDING ACCESS TO THE ASSOCIATION OF ALL RECORDS NECESSARY TO CARRY OUT THE OBLIGATIONS OF THE BOARD, AT THE EXPENSE OF THE ASSOCIATION.

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

SECTION 1. That Section 41-3602, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section 41-3603, Idaho Code, be, and the same is

hereby amended to read as follows:

41-3603. APPLICATION OF ACT. This act shall apply to all kinds of direct insurance, but shall not be applicable to the following:

- (1) Life, annuity, health or disability insurance;
- (2) Residual value, mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement or service of goods or property, indemnification for repair, replacement or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits;
- (6) Title insurance;
- (7) Ocean marine insurance;
- (8) Any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk;
- (9) Any insurance provided by or guaranteed by government including, but not limited to the state insurance fund, created pursuant to chapter 9, title 72, Idaho Code, and the Idaho petroleum clean water trust fund, created pursuant to chapter 49, title 41, Idaho Code;
- (10) Any insurance provided by or through any reciprocal insurer which exclusively insures members who are governmental entities;
- (11) Insurance written on a retroactive basis to cover known losses for which a claim has already been made and the claim is known to the insurer at the time the insurance is bound; or
- (12) Domestic reciprocal insurers with fewer than seven (7) subscribers which insure only worker's compensation risks and which only issue fully assessable policies.

SECTION 3. That Section 41-3604, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 41-3605, Idaho Code, be, and the same is hereby amended to read as follows:

41-3605. DEFINITIONS. As used in this act:

- (1) "Account" means any one (1) of the three (3) accounts created by section 41-3606, Idaho Code.
- (2) "Affiliate" means a person who directly, or indirectly, through one (1) or more intermediaries controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.
- (3) "Association" means the Idaho insurance guaranty association created under section 41-3606, Idaho Code.

(4) "Claimant" means any insured making a first party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(5) "Director" means the director of the department of insurance of this state.

(6) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(7) "Covered claim" means an unpaid claim, including one for unearned premiums submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this act and:

(a) the claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, or insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or

(b) ~~the property from which the claim arises--is--permanently located~~ is a first party claim for damage to property with a permanent location in this state.

"Covered claim" shall not include any amount awarded as punitive or exemplary damages; any amount sought as a return of premium under any retrospective rating plan; any amount sought from or first party claims by any insured who which is an affiliate of the insolvent insurer; or any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. No claim for any amount due any reinsurer, insurer, insurance pool or underwriting association may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent such claim exceeds the association obligation limitations set forth in section 41-3608, Idaho Code.

(8) "Insolvent insurer" means:

(a) an insurer holding a certificate of authority issued by the director to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) ~~determined to be insolvent~~ against whom a final order of liquidation has been entered after the effective date of this act with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.

(9) "Member insurer" means any person who:

(a) writes any kind of insurance to which this act applies under section 41-3603, Idaho Code, including the exchange of reciprocal

or interinsurance contracts; and

(b) is licensed to transact insurance in this state, except assessable mutual companies. An insurer shall cease to be a member insurer effective on the day following the termination or expiration of its license to transact the kinds of insurance to which this act applies, however, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer which becomes an insolvent insurer prior to the termination or expiration of the insurer's license.

(10) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(11) "Ocean marine insurance" includes any form of insurance, regardless of the name, label or marketing designation of the insurance policy, which insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance, such as hull and machinery, marine builders risk, and marine protection and indemnity. Such perils and risk insured against include, without limitation, loss, damage, expense or legal liability of the insured for loss, damage or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways for commercial purposes, including liability of the insured for personal injury, illness or death or for loss or damage to the property of the insured or another person.

(12) "Person" means any individual, corporation, partnership, association or voluntary organization.

(123) "Warranty insurance" includes a contract under which one (1) other than a manufacturer, builder, seller or lessor of the subject property undertakes to perform or provide, for a fixed term and consideration, repair or replacement service or indemnification therefor for the operational or structural failure of specified real or personal property or property components. Warranty insurance includes, but is not limited to, automobile guaranty insurance.

SECTION 5. That Section 41-3607, Idaho Code, be, and the same is hereby amended to read as follows:

41-3607. BOARD OF DIRECTORS -- NUMBER -- ELECTION OR APPOINTMENT -- REIMBURSEMENT FOR EXPENSES. (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the director. Vacancies on the board shall be filled for the remaining period of the term ~~in the same manner as initial appointments~~ by a majority vote of the remaining board members subject to the approval of the director. If no members are selected within sixty (60) days after ~~the effective date of this act~~ May 6, 1970, the

director may appoint the initial members of the board of directors.

(2) In approving selections to the board, the director shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

SECTION 6. That Section 41-3608, Idaho Code, be, and the same is hereby amended to read as follows:

41-3608. OBLIGATIONS AND POWERS OF ASSOCIATION. (1) The association shall:

(a) Be obligated to pay covered claims existing prior to the determination order of insolvency liquidation arising within thirty (30) days after the determination order of insolvency liquidation, or before the policy expiration date if less than thirty (30) days after the determination order of insolvency liquidation, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination order of liquidation. Such obligation shall be satisfied by paying ~~each covered claim which is less than three hundred thousand dollars (\$300,000); and the association shall pay the full amount of any covered claim arising out of a worker's compensation policy. With regard to a covered claim for the return of unearned premiums, the association shall not pay an amount exceeding ten thousand dollars (\$10,000) per policy~~ to the claimant an amount as follows:

(i) The full amount of a covered claim for benefits under a worker's compensation insurance coverage;

(ii) An amount not exceeding ten thousand dollars (\$10,000) per policy for covered claim for the return of unearned premium;

(iii) An amount not exceeding three hundred thousand dollars (\$300,000) per claim for all other covered claims.

(b) In no event shall the association be obligated to ~~pay a policyholder or~~ claimant in an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises.

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after the earlier of: (i) eighteen (18) months after the date of the order of liquidation, or (ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured policy for incurred-but-not-reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment by settlement releasing the insured or on a judgment of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit.

(bc) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties,

and obligations of the insolvent insurer as if the insurer had not become insolvent including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations.

(ed) Allocate claims paid and expenses incurred among the three (3) accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any one (1) year on any account an amount greater than one per cent (1%) of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one (1) year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it deems reasonable, including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(de) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested. The association shall have the right to appoint or sub-

stitute and to direct legal counsel retained under liability insurance policies for the defense of covered claims.

~~(e) -- Notify such persons as the director directs under section 41-3610(2)(a), Idaho Code.~~

(f) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the director, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act.

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation.

(c) Sue or be sued, and such power to sue includes the power and right to intervene as a party before any court that has jurisdiction over the insolvent insurer as defined by this act.

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act.

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this act.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

SECTION 7. That Section 41-3609, Idaho Code, be, and the same is hereby amended to read as follows:

41-3609. PLAN OF OPERATION -- APPROVAL -- ADOPTION OF INTERIM RULES BY DIRECTOR -- CONTENTS OF PLAN -- DELEGATION OF POWERS AND DUTIES -- REIMBURSEMENT OF DELEGATE CORPORATION OR ORGANIZATION.

(1) (a) The association shall submit to the director a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the director.

(b) If the association fails to submit a suitable plan of operation within ninety (90) days following ~~the effective date of this act~~ May 6, 1970 or if at any time thereafter the association fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the director or superseded by a plan submitted by the association

and approved by the director.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under section 41-3608, Idaho Code, will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish procedures for the disposition of liquidating dividends or other moneys received from the estate of the insolvent insurer.

(d) Establish the amount and method of reimbursing members of the board of directors under section 41-3607, Idaho Code.

(de) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(ef) Establish regular places and times for meetings of the board of directors.

(fg) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(gh) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the director within thirty (30) days after the action or decision.

(hi) Establish the procedures whereby selections for the board of directors will be submitted to the director.

(ij) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under sections 41-3608(1)(ed) and 41-3608(2)(b), Idaho Code, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the director, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

SECTION 8. That Section 41-3610, Idaho Code, be, and the same is hereby amended to read as follows:

41-3610. DUTIES AND POWERS OF DIRECTOR -- JUDICIAL REVIEW. (1) The director shall:

(a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he receives notice of the determination of the insolvency. The association shall be

entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that such complaint is filed with a court of competent jurisdiction.

(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The director may:

~~(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.~~

~~(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the director may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five per cent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.~~

~~(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.~~

(3) Any final action or order of the director under this act shall be subject to judicial review in a court of competent jurisdiction.

SECTION 9. That Section 41-3611, Idaho Code, be, and the same is hereby amended to read as follows:

41-3611. SUBROGATION OF ASSOCIATION TO RIGHTS OF CLAIMANTS -- RECEIVER, LIQUIDATOR, OR SUCCESSOR BOUND BY ASSOCIATION CLAIM SETTLEMENTS -- PERIODIC FILING OF STATEMENTS OF PAID CLAIMS WITH RECEIVER OR LIQUIDATOR. (1) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims made by the association or a similar organization in another state to the extent such determinations or settlements satisfy obligations of the association. The receiver shall not be bound in any way by such deter-

minations or settlements to the extent there remains a claim against the insolvent insurer. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

SECTION 10. That Section 41-3612, Idaho Code, be, and the same is hereby amended to read as follows:

41-3612. ~~EXHAUSTION OF RIGHTS UNDER POLICY REQUIRED BEFORE CLAIM AGAINST ASSOCIATION --- EXCEPTION --- CLAIMS AGAINST MORE THAN ONE ASSOCIATION~~ OTHER COVERAGE. (1) Any person having a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's worker's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

SECTION 11. That Section 41-3613, Idaho Code, be, and the same is hereby amended to read as follows:

41-3613. PREVENTION OF INSOLVENCIES. To aid in the detection and prevention of insurer insolvencies:

(1) The board of directors ~~shall~~, upon majority vote, may ~~(a) -- Make recommendations to the director for the detection and prevention of insurer insolvencies; and~~ ~~(b) -- Respond to requests by the director to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public.~~ Such recommendations shall not be considered public documents.

(2) The board of directors may, upon majority vote, make recommendations on matters generally relating to improving or enhancing regulation for solvency.

(3) The board of directors ~~shall~~ may, at the conclusion of any

domestic insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association and submit such report to the director.

(34) All domestic insurance companies subject to the coverage of this chapter must maintain the paid-up capital stock or basic surplus and the additional surplus set forth in section 41-313, Idaho Code.

(45) Domestic reciprocal insurance companies issuing only fully assessable worker's compensation policies are not subject to coverage of this chapter but must meet the requirements of section 41-313A, Idaho Code.

SECTION 12. That Section 41-3617, Idaho Code, be, and the same is hereby amended to read as follows:

41-3617. NO LIABILITY FOR ACTIONS TAKEN PURSUANT TO ACT. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or any person serving as a representative of any board director, or the director or his representatives for any action taken or any failure to act by them in the performance of their powers and duties under this act.

SECTION 13. That Section 41-3618, Idaho Code, be, and the same is hereby amended to read as follows:

41-3618. STAY OF COURT PROCEEDINGS FOR INSOLVENCY -- SETTING ASIDE JUDGMENT AGAINST INSOLVENT INSURER. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall, subject to written waiver by the association in specific cases involving covered claims, be stayed for up to six-(6)-months until the last day fixed by the court for the filing of claims and such additional time thereafter as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or findings based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits. The liquidator, receiver, or statutory successor of an insolvent insurer covered by this act shall permit access by the board or its authorized representative to such of the insolvent insurer's records which are necessary for the board in carrying out its functions under this act with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board or its representative with copies of such records upon the request by the board and at the expense of the board.

Approved March 15, 1997.

CHAPTER 110
(H.B. No. 214)

AN ACT

RELATING TO COMPUTATION OF SERVICE RETIREMENT ALLOWANCES UNDER THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1342, IDAHO CODE, TO PROVIDE FOR AN EQUIVALENT ACCRUED RETIREMENT ALLOWANCE IF THE PERSON RETURNS TO EMPLOYMENT COVERED BY THE PUBLIC EMPLOYEE RETIREMENT SYSTEM.

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

SECTION 1. That Section 59-1342, Idaho Code, be, and the same is hereby amended to read as follows:

59-1342. COMPUTATION OF SERVICE RETIREMENT ALLOWANCES -- MINIMUM BENEFITS. (1) The annual amount of accrued retirement allowance for each month of credited service for which a member was not classified as a police member or firefighter shall equal one and two-thirds per cent (1 2/3%) of the member's average monthly salary. Effective October 1, 1992, the annual amount of accrued retirement allowance for all service for which a member was not classified as a police member or firefighter shall equal one and seventy-five hundredths per cent (1.75%) of the member's average monthly salary; effective October 1, 1993, the annual amount of accrued retirement allowance shall equal one and eight hundred thirty-three thousandths per cent (1.833%) of the member's average monthly salary; and effective October 1, 1994, the annual amount of accrued retirement allowance shall equal one and nine hundred seventeen thousandths per cent (1.917%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect on the date of the final contribution by the member. The annual amount of initial service retirement allowance of such a member shall equal (a) or (b), whichever is greater:

(a) the member's accrued retirement allowance; or

(b) five dollars (\$5.00) multiplied by the number of months of credited service and by the bridging factor, as provided in section 59-1355, Idaho Code, between July 1, 1974 and the first of the month following the member's final contribution.

(2) The annual amount of accrued retirement allowance for each month of credited service for which a member was classified as a police member or firefighter shall equal two per cent (2%) of the member's average monthly salary. Effective October 1, 1992, the annual amount of accrued retirement allowance for all service for which a member was classified as a police member or firefighter shall equal two and seventy-five thousandths per cent (2.075%) of the member's average monthly salary; effective October 1, 1993, the annual amount of accrued retirement allowance shall equal two and one-hundred-fifty fifteen hundredths per cent (2.15%) of the member's average monthly salary; and effective October 1, 1994, the annual amount of accrued

retirement allowance shall equal two and two hundred twenty-five thousandths per cent (2.225%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect on the date of the final contribution by the member. The annual amount of initial service retirement allowance of such a member shall equal (a) or (b), whichever is greater:

- (a) the member's accrued retirement allowance; or
- (b) six dollars (\$6.00) multiplied by the number of months of credited service and by the bridging factor, as provided in section 59-1355, Idaho Code, between July 1, 1974 and the first of the month following the member's final contribution.

(3) Provisions of this section shall be applicable to members and contingent annuitants of the employee retirement system and to members, annuitants and beneficiaries of the teachers and city systems. In any recomputation of an initial retirement allowance for a person not making a final contribution subsequent to 1974, the bridging factor referred to in subsections (1) and (2) shall be 1.000. Any recomputed retirement allowance shall be payable only prospectively from July 1, 1974.

(4) Benefits payable to a person who became a member prior to July 1, 1974, or to the member's beneficiaries shall never be less than they would have received under this chapter as in effect on June 30, 1974; provided, however, that the member shall have accrued the amount of accumulated contributions required thereby prior to payment of an initial retirement allowance.

(5) If the majority of a member's credited service is as an elected official or as an appointed official, except as a member of the Idaho legislature, and that official was normally in the administrative offices of the employer less than twenty (20) hours per week during the term of office, or was normally not required to be present at any particular work station for the employer twenty (20) hours per week or more during the term of office, and that member's initial service retirement allowance for service credited only during that period would be computed under subsection (1)(b) and/or (2)(b) of this section, without consideration of any other credited service, then it will be so computed for that period of service. If that member has credited service from any other employment, the accrued service retirement allowance for the credited service from such other employment shall be computed from an average monthly salary for salary received during the period of such other employment. The initial service retirement allowance of members of the Idaho legislature will be computed under subsection (1) and/or (2) of this section, on the basis of their total months of credited service.

~~If that member has credited service from any other employment, the accrued service retirement allowance for the credited service from such other employment shall be computed from an average monthly salary for salary received during the period of such other employment.~~

(6) In no case, however, will a member's initial service retirement benefit be equal to more than the member's accrued benefit as of May 1, 1990, or one hundred per cent (100%) of the member's average

compensation for the three (3) consecutive years of employment which produce the greatest aggregate compensation, whichever is greater. If the benefit is calculated to exceed one hundred per cent (100%) of the member's average compensation, the member shall be eligible for and may choose either:

- (a) an annual service retirement allowance equal to the member's average annual compensation for the three (3) consecutive years of employment which produced the greatest aggregate compensation; or
- (b) a separation benefit.

(7) The annual amount of initial service retirement allowance of a member who is over age seventy (70) on the effective date of the member's retirement shall be a percentage of the member's initial service retirement allowance. Such percentage shall be one hundred per cent (100%) increased as determined by the board to compensate for each month that the member's retirement is deferred beyond age seventy (70).

(8) A member's accrued retirement allowance, as otherwise provided in subsections (1), (2), (3), (4) and (5) of this section, shall not be less than the minimum accrued retirement allowance provided in this subsection. The determination of the initial service retirement allowance provided in subsections (1) and (2) of this section, and the application of the provisions in subsections (6) and (7) of this section, will be made after the determination of the minimum accrued retirement allowance provided in this subsection.

This subsection shall apply to members who have at least two (2) separate periods of employment covered under this chapter where each separate period of employment would otherwise be eligible for a separation benefit described in section 59-1359, Idaho Code. For purposes of this subsection, if a separation of employment occurs that does not exceed sixty (60) consecutive calendar months then the member's period of employment shall be considered a continuous period of employment. For purposes of this subsection, date of last contribution is the date of final contribution for each period or periods of employment.

For each separate period of employment considered under this subsection, the member must not have received a separation benefit for that period, or if he has received such a separation benefit under section 59-1359, Idaho Code, he must have completed reinstatement of all previous credited service associated with all separation benefits for all periods of employment as permitted under section 59-1360, Idaho Code.

The minimum accrued retirement allowance shall be equal to the largest accrued retirement allowance calculated at each date of last contribution based upon the benefit and eligibility provisions in effect as of the date of the last contribution made during such separate period of employment. For purposes of determining the accrued retirement allowance for each date of last contribution:

- (a) the member must have at least sixty (60) months of credited service at the date of last contribution;
- (b) the member's months of credited service and average monthly salary are determined based solely on all periods of employment up to that date of last contribution, ignoring later periods of employment; and
- (c) the accrued retirement allowance computed for each period is

multiplied by the bridging factor as provided in section 59-1355(3), Idaho Code, between the date of the last contribution made during that separate period of employment and the date of the member's final contribution made during the last period of employment prior to retirement.

Approved March 15, 1997.

CHAPTER 111
(H.B. No. 225)

AN ACT

RELATING TO THE IDAHO CREDIT UNION ACT; AMENDING SECTION 26-2104, IDAHO CODE, TO DEFINE "INTERSTATE CREDIT UNION"; AMENDING SECTION 26-2107, IDAHO CODE, TO PROVIDE THAT INTERSTATE CREDIT UNIONS ARE EXCEPTED FROM THE RESTRICTIONS ON USING NAMES AND TITLES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 26-2145, IDAHO CODE, TO AUTHORIZE CREDIT UNIONS TO OPERATE WITH THE SAME POWERS AS IF THEY WERE CHARTERED BY ANOTHER STATE; AND AMENDING CHAPTER 21, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-2152, IDAHO CODE, TO PROVIDE FOR APPROVAL, PERMITS, FEES AND SUPERVISION OF INTERSTATE CREDIT UNIONS.

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

SECTION 1. That Section 26-2104, Idaho Code, be, and the same is hereby amended to read as follows:

26-2104. DEFINITION AND USE OF TERMS. As used in this chapter unless the context otherwise requires:

(a) "Credit union" means a cooperative nonprofit corporation chartered under the provisions of this chapter.

(b) "Capital" means the shares of a credit union.

(c) "Director" means the director of the department of finance of the state of Idaho.

(d) "Federal supervisory agency" means the National Credit Union Administration.

(e) "Credit union services" means services such as draft and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of drafts, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a credit union.

(f) "Credit union service corporation" means a corporation organized to perform credit union services for two (2) or more credit unions, each of which owns part of the capital stock of such corporations, and which are subject to examination by either the department of finance of the state of Idaho or a federal supervisory agency.

(g) "Interstate credit union" means a credit union chartered under the provisions of this chapter or under the authority of the laws of another state and operating both in Idaho and in one (1) or

more other states.

(h) "Invest" means any advance of funds to a credit union service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

(hi) "Surplus funds" means those funds which are not needed to meet a credit union's members' loan needs and credit union expenses.

(ij) "Nonmembers' certificates of indebtedness" means all funds received from individuals who are not members of the credit union must be called certificates of indebtedness and are to be shown on the books and records of the credit union as a separate and distinct category. The guaranteed rates of interest upon such certificates of indebtedness will be established by the board of directors.

SECTION 2. That Section 26-2107, Idaho Code, be, and the same is hereby amended to read as follows:

26-2107. RESTRICTIONS. Any person, corporation, copartnership or association, except a credit union organized under the provisions of this chapter, an interstate credit union with a permit issued under section 26-2152, Idaho Code, the federal credit union act, 48 Statute 1216 (1934), 73 Statute (1959), 12 U.S.C. 192, or the Idaho credit union league, a recognized chapter of the Idaho credit union league, using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise conducting business as a credit union shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one (1) year, or both, and may be permanently enjoined ~~form~~ from using such words in its name.

SECTION 3. That Section 26-2145, Idaho Code, be, and the same is hereby amended to read as follows:

26-2145. AUTHORITY TO EXERCISE FEDERAL POWERS. (a) Notwithstanding any other provision of law, but subject to the limitations provided for in this section, a credit union may engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment which it could make if it were operating as a federal credit union, or a credit union chartered by another state. ~~Any such activity must be authorized by federal law or regulation.~~

(b) Before engaging in any activity or exercising any power afforded under this section, a credit union shall first notify the director of its intent to do so. This notice shall be sent to the director by U.S. mail, postage prepaid, certified or registered, with return receipt requested. Should the director take no action on the request within twenty (20) days of delivery to the director, the right to engage in the action or power so requested shall be deemed granted.

(c) Should the director deny the request, the affected credit union shall have the right to request a hearing before the director, which hearing shall be held within thirty (30) days of the date of the denial.

(d) The director shall have the discretion to deny any request

which is inconsistent with the purposes of this chapter.

(e) No such approval shall operate to deny the director of any of his authority under this chapter and such permitted activity shall be subject to regulation by the director.

SECTION 4. That Chapter 21, Title 26, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 26-2152, Idaho Code, and to read as follows:

26-2152. INTERSTATE CREDIT UNIONS -- APPROVAL -- PERMIT -- FEES -- SUPERVISION. (1) Provided that the membership limits as defined in section 26-2110, Idaho Code, are maintained:

(a) A credit union chartered under this chapter may operate in another state unless prohibited by the law of the other state. Idaho is the home state for any credit union chartered under this chapter.

(b) A credit union chartered under the laws of another state may operate in Idaho with the approval of the director on the terms and conditions provided in subsection (2) of this section. Idaho is the host state for any credit union chartered under the laws of any other state. The state which charters the credit union is the home state of the credit union.

(2) The director may issue a permit to a credit union chartered in another state to operate in this state in a manner consistent with the Idaho credit union act, provided that the credit union applies for such permit on a form approved by the director and has approval from the regulator of credit unions in its home state to operate in Idaho. A credit union for which Idaho is a host state shall acknowledge that Idaho laws relating to consumer protection apply to transactions with residents in Idaho. The credit union for which Idaho is a host state shall maintain its books and records in Idaho or in such other place as the director may agree in writing. The director may, pursuant to chapter 52, title 67, Idaho Code, suspend or revoke the permit of any credit union for which Idaho is the host state for any violation of the Idaho credit union act.

(3) The director shall assess fees as provided in section 26-2136, Idaho Code, to be paid by a credit union for which Idaho is the host state on the basis of the assets of the credit union which are derived from its operations in Idaho. The director, in his discretion, may adjust such fees according to the level of participation of the department in the supervision of the credit union.

(4) The director may enter into agreements with private share insurers and credit union regulators both with the federal government and in other states, to coordinate and facilitate regulation and supervision of interstate credit unions as permitted by section 26-2610, Idaho Code.

Approved March 15, 1997.

CHAPTER 112
(H.B. No. 254)

AN ACT

RELATING TO RESTITUTION FOR CRIME VICTIMS; AMENDING SECTION 19-5304, IDAHO CODE, TO DEFINE VICTIM TO INCLUDE THE CRIME VICTIMS COMPENSATION ACCOUNT AND CERTAIN THIRD PARTIES MAKING PAYMENTS TO OR ON BEHALF OF A DIRECTLY INJURED VICTIM AND TO PROVIDE FOR RESTITUTION TO THE DIRECTLY INJURED VICTIM OF LOSSES NOT PAID BY A THIRD PARTY AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 72-1024, IDAHO CODE, TO PROVIDE FOR PAYMENT BY THE CONVICTED PERSON TO THE CRIME VICTIMS COMPENSATION ACCOUNT OF BENEFITS PAID TO OR ON BEHALF OF VICTIMS AND THEIR DEPENDENTS.

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

SECTION 1. That Section 19-5304, Idaho Code, be, and the same is hereby amended to read as follows:

19-5304. RESTITUTION FOR CRIME VICTIMS -- ORDERS TO BE SEPARATE -- WHEN RESTITUTION IS NOT APPROPRIATE -- OTHER REMEDIES -- EVIDENTIARY HEARINGS -- DEFINITIONS. (1) As used in this chapter:

(a) "Economic loss" includes, but is not limited to, the value of property taken, destroyed, broken, or otherwise harmed, lost wages, and direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct, but does not include less tangible damage such as pain and suffering, wrongful death or emotional distress.

(b) "Found guilty of any crime" shall mean a finding by a court that a defendant has committed a criminal act and shall include an entry of a plea of guilty, an order withholding judgment, suspending sentence, or entry of judgment of conviction for a misdemeanor or felony.

(c) "Value" shall be as defined in section 18-2402(11), Idaho Code.

(d) "Property" shall be as defined in section 18-2402(8), Idaho Code.

(e) "Victim" shall mean:

(i) The directly injured victim which means a person or entity, named in the complaint, information or indictment, who suffers economic loss or injury as the result of the defendant's criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases;

(ii) Victim shall also mean a health care provider who has provided medical treatment to a directly injured victim if such treatment is for an injury resulting from the defendant's criminal conduct, and who has not been otherwise compensated for such treatment by the directly injured victim or the immediate family of the directly injured victim;

(iii) The account established pursuant to the crime victims compensation act, chapter 10, title 72, Idaho Code, from

which payment was made for medical treatment, services or monetary benefits for injury resulting from the defendant's criminal conduct;

(iv) A person or entity who suffers economic loss because such person or entity has made payments to or on behalf of a directly injured victim pursuant to a contract including, but not limited to, an insurance contract.

(2) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim. An order of restitution shall be a separate written order in addition to any other sentence the court may impose, including incarceration, and may be complete, partial, or nominal. The court may also include restitution as a term and condition of judgment of conviction; however, if a court orders restitution in the judgment of conviction and in a separate written order, a defendant shall not be required to make restitution in an amount beyond that authorized by this chapter. Restitution shall be ordered for any economic loss which the victim actually suffers. The existence of a policy of insurance covering the victim's loss shall not absolve the defendant of the obligation to pay restitution.

(3) If the court determines that restitution is inappropriate or undesirable or if only partial or nominal restitution is ordered, it shall enter an order articulating the reasons therefor on the record.

(4) If a separate written order of restitution is issued, an order of restitution shall be for an amount certain and shall be due and owing at the time of sentencing or at the date the amount of restitution is determined, whichever is later. An order of restitution may provide for interest from the date of the economic loss or injury.

(5) The court may order the defendant to pay restitution to the victim in any case, regardless of whether the defendant is incarcerated or placed on probation. The court may order the defendant to pay all or a part of the restitution ordered to the court to be distributed by the court to the victims in a manner the court deems just.

(6) Restitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court. Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or presentence investigator. Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such hearsay as may be contained in the presentence report, victim impact statement or otherwise provided to the court.

(7) The court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate. The immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution.

(8) In determining restitution, where it appears that more than one (1) person is responsible for a crime that results in economic loss to a victim, and one or more of the suspects or defendants are not found, apprehended, charged, convicted or ordered to pay restitu-

tion, the court may require the remaining defendant or defendants, who are convicted of or plead guilty to the crime, to be jointly and severally responsible for the entire economic loss to the victim.

(9) The court may, with the consent of the parties, order restitution to victims, and/or any other person or entity, for economic loss or injury for crimes which are not adjudicated or are not before the court.

(10) A defendant, against whom a restitution order has been entered, may, within forty-two (42) days of the entry of the order of restitution, request relief from the restitution order in accordance with the Idaho rules of civil procedure relating to relief from final orders.

(11) An order of restitution shall not preclude the victim from seeking any other legal remedy.

(12) Every presentence report shall include a full statement of economic loss suffered by the victim or victims of the defendant's crime or crimes.

(13) If there is more than one (1) victim, the restitution order shall provide that the directly injured victim(s) be fully compensated for so much of the loss caused by the defendant's criminal conduct which has not been paid by a third party, including persons referred to in subsection (1)(e)(ii), (iii) and (iv) of this section.

SECTION 2. That Section 72-1024, Idaho Code, be, and the same is hereby amended to read as follows:

72-1024. EFFECT OF AWARD ON PROBATION AND PAROLE OF OFFENDER. (1) When placing any convicted person on probation, the court may set as a condition of probation the payment to the account of an amount equal to any benefits paid from the account to or for the benefit of a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

Approved March 15, 1997.

CHAPTER 113
(H.B. No. 305)

AN ACT

RELATING TO ESTATES; AMENDING SECTION 15-1-201, IDAHO CODE, TO FURTHER DEFINE THE TERM "CLAIMS" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-3-803, IDAHO CODE, TO PROVIDE A SEPARATE PROCEDURE FOR CLAIMS FOR STATE TAXES AGAINST A DECEDENT'S ESTATE; AMENDING SECTION 15-3-1006, IDAHO CODE, TO PROVIDE THAT THE SECTION DOES NOT BAR AN ACTION COMMENCED BY THE STATE TAX COMMISSION TO COLLECT STATE TAXES; AMENDING SECTION 63-3068, IDAHO CODE, TO PROVIDE IN THE CASE OF INCOME RECEIVED BY AN ESTATE DURING THE PERIOD OF ADMINISTRATION, A NOTICE OF DEFICIENCY SHALL BE ISSUED, A CLAIM SHALL BE MADE, THE TAX SHALL BE ASSESSED OR ANY PROCEEDING IN

COURT WITHOUT ASSESSMENT FOR THE COLLECTION OF THE INCOME TAX SHALL BE BEGUN WITHIN TWELVE MONTHS AFTER WRITTEN REQUEST FOR PROMPT ACTION IS FILED WITH THE STATE TAX COMMISSION BY THE EXECUTOR, ADMINISTRATOR OR OTHER FIDUCIARY REPRESENTING THE ESTATE OF THE DECEDENT, TO PROVIDE EXCEPTIONS IF THE RETURN FOR WHICH THE REQUEST FOR PROMPT ACTION RELATES HAS NOT BEEN FILED WITH THE STATE TAX COMMISSION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 63-3633, IDAHO CODE, TO PROVIDE PROCEDURES FOR A NOTICE OF DEFICIENCY AND A CLAIM MADE FOR TAXES AGAINST A DECEDENT'S ESTATE AND TO PROVIDE AN EXCEPTION IF THE RETURN FOR WHICH THE REQUEST FOR PROMPT ACTION RELATES HAS NOT BEEN FILED WITH THE STATE TAX COMMISSION.

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

SECTION 1. That Section 15-1-201, Idaho Code, be, and the same is hereby amended to read as follows:

15-1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters or parts, and unless the context otherwise requires, in this code:

(1) "Application" means a written request to the registrar for an order of informal probate or appointment under part 3 of chapter 3 of this code.

(2) "Augmented estate" means the estate described in section 15-2-202 of this code.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(4) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(5) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, other tax obligations arising from activities or transactions of the estate, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(6) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents, minors, incapacitated and disabled persons. This court in this state is known as the district court.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person and includes limited conservators as described by section 15-5-420, Idaho Code.

(8) "Determination of heirship of community property" shall mean that determination required by the provisions of section 15-3-303 of this code upon an application for informal probate not accompanied by presentation of a will.

(9) "Determination of heirship" shall mean that determination of heirship required by section 15-3-409 of this code upon a finding of intestacy.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) "Disability" means cause for a protective order as described by subsection (b)(1) of section 15-5-401 of this code.

(13) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purpose of this provision "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Emancipated minor" shall mean any male or female who has been married.

(15) "Estate" means all property of the decedent, including community property of the surviving spouse subject to administration, property of trusts, and property of any other person whose affairs are subject to this code as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate which is described in section 15-2-402 of this code.

(17) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(18) "Foreign personal representative" means a personal representative of another jurisdiction.

(19) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment and includes limited guardians as described by section 15-5-304, Idaho Code, but excludes one who is merely a guardian ad litem.

(21) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person" is as defined in section 15-5-101 of this code.

(23) "Informal proceedings" means those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(25) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(26) "Lease" includes an oil, gas, or other mineral lease.

(27) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(28) "Minor" means a male under eighteen (18) years of age or a female under eighteen (18) years of age.

(29) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(30) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(31) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal entity.

(32) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(33) "Person" means an individual, a corporation, an organization, or other legal entity.

(34) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(35) "Petition" means a written request to the court for an order after notice.

(36) "Proceeding" includes action at law and suit in equity.

(37) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(38) "Protected person" is as defined in section 15-5-101 of this code.

(39) "Protective proceeding" is as defined in section 15-5-101 of this code.

(39A) "Quasi-community property" is the property defined by section 15-2-201 of this code.

(40) "Registrar" refers to magistrates or judges of the district court who shall perform the functions of registrar as provided in section 15-1-307 of this code.

(41) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(42) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(43) "Special administrator" means a personal representative as described by sections 15-3-614 through 15-3-618 of this code.

(44) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(45) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(46) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(47) "Supervised administration" refers to the proceedings described in part 5, chapter 3, of this code.

(48) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(49) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 6 of this code, custodial arrangements pursuant to chapter 8, title 68, Idaho Code, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(50) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(51) "Ward" is as defined in section 15-5-101 of this code.

(52) "Will" is a testamentary instrument and includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

(53) "Separate property" includes all property of either the husband or the wife owned by him or her before marriage, and that acquired afterward either by gift, bequest, devise or descent, or that which either he or she acquires with proceeds of his or her separate property, by way of moneys or other property.

(54) "Community property" includes all other property acquired after marriage by either husband or wife, including the rents and profits of the separate property of the husband and wife, unless, by

the instrument by which any such property is acquired by the wife, it is provided that the rents and profits thereof be applied to her sole and separate use. Real property conveyed by one (1) spouse to the other shall be presumed to be the sole and separate estate of the grantee.

SECTION 2. That Section 15-3-803, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS. (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof (except claims for state taxes), whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

(1) two (2) years after the decedent's death; or

(2) within the time provided in section 15-3-801(b), Idaho Code, for creditors who are given actual notice, and within the time provided in section 15-3-801(a), Idaho Code, for all creditors barred by publication.

(b) All claims described in subsection (a) of this section barred by the nonclaim statute of the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.

(c) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof (except claims for state taxes), whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative, within four (4) months after performance by the personal representative is due;

(2) any other claim, within the later of four (4) months after it arises, or the time specified in subsection (a)(1) of this section.

(d) Claims relating to state taxes, whether due or to become due, absolute or contingent, liquidated or unliquidated, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

(1) three (3) years from the latest of:

(i) the date of the decedent's death,

(ii) the due date of the return (without regard to extensions), or

(iii) the date the return was filed; or

(2) within the time provided in section 63-3068(e) or 63-3633(e), Idaho Code, if the state tax commission has been given written notice in accordance with the provisions of those sections.

(e) Nothing in this section affects or prevents:

- (1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;
- (2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or
- (3) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate; or
- (4) assessment or collection of state taxes arising from activities or transactions of the estate; or
- (5) assessment or collection of state taxes if a return has not been filed with the state tax commission.

SECTION 3. That Section 15-3-1006, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-1006. LIMITATIONS ON ACTIONS AND PROCEEDINGS AGAINST DISTRIBUTEEES. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (i) three (3) years after the decedent's death; or (ii) one (1) year after the time of distribution thereof, except if the claim is by a creditor of the decedent, it is forever barred two (2) years after the decedent's death. This section does not bar an action to recover property or value received as the result of fraud, or an action commenced by the state tax commission to collect state taxes.

SECTION 4. 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, or by his estate during the period of administration, a notice of deficiency shall be issued, a claim shall be made, the tax shall be assessed or any proceeding in court without assessment for the collection of such tax shall be begun, within ~~six-(6)~~ twelve (12) months after written request ~~therefore-(filed-after-the-return-is-made)~~ for prompt action is filed with the state tax commission by the executor, administrator, or other fiduciary representing the estate of such decedent. This subsection shall not apply if the return for which the request for prompt action relates has not been filed with the state tax commission.

(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.

(1) 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 5. That Section 63-3633, Idaho Code, be, and the same is hereby amended to read as follows:

63-3633. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION. Except as otherwise provided in this section:

(a) The amount of taxes imposed by this act shall be assessed within three (3) years after the due date of the return or the date the return was filed, whichever is the later, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; provided, however, if an assessment has been made within the prescribed time, such tax may be collected by levy or by a proceeding in court within a period of six (6) years after assessment of the tax and, provided further, that this shall not be in derogation of any of the remedies elsewhere herein provided. The running of the period of limitations provided by this section shall be suspended for the period during which the state tax commission is prohibited from making the assessment or from collecting by levy or a proceeding in court, and for thirty (30) days thereafter.

(b) In the case of a false or fraudulent return with the intent to evade tax, or a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(c) In the case of taxes owed by a person who has failed to file a return as provided in section 63-3623, Idaho Code, the amount of taxes imposed in this chapter shall be assessed within seven (7) years of the time the return upon which the tax asserted to be due should have been filed.

(d) The periods of limitation upon assessment and collection provided in this section shall not apply:

(1) In cases where the facts disclose a false or fraudulent act with the intent to evade tax, or

(2) To taxes collected by a retailer, seller or any other person who has failed to pay over such taxes to the state tax commission.

(e) In the case of taxes due during the lifetime of a decedent, or by his estate during the period of administration, a notice of deficiency shall be issued, a claim shall be made, the tax shall be assessed, and or any proceeding in court without assessment for the collection of such tax shall be begun, within ~~six--(6)~~ twelve (12) months after written request therefor--(filed after the return is made) for prompt action is filed with the state tax commission by the executor, administrator, or other fiduciary representing the estate of such decedent. This subsection shall not apply if the return for which the request for prompt action relates has not been filed with the state

tax commission.

(f) Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this act, both the state tax commission or its delegate or deputy and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Approved March 15, 1997.

CHAPTER 114
(H.B. No. 310)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE; AMENDING SECTIONS 18-8005 AND 18-8006, IDAHO CODE, TO CLARIFY THAT THE FIRST FORTY-EIGHT HOURS OF THE THIRTY-DAY MINIMUM JAIL SENTENCE FOR FELONY DRIVING UNDER THE INFLUENCE AND AGGRAVATED DRIVING UNDER THE INFLUENCE MUST BE SERVED CONSECUTIVELY.

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

SECTION 1. That Section 18-8005, Idaho Code, be, and the same is hereby amended to read as follows:

18-8005. PENALTIES. (1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a) or (5), Idaho Code, for the first time is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) May be sentenced to jail for not to exceed six (6) months;
(b) May be fined an amount not to exceed one thousand dollars (\$1,000);

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney; and

(d) Shall have his driving privileges suspended by the court for a period of thirty (30) days which shall not be reduced and during which thirty (30) day period absolutely no driving privileges of any kind may be granted. After the thirty (30) day period of absolute suspension of driving privileges has passed, the defendant shall have driving privileges suspended by the court for an additional period of at least sixty (60) days, not to exceed one hundred fifty (150) days during which the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment or for family health

needs.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(b), Idaho Code, for the first time is guilty of a misdemeanor and subject to:

- (a) The provisions of section 18-8005(1), Idaho Code; and
- (b) The provisions of section 49-335, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(c), Idaho Code, for the first time, is guilty of a misdemeanor and is subject to:

- (a) The provisions of section 18-8005(1), Idaho Code; and
- (b) The provisions of section 49-335, Idaho Code.

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), and except as provided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days the first forty-eight (48) hours of which must be consecutive, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work detail program within the custody of the county sheriff during the period of incarceration;

(b) May be fined an amount not to exceed two thousand dollars (\$2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(f) If the person has pled guilty or was found guilty for the second time within five (5) years of a violation of the provisions of section 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335, Idaho Code, shall apply.

(5) Except as provided in section 18-8004C, Idaho Code, any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation, or any combination thereof, within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony; and

(a) Shall be sentenced to the custody of the state board of cor-

rection for not to exceed five (5) years; provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive; and further provided that notwithstanding the provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars (\$5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind.

(6) For the purpose of computation of the enhancement period in subsections (4), (5) and (7) of this section, the time that elapses between the date of commission of the offense and the date the defendant pleads guilty or is found guilty for the pending offense shall be excluded. If the determination of guilt against the defendant is reversed upon appeal, the time that elapsed between the date of the commission of the offense and the date the defendant pleads guilty or is found guilty following the appeal shall also be excluded.

(7) Notwithstanding the provisions of subsections (4) and (5) of this section, any person who has pled guilty or has been found guilty of a felony violation of the provisions of section 18-8004, Idaho Code, a felony violation of the provisions of section 18-8004C, Idaho Code, a violation of the provisions of section 18-8006, Idaho Code, or a violation of the provisions of section 18-4006 3. (b), Idaho Code, and within ten (10) years pleads guilty or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (5) of this section.

(8) For the purpose of subsections (4) and (5) of this section and the provisions of section 18-8004C, Idaho Code, a substantially conforming foreign criminal violation exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of section 18-8004, Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(9) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall undergo, at his own expense, (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code,) and prior to the sentencing date, an alcohol evaluation by an alcohol evaluation facility approved by the Idaho department of health and welfare. In the event the alcohol evaluation indicates the

need for alcohol treatment, the evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment program, together with the estimated cost thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person 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 appropriate 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 alcohol treatment is required unless the defendant makes a showing by a preponderance of evidence that treatment 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 treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the 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 pursuant to the provisions of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for indigent defendants.

(10) At the time of sentencing, the court shall be provided with the following information:

(a) The results, if administered, of any evidentiary test for alcohol and/or drugs;

(b) A computer or teletype or other acceptable copy of the person's driving record;

(c) Information as to whether the defendant has pled guilty to or been found guilty of violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, or a similar offense within the past five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s); and

(d) The alcohol evaluation required in subsection (9) of this section, if any.

(11) A minor may be prosecuted for a violation of the provisions of section 18-8004 or 18-8004C, Idaho Code, under title 16, Idaho Code. In addition to any other penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended or denied for an additional one (1) year following the end of any period of suspension or revocation existing at the time of the violation, or until he reaches the age of twenty-one (21) years, whichever period is greater. During the period of additional suspension or denial, absolutely no driving privileges shall be allowed.

(12) In the event that the alcohol evaluation required in subsection (9) of this section recommends alcohol treatment, the court shall order the person to complete a treatment program in addition to any other sentence which may be imposed, unless the court determines that alcohol treatment would be inappropriate or undesirable, in which

event, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred 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 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. Such treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event that funding is provided for or on behalf of the defendant by an entity of state government, restitution shall be ordered to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code. Nothing contained herein shall be construed as requiring a court to order that a governmental entity shall provide alcohol treatment at government expense unless otherwise required by law.

(13) Any person who is disqualified shall not be granted restricted driving privileges to operate a commercial motor vehicle.

SECTION 2. That Section 18-8006, Idaho Code, be, and the same is hereby amended to read as follows:

18-8006. AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY OTHER INTOXICATING SUBSTANCES. (1) Any person causing great bodily harm, permanent disability or permanent disfigurement to any person other than himself in committing a violation of the provisions of section 18-8004(1)(a) or (1)(c), Idaho Code, is guilty of a felony, and upon conviction:

(a) Shall be sentenced to the state board of correction for not to exceed five (5) years, provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive; and further provided that notwithstanding the provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars (\$5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall be ordered by the court to pay restitution in accordance with chapter 53, title 19, Idaho Code.

(2) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has

been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

Approved March 15, 1997.

CHAPTER 115
(H.B. No. 332)

AN ACT

RELATING TO TRANSPORTATION OF SCHOOL CHILDREN; AMENDING SECTION 33-1503, IDAHO CODE, TO PROVIDE THAT WHENEVER ANY PUPIL LIVES MORE THAN ONE AND ONE-HALF MILES FROM ANY ESTABLISHED BUS STOP OR FROM THE SCHOOL OF ATTENDANCE, AS DESIGNATED BY THE BOARD OF TRUSTEES, AND THE PUPIL IS REGULARLY TRANSPORTED BY PRIVATE VEHICLE NOT UNDER CONTRACT WITH THE SCHOOL DISTRICT, THE BOARD OF TRUSTEES MAY PAY TO THE PARENT OR GUARDIAN AN AMOUNT PER MONTH UP TO TEN DOLLARS PER VEHICLE PLUS MILEAGE FOR EACH ROUND TRIP APPROVED AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-1503, Idaho Code, be, and the same is hereby amended to read as follows:

33-1503. PAYMENTS WHEN TRANSPORTATION NOT FURNISHED. a. Whenever any pupil lives more than one and one-half (1 1/2) miles from any established bus stop or from the school of attendance, as designated by the board of trustees, and such pupil is regularly transported by private vehicle not under contract with the school district, the board ~~shall~~ may pay to the parent or guardian an amount per month ~~not less than~~ up to ten dollars (\$10.00) per vehicle plus mileage at the current rate established by the state board of examiners for each round trip approved.

b. Whenever in the judgment of the board of trustees any pupil residing within the area of a ~~non-transportation~~ nontransportation zone, and otherwise eligible to transportation, cannot be transported in any manner herein authorized, the said board may pay to the parent or guardian thereof such amount of the cost incurred by the parent or guardian for the board and lodging of the pupil as may be authorized by the board of trustees.

Approved March 15, 1997.

CHAPTER 116
(H.B. No. 338)

AN ACT

RELATING TO SHEEP AND GOATS; AMENDING SECTION 25-127, IDAHO CODE, TO PROVIDE THAT THE BOARD OF SHEEP COMMISSIONERS MAY COMPENSATE ITS

MEMBERS; AMENDING SECTION 25-128, IDAHO CODE, TO REDESIGNATE THE SECTION, TO DELETE POWERS AND DUTIES OF THE BOARD OF SHEEP COMMISSIONERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 1, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-128, IDAHO CODE, TO PROVIDE POWERS AND DUTIES OF THE BOARD OF SHEEP COMMISSIONERS; AMENDING SECTION 25-129, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION AND TO PROVIDE THAT THE BOARD OF SHEEP COMMISSIONERS SHALL HAVE POWER REGARDING THE PREVENTION, CONTROL AND ERADICATION OF INFECTIOUS OR CONTAGIOUS DISEASES AND CERTAIN OTHER MALADIES OF SHEEP; AMENDING SECTION 25-130, IDAHO CODE, TO DELETE THE REQUIREMENT OF A REPORT TO THE GOVERNOR AND TO DELETE REFERENCE TO SCABIES; AMENDING SECTION 25-137, IDAHO CODE, TO PROVIDE PENALTIES FOR VIOLATION OF ADMINISTRATIVE RULES AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTIONS 25-141, 25-142 AND 25-151, IDAHO CODE; AMENDING CHAPTER 1, TITLE 25, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 25-141A, 25-141B, 25-141C, 25-141D AND 25-141E, IDAHO CODE, TO PROVIDE ESTABLISHMENT OF SCRAPIE ERADICATION AREAS, TO PROVIDE THE EXTENT OF ERADICATION AREAS AND TO PROVIDE SUPERVISION AND QUARANTINE OF PREMISES, TO PROVIDE FOR HERD DEPOPULATION OF SHEEP OR GOATS IN PRESENCE OF SCRAPIE OR OTHER DISEASES, TO PROVIDE THE CREATION OF THE SHEEP AND GOAT DISEASE INDEMNITY FUND AND TO RESTRICT INDEMNITY PAYMENTS; AMENDING SECTION 25-143, IDAHO CODE, TO DELETE REFERENCE TO RAILROAD COMPANIES, TO DELETE REFERENCE TO AN ARCAINE PROCEDURE, TO DELETE REFERENCE TO DIPPING AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 25-146, IDAHO CODE, TO PROVIDE AUTHORITY FOR THE BOARD OF SHEEP COMMISSIONERS TO DIAGNOSE AND TREAT SHEEP, TO DELETE REFERENCE TO DIP AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 25-147, IDAHO CODE, TO PROVIDE FOR COMMUNICATION BY FACSIMILE, TO DELETE REFERENCE TO HAND DRESSING AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 25-148, IDAHO CODE, TO PROVIDE FOR NOTICE BY FACSIMILE, TO DELETE REFERENCE TO RAILROADS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 1, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-152, IDAHO CODE, TO PROVIDE SEVERABILITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 25-127, Idaho Code, be, and the same is hereby amended to read as follows:

25-127. MEMBERS -- APPOINTMENT, QUALIFICATIONS, SALARY -- BOND AND OATH. The state board of sheep commissioners, hereinafter called the board, shall consist of five (5) members, all of whom shall be experienced wool growers and no two (2) of whom shall be from the same county; said members shall be appointed by the governor and hold their offices for the term for which they are appointed and thereafter until their successors are duly appointed and qualified.

As vacancies occur upon the board, the Idaho Wool Growers Association shall submit to the governor the names of two (2) persons qualified and suitable for appointment for each such vacancy from whom the governor shall make his appointment to fill such vacancies. The first commissioners shall be appointed for the following terms: two (2) com-

missioners shall be appointed to hold office until the first Monday of January 1952; two (2) commissioners shall be appointed to hold office until the first Monday of January 1954; one (1) commissioner shall be appointed to hold office until the first Monday of January 1956; and at the expiration of said dates for the commissioners first appointed and until the expiration of terms thereafter, commissioners shall be appointed to fill such vacancies for a term of six (6) years; and in case of any vacancy occurring in the office of commissioner at any time other commissioners shall be appointed, who in each instance shall hold office until the unexpired term of the commissioner whom he is appointed to succeed. Each of said commissioners, before entering upon the duties of his office, shall take and subscribe to the oath of office required by section 59-401, Idaho Code, and be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The members of the board ~~shall~~ may be compensated as provided by section 59-509(d), Idaho Code. Said compensation ~~shall~~ may be paid from the sheep commission account in the same manner as other expenses are paid. Each member of said board shall be a qualified elector of the county from which he is chosen and must reside during his term of office within the state of Idaho. Said board must hold a meeting semiannually and at any other time if so requested by any member of the board.

SECTION 2. That Section 25-128, Idaho Code, be, and the same is hereby amended to read as follows:

25-128A. DUTIES AND POWERS OF THE STATE ANIMAL DAMAGE CONTROL BOARD. (1) ~~The board of sheep commissioners shall perform all those duties and powers necessary for the supervision of sheep, handling of sheep, shipping, transporting or moving of sheep, regulation of sheep, eradication of all diseases among sheep, the making of all rules and regulations concerning sheep and all other matters pertaining to sheep either in the state of Idaho or which may be brought into or shipped from the state of Idaho.~~

(2) There is hereby created a state animal damage control board. The chairman of the board of sheep commissioners shall be a voting member and serve as the chairman of the state animal damage control board which shall have such duties and powers relating to the prevention and control of damage caused by predatory animals and other vertebrate pests, including threatened or endangered wildlife, within the state of Idaho as are established by federal or state law, federal or state rule or regulation, or county ordinance. It is hereby made the duty of the state animal damage control board to coordinate and give general direction to programs to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health or safety; and also to facilitate, coordinate or conduct such investigations, experiments or tests as deemed necessary to determine, demonstrate and promulgate the best methods of predatory animals and other vertebrate pest control. In carrying out these duties, the board may cooperate with federal, state, county, city and private agencies, organizations or individuals; provided, however, that the authority of

this board is not to supersede the state fish and game department or the responsible federal agency in the utilization of the funds of those two (2) agencies in their conduct of similar work within the state of Idaho, but the board shall cooperate and work with these two (2) agencies. Prevention and control of predatory animals and other vertebrate pests does not include the payment of compensation for damages.

(32) In addition to the chairman, the state animal damage control board shall consist of a member appointed by the president of the Idaho cattle association, the director of the state department of agriculture, the director of the state department of fish and game, and the chairman of the board of directors of each of the five (5) animal damage control districts.

(43) The state animal damage control board shall have as its primary duties the coordination of the control efforts of the five (5) animal damage control districts; the establishment of general policies for the control programs; the establishment of annual priorities for control efforts; and the assignment or distribution of moneys made available to the board from any source. All contracts or agreements for providing prevention and control services which involve an expenditure of moneys from the state animal damage control board shall be in writing and shall be maintained as a part of the official records of the board.

(54) The state board of sheep commissioners shall provide staff, administrative and fiscal services for the animal damage control board.

SECTION 3. That Chapter 1, 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 25-128, Idaho Code, and to read as follows:

25-128. POWERS AND DUTIES OF STATE BOARD OF SHEEP COMMISSIONERS. The board shall have the authority to perform all those duties and powers necessary for the prevention, control, and eradication of diseases which may include the supervision of sheep, handling of sheep, shipping, transporting or moving of sheep, regulation of sheep, the making of rules concerning sheep and all other matters pertaining to sheep either in the state of Idaho or which may be brought into or shipped from the state of Idaho. The board shall also be responsible for all matters relating to the prevention, control, and eradication of diseases pertaining to goats within the state of Idaho with the provisions of this chapter also applying to goats.

SECTION 4. That Section 25-129, Idaho Code, be, and the same is hereby amended to read as follows:

25-129. ~~RULES AND REGULATIONS~~ -- EXECUTIVE SECRETARY, VETERINARIAN, INSPECTORS, SALARIES, EXPENSES AND OFFICE. (1) The board shall elect one (1) of its members chairman. The said board is empowered to make rules ~~and--regulations~~ for governing itself and such rules ~~and regulations~~ as it may deem necessary for the enforcement of the provisions of this chapter and to enforce all such rules ~~and--regulations~~,

and shall have exclusive control of all matters pertaining to the sheep industry. It shall be empowered to make and enforce rules and regulations for quarantining, dipping or otherwise treating sheep which may be infected, affected or infested with scabies, ticks, lice or any other parasites detrimental or injurious to sheep, or any infectious or contagious disease of sheep and for the ~~speedy--and effective-suppression-and-extirpation~~ prevention, control and eradication of infectious or contagious diseases, scabies, ticks, lice or other parasites detrimental to sheep ~~as-are-not-in-conflict--with--the provisions--of--this--chapter~~. All such rules and regulations adopted by said board shall have the same force and effect as law and any person, association, firm or corporation violating such rules ~~or--regulations~~ shall be deemed guilty of a misdemeanor.

(2) The board is empowered to select an executive secretary who may or may not be a member of the board, and such executive secretary shall have the authority and power to sign any and all lawful claims or vouchers to be made, filed or drawn by or on behalf of the board against the sheep commission account, and for such purposes he shall be regarded as the administrative head of the agency and he shall perform such other and further duties as the board shall direct.

(3) The board is empowered to appoint, with the approval of the governor, a veterinarian in charge, who must be duly licensed in the state of Idaho and who is a graduate of a recognized and accredited school of veterinary medicine, whose duties and powers shall be defined and prescribed by said board; which said officer shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The veterinarian in charge shall receive such compensation as may be allowed by said board and actual and necessary expenses incurred in the performance of his duties. The veterinarian in charge shall be at all times subject to the authority of the board and shall have the same powers hereinafter provided for all other inspectors appointed by the board under this chapter. The veterinarian in charge shall have authority and power to sign all lawful claims or vouchers filed or drawn on behalf of the board against the sheep commission account.

(4) The board is hereby empowered to appoint all other inspectors, veterinarians and such other employees and assistants as may be necessary to carry out the duties and powers herein conferred and fix the compensation of all such appointees. All salaries and expenses of every kind incurred in carrying out the provisions of this chapter shall be paid from the sheep commission account.

(5) Inspectors and veterinarians appointed by the board of sheep commissioners shall have the power and duty to enforce assist law enforcement entities in the enforcement of all of--the laws of the state for pertaining to the identification, inspection and transportation of sheep and other livestock, and shall have general authority to enforce assist law enforcement entities in the enforcement of theft laws of the state with respect to sheep and other livestock.

SECTION 5. That Section 25-130, Idaho Code, be, and the same is hereby amended to read as follows:

25-130. FIXING ASSESSMENT RATE -- PAYMENT OF CLAIMS -- REPORT --

INSPECTION, QUARANTINE AND TREATMENT OF SHEEP -- DISTRICTS. The board shall meet and fix the rate of special assessment to be levied as provided for in this chapter. Any change in the rate of the special assessment shall be made to be effective at the start of a calendar year. The board shall audit all bills of salaries and expenses incurred in the enforcement of this chapter that may be payable from the sheep commission account which shall be audited, allowed and paid as other claims against the state. ~~The board shall make an annual report in writing to the governor on or before the first day of December in each year, giving a statement of the transactions of the board and facts relating to the condition of the sheep industry in this state and facts relating to the prevention and control of damage caused by predatory animals and other vertebrate pests within the state.~~ The board shall have power to order an inspection or quarantine of any sheep in the state of Idaho, whether diseased or exposed to disease, to compel dipping or other treatment of sheep, whether diseased or exposed to disease, at such times and as often as it deems necessary to insure the suppression or eradication of ~~scabies~~ or any infectious or contagious disease of sheep and divide the state into such districts as may be necessary for the enforcement of this chapter.

SECTION 6. That Section 25-137, Idaho Code, be, and the same is hereby amended to read as follows:

25-137. PUNISHMENT FOR DISREGARD OF QUARANTINE ~~REGULATIONS~~ RULES -- TAKING EVIDENCE. Any person, company, corporation or association or any agent, servant or employee of such, who shall violate or disregard any quarantine provision of this chapter or rules promulgated thereunder or any other provision of law or any sanitary or quarantine rule, order of the board or inspector thereof or any of the provisions of this chapter or rules promulgated thereunder, shall be deemed guilty of a misdemeanor and upon conviction be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense. For the purpose of carrying out the provisions of this chapter, the board is authorized to subpoena and examine witnesses and to administer oaths for the purpose of soliciting information to be used in enforcing the provisions hereof and in the furtherance of the quarantine, sanitary or other regulations rules.

SECTION 7. That Sections 25-141, 25-142 and 25-151, Idaho Code, be, and the same are hereby repealed.

SECTION 8. That Chapter 1, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 25-141A, 25-141B, 25-141C, 25-141D and 25-141E, Idaho Code, and to read as follows:

25-141A. SCRAPIE ERADICATION AREA. (1) The state of Idaho is engaged in the eradication of scrapie from sheep and goats within this state and in cooperation with the United States department of agriculture in the eradication of scrapie from sheep and goats outside of this state. The board is authorized to quarantine the whole state or any portion thereof and the movement of sheep and goats is prohibited

except in conformity with the provisions of this chapter and the rules of the board promulgated for the purpose of preventing the introduction of scrapie into Idaho from any other state or country. Any person, firm, corporation or other recognized legal entity, who shall bring into the state or move within the state any sheep or goats in violation of the provisions of this chapter or the rules of the board, shall, upon conviction, be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each animal brought into the state or moved within the state in violation of the provisions of this chapter or rules promulgated thereunder.

(2) The board shall issue permits authorizing the moving of sheep and goats to and from and through and across quarantine areas for exhibition, sale or feeding purposes and for transporting or moving sheep and goats from one (1) locality to another outside of quarantine areas. The permits shall be issued under rules of the board promulgated with due regard to the convenience of the sheep and goat owners and the protection of sheep and goats within the quarantine areas established as herein provided for the eradication of scrapie.

25-141B. EXTENT OF ERADICATION AREA -- SUPERVISION AND QUARANTINE OF PREMISES. The state board of sheep commissioners is hereby authorized to quarantine any portion of this state when the fact is determined that sheep or goats are affected with scrapie or any other contagious, infectious or communicable disease. The area designated for the control of scrapie may consist of the entire state, a portion of the state, entire county, or part of the county, if it is less than the entire county; the boundary of the area shall be clearly defined in the order for the establishment of the area.

25-141C. SHEEP -- GOATS -- SCRAPIE -- OR OTHER DISEASES -- HERD DEPOPULATION. In order to prevent the introduction or dissemination of scrapie or other contagious, infectious or communicable diseases into or among the sheep or goat population of Idaho, the board is granted authority to identify diseases of concern and to condemn infected herds and to require the destruction or other disposition as approved by the board of such herd or herds. The board of sheep commissioners is authorized to reimburse the owner by cash payment for any affected or exposed sheep or goats which have been condemned, appraised and slaughtered or destroyed or otherwise disposed of by direction of the board of sheep commissioners and for property destroyed and for labor employed in digging trenches and for cleaning and disinfecting premises where such infected or exposed sheep and goats have been kept; provided, that the board shall only pay the difference between the appraised price less federal indemnity and salvage value for any sheep or goats condemned and slaughtered or destroyed under this section and the actual costs for burials or disposal of animal carcasses and for cleaning and disinfecting of premises where infected or exposed sheep or goats have been kept. In the event federal indemnity is unavailable in regard to the value of the sheep or goats, the board shall only pay the difference between the appraised price and salvage value. Appraisals shall be performed by a team comprised of an animal health representative, the owner and a person with experience in sheep or goat marketing. A maximum per head value may be established by rules of the

board. The board or its designee may grant a hearing to any person, under such rules as the board may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when the appraisal price is in dispute. An appeal may be taken from the decision of the board or its designee under the provisions of chapter 52, title 67, Idaho Code.

25-141D. CREATION OF SHEEP AND GOAT DISEASE INDEMNITY FUND. There is hereby created within the department of agriculture a state board of sheep commissioners account to be known as the sheep and goat disease indemnity fund. Moneys deposited into this account from any source including, but not limited to, donations, gifts, grants, federal funds, sheep commission funds, or appropriations from general or dedicated accounts. Moneys received into this account shall be deposited with the state treasurer to the credit of the sheep and goat disease indemnity fund. Moneys deposited into this account may only be used to indemnify owners whose animals or herds have been condemned or destroyed or otherwise disposed of by direction of the board, and for property destroyed, for labor employed in digging trenches, and for cleaning and disinfecting of premises where infected or exposed sheep and goats have been kept.

25-141E. INDEMNITY PAYMENTS RESTRICTED. Indemnity shall only be paid to an owner of sheep or goats for any animals or herds diagnosed to be infected with or exposed to scrapie or any other contagious, infectious or communicable disease, as determined by the board, for sheep or goats born in Idaho or sheep or goats imported in compliance with existing Idaho statutes or rules promulgated pursuant thereto.

SECTION 9. That Section 25-143, Idaho Code, be, and the same is hereby amended to read as follows:

25-143. TRANSPORTATION OF SHEEP FROM QUARANTINED AREA. It shall be unlawful for any ~~railroad-company-or-other~~ transportation company or operator of any motor truck to receive for transportation or transport from the quarantined area of this state into or through an unquarantined area of this state or receive for transportation or transport within the quarantined area of this state any sheep, or as a connecting carrier knowingly receive without the quarantined area, sheep from the quarantined area, and transport the same within the state, except as hereinafter provided; nor shall any person, company or corporation deliver for such transportation to any ~~railroad-company or--other~~ transportation company, or operator of any motor truck, any sheep from the quarantined area, except as hereinafter provided; nor shall any person, company or corporation drive on foot or cause to be driven on foot or transport in private conveyances or otherwise move within the quarantined area, any sheep except as hereinafter provided; and the state board of sheep commissioners shall make and promulgate rules ~~and-regulations~~ which shall permit and govern the inspection, ~~dipping~~, treatment, certification, handling and method and manner of delivery and shipment or other movement of sheep from a quarantined area of this state, or the shipment or other movement of sheep within a quarantined area of this state. ~~The-board-shall-file-notice-of--such rules--and-regulations-in-the-manner-as-provided-in-section-25-142-for~~

~~notice-of-establishment-of-quarantine:~~

SECTION 10. That Section 25-146, Idaho Code, be, and the same is hereby amended to read as follows:

25-146. INSPECTION AND TREATMENT OF DISEASED SHEEP. The representative of the state board of sheep commissioners or any inspector or agent of the United States bureau of animal industry shall have authority to enter upon any grounds or premises where sheep are kept and to inspect, and dip diagnose and treat sheep found thereon. They shall be authorized and empowered to require owners of sheep to apply such remedies, dips and other curative, protective or preventive agents as may by the board be deemed necessary in order to prevent the introduction or dissemination of disease among the sheep of this state or to effect a cure of affected or infected sheep and in the event that any owner or custodian of such sheep shall refuse to comply with the rules ~~and regulations~~ of the board regarding the use of such remedies, dippings and curative agents within the time set by the board and in the manner provided in this act or by the rules ~~and regulations~~ of said board, then the board shall be empowered to treat or dip such sheep and the cost thereof, together with all incidental expenses therewith, if any, which shall include the cost and expense of the care and maintenance of said sheep during the time of their custody by the board or its representatives as herein provided, shall be borne by the owner of the sheep so treated or dipped and shall be, until paid, a lien against such sheep.

SECTION 11. That Section 25-147, Idaho Code, be, and the same is hereby amended to read as follows:

25-147. DISEASES -- NOTICE TO STATE BOARD -- EVIDENCE OF INFECTION -- RULES ~~AND REGULATIONS~~. Whenever any sheep becomes affected or infected with any contagious, infectious or communicable disease or whenever symptoms of any contagious, infectious or communicable disease shall have developed in any sheep, notice shall be given in writing or telegraph facsimile to the state board ~~of sheep commissioners~~ by the owner or agent in charge of such sheep. ~~What is known--as--hand dressing--shall be considered prima facie evidence of the existence of symptoms of scabies infection.~~ The board shall be authorized and empowered to make and promulgate rules ~~and regulations~~ not inconsistent with law, for the especial enforcement of this section as may by the board be deemed necessary to prevent the introduction or dissemination of any infection among sheep of this state.

SECTION 12. That Section 25-148, Idaho Code, be, and the same is hereby amended to read as follows:

25-148. IMPORTATION OF SHEEP -- NOTICE OF INTENTION. When an owner or person in charge of sheep desires to bring such sheep into this state from an adjoining state or territory, he shall notify the state board of sheep commissioners or its agent, in writing, or by telephone or by telegram facsimile, of such intention ~~at least two (2)~~ days before entering the state, stating the time and place where such

sheep shall enter; provided, however, that no notice will be required when sheep are in transit through the state ~~on-railroad-cars~~, except sheep from a known infected area shall only be admitted in accordance with the rules ~~and-regulations~~ of the board.

SECTION 13. That Chapter 1, 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 25-152, Idaho Code, and to read as follows:

25-152. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this 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 chapter.

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 its passage and approval.

Approved March 15, 1997.

CHAPTER 117
(H.B. No. 343)

AN ACT

RELATING TO PROPERTY TAX; AMENDING SECTION 31-1420, IDAHO CODE, TO PROVIDE CORRECT CITATIONS AND TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING SECTION 31-4318, IDAHO CODE, TO DELETE CERTAIN LEVYING AUTHORITY; AMENDING SECTION 31-4603, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING SECTION 31-4706, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING SECTION 33-1003, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING SECTION 33-2710, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AMENDING SECTION 46-1008, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING SECTION 50-2908, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING SECTION 58-1414A, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AMENDING CHAPTER 1, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-113, IDAHO CODE, TO PROVIDE FOR FILING OF ELECTRONIC RETURNS AND DOCUMENTS AND TO PROVIDE FOR ELECTRONIC FUNDS TRANSFERS; AMENDING SECTION 63-201, IDAHO CODE, TO FURTHER DEFINE THE TERM PERSONAL PROPERTY; AMENDING SECTION 63-215, IDAHO CODE, TO PROVIDE THAT IN THE CASE OF FIRE PROTECTION DISTRICTS, THE BOARD OF COUNTY COMMISSIONERS APPROVING THE BOUNDARIES SHALL BE RESPONSIBLE FOR DELIVERING TO THE ASSESSOR AND RECORDER THE MAP AND LEGAL DESCRIPTION OF THE AMENDED DISTRICT BOUNDARIES AND TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING CHAPTER 3, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-301A, IDAHO CODE, TO PROVIDE A NEW CONSTRUCTION ROLL; AMENDING SECTION 63-314, IDAHO CODE, TO REVISE PROCEDURES OF HOW THE COUNTY VALUATION PROGRAM IS TO BE CARRIED ON BY COUNTY ASSESSORS AND TO DEFINE AN ADDITIONAL

TERM; AMENDING SECTION 63-317, IDAHO CODE, TO PROVIDE A STATUTORY REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-404, IDAHO CODE, TO PROVIDE CORRECT NAMES AND TO PROVIDE FOR REPORTS TO SUCCESSOR AGENCIES; AMENDING SECTION 63-405, IDAHO CODE, TO PROVIDE FOR OTHER METHODS OF APPORTIONMENT OF CERTAIN OPERATING PROPERTY; AMENDING SECTION 63-501A, IDAHO CODE, TO REVISE PROCEDURES ON HOW TAXPAYERS MAY FILE AN APPEAL OF AN ASSESSMENT WITH THE COUNTY BOARD OF EQUALIZATION; AMENDING SECTION 63-509, IDAHO CODE, TO PROVIDE AN ADDITIONAL CITATION; AMENDING SECTION 63-602X, IDAHO CODE, TO REVISE PROCEDURES FOR CLAIMING AN EXEMPTION FROM TAXATION OF REAL PROPERTY FOR CASUALTY LOSS; AMENDING CHAPTER 6, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-602BB, IDAHO CODE, TO PROVIDE A PARTIAL PROPERTY TAX EXEMPTION FOR REMEDIATED LAND AND TO DEFINE TERMS; AMENDING CHAPTER 6, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-602CC, IDAHO CODE, TO PROVIDE A PROPERTY TAX EXEMPTION FOR QUALIFIED EQUIPMENT UTILIZING POSTCONSUMER WASTE OR POSTINDUSTRIAL WASTE, TO DEFINE TERMS AND TO PROVIDE PROCEDURES; AMENDING SECTION 63-701, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 63-702, IDAHO CODE, TO CLARIFY A CITATION AND TO PROVIDE PROCEDURES FOR FILING A CLAIM IN THE CASE OF PROPERTY OWNED BY A DECEASED PERSON'S ESTATE; AMENDING SECTION 63-703, IDAHO CODE, TO CLARIFY CITATIONS; AMENDING SECTION 63-704, IDAHO CODE, TO CLARIFY CITATIONS; AMENDING SECTION 63-705, IDAHO CODE, TO INCREASE MAXIMUM REDUCTION AMOUNTS; AMENDING SECTION 63-706, IDAHO CODE, TO CLARIFY A CITATION; AMENDING SECTION 63-708, IDAHO CODE, TO CLARIFY CITATIONS; AMENDING SECTION 63-709, IDAHO CODE, TO CLARIFY A CITATION; AMENDING SECTION 63-711, IDAHO CODE, TO DELETE PROVISIONS REGARDING SPECIAL CANCELLATIONS; AMENDING SECTION 63-802, IDAHO CODE, TO PROVIDE REFERENCE TO PROPERTY TAX REVENUES AND TO REVISE PROCEDURES FOR CALCULATING BUDGET REQUESTS OF TAXING DISTRICTS; AMENDING SECTION 63-902, IDAHO CODE, TO PROVIDE CONDITIONS WHEN CHARGES OTHER THAN PROPERTY TAXES MAY BE INCLUDED ON A TAX NOTICE; AMENDING SECTION 63-1013, IDAHO CODE, TO REVISE PROCEDURES REGARDING WARRANTS OF DISTRAINT; AMENDING SECTION 63-1311, IDAHO CODE, TO PROVIDE WHEN CHARGES, OTHER THAN PROPERTY TAXES, MAY BE PLACED ON TAX NOTICES; AMENDING CHAPTER 13, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-1311A, IDAHO CODE, TO PROVIDE FOR ADVERTISEMENT OF AND HEARINGS ON FEE INCREASES OF TAXING DISTRICTS; AMENDING SECTION 63-1607, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR; AMENDING SECTION 63-1706, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AMENDING SECTION 63-2604, IDAHO CODE, TO PROVIDE CORRECT CITATIONS; AMENDING SECTION 63-3638, IDAHO CODE, TO PROVIDE A CORRECT TERM; AMENDING SECTION 39-7208, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AND DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND EFFECTIVE DATES.

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

SECTION 1. 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 63-812, Idaho Code.

(2) If two (2) or more fire protection districts consolidate into one (1) district, the provisions of section 63-802A, Idaho Code, shall apply to the consolidated district's budget request as if the former district which, in the year of the consolidation, has the higher levy subject to the limitations of section 63-2220A802, 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 63-802(1)(a) e, Idaho Code. 802 802-a

SECTION 2. 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 in any one (1) year 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 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 which levy shall not exceed twenty hundredths percent (.20%) of market value for assessment purposes in any one (1) year upon 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 section 63-804, Idaho Code. Such taxes shall be collected as provided by section 63-812, Idaho Code, and remitted to the treasurer of the district as provided by section 63-1202, Idaho Code.

SECTION 3. 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 property 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 property 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 property 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 property tax base for the current expense fund. ~~802~~ Allowable ad valorem property 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 63-805, Idaho Code.

(3) Additional revenues, other than those derived from ad-valorem property 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 revenue 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 4. 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; ~~802(i)(e)~~ 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 5. 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 Program When District Boundaries are 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. ~~802~~ 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. ~~802~~

SECTION 6. That Section 33-2710, Idaho Code, be, and the same is hereby amended to read as follows:

33-2710. DETERMINATION OF THE ~~AD-VALOREM~~ PROPERTY PORTION OF THE BUDGET FOR CONSOLIDATED LIBRARIES -- DISTRICT AND DISTRICT -- DISTRICT AND CITY. (1) When two (2) district libraries have agreed to consolidate, the ad-valorem property tax portion of the new consolidated district's first budget will be determined in the following manner.

The ad-valorem property tax portion of each district's most recent annual certified budget will be added together. The resulting figure will be considered the dollar amount of ad-valorem property taxes on which to base the first annual budget for the new consolidated district. The provisions of section ~~63-2220~~802, 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 ad-valorem property tax portion of the

new consolidated district's first annual budget will be determined in the following manner.

The city library budget figure 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 budget figure and the ad-valorem property tax portion of the public library district's most recent annual certified budget will be added together. The resulting figure will be considered the dollar amount of ad-valorem property taxes on which to base the first annual budget for the new consolidated district. The provisions of section 63-~~2220~~802, 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 property 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 7. 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 63-802, 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 8. 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 val-

uation of such taxable property as shown on the base assessment 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 section 63-803, 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~~7~~, and 63-1313 ~~802~~, 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 63-208, Idaho Code.

SECTION 9. That Section 58-1414A, Idaho Code, be, and the same is hereby amended 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 property 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~~903, 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 10. 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 63-113, Idaho Code, and to read as follows:

63-113. 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.

SECTION 11. That Section 63-201, Idaho Code, be, and the same is hereby amended to read as follows:

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) "Barge" 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. For the purposes of payment and collection of property taxes pursuant to chapter 9, title 63, Idaho Code, collection of delinquency pursuant to chapter 10, title 63, Idaho Code, and seizure and sale of personal property for taxes pursuant to chapter 11, title 63, Idaho Code, personal property includes manufactured homes not declared as real property pursuant to section 63-304, Idaho Code.

(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 ser-

vice 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.

SECTION 12. That Section 63-215, Idaho Code, be, and the same is hereby amended to read as follows:

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. In the case of fire protection districts, the board of county commissioners approving the boundaries shall be responsible for delivering to the assessor and recorder the map and legal description of the amended district boundaries.

(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 various 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.

SECTION 13. That Chapter 3, 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 63-301A, Idaho Code, and to read as follows:

63-301A. NEW CONSTRUCTION ROLL. (1) The county assessor shall prepare a new construction roll, which shall be in addition to the 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 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 14. That Section 63-314, Idaho Code, be, and the same is hereby amended to read as follows:

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 taxable 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 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 value for assessment purposes 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.

(23) 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.

(34) 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.

(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.

SECTION 15. That Section 63-317, Idaho Code, be, and the same is hereby amended to read as follows:

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 sections 63-602G and 63-602X, 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, ~~notwithstanding~~ notwithstanding 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 16. That Section 63-404, Idaho Code, be, and the same is hereby amended to read as follows:

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 suffi-

cient 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~~ surface transportation board, federal communications commission, federal energy regulatory commission and the securities exchange commission or their successor agencies.

(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.

SECTION 17. That Section 63-405, Idaho Code, be, and the same is hereby amended to read as follows:

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.

(3) If the value of property of any company assessable under this section is of such a nature that it cannot reasonably be apportioned on the basis of rail, wire, pipeline mileage, such as microwave and radio relay stations, the tax commission may adopt such other method or basis of apportionment to the county and taxing districts in which the property is situate as may be feasible and proper.

SECTION 18. That Section 63-501A, Idaho Code, be, and the same is hereby amended to read as follows:

63-501A. TAXPAYER'S RIGHT TO APPEAL. (1) Taxpayers may file an appeal of an assessment to with the county board of equalization. The taxpayer may file An appeal shall be made in writing on a form provided by the county board of equalization or assessor and must identify the taxpayer, the property which is the subject of the appeal and the reason for the appeal. An appeal of an assessment listed on the real--or--personal property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of June. The taxpayer may file aAn appeal of an assessment listed on the subsequent property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of November. The taxpayer may file aAn appeal of an assessment listed on the missed property roll must be filed on or before the end of the county's normal business hours on the day of the January meeting of the board of equalization adjourns on the day of its January meeting. The board of equalization may consider an appeal only if it is timely filed.

(2) Appeals from the county board of equalization shall be made pursuant to section 63-511, Idaho Code.

SECTION 19. That Section 63-509, Idaho Code, be, and the same is hereby amended to read as follows:

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, 63-602AA, 63-602X, 63-602BB and 63-602CC, 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.

SECTION 20. That Section 63-602X, Idaho Code, be, and the same is hereby amended to read as follows:

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 the years in which the real or personal property has been damaged or destroyed and has not been replaced. Claimants seeking exemption under this section must apply to the county board of equalization, in accordance with the procedure prescribed in section 63-711, Idaho Code The application must be in writing on a form provided by the county and must identify the claimant, the date of the casualty loss, and the property that has been damaged or destroyed. The application must be filed on or before the end of the county's normal business hours on the fourth Monday of June of the year in which the casualty loss occurred. If an exemption is granted, the value of the property taxes that subject to taxation 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 calculated by dividing the number of days in the year prior to the casualty loss by the number of days in the year and multiplying the resulting quotient by the market value of the property less any applicable exemptions, as of 12:01 a.m. on the first day of January of the tax year.

(2) The county board of equalization may sit and shall decide whether to grant such claim for exemption at any time within the limits allowed in this section, and on or before the second Monday of July of the year in which the claim is filed. If granted, either in whole or in part, the county board of equalization 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~~ property roll.

SECTION 21. That Chapter 6, 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 63-602BB, Idaho Code, and to read as follows:

63-602BB. 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 property 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 22. That Chapter 6, 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 63-602CC, Idaho Code, and to read as follows:

63-602CC. PROPERTY EXEMPT FROM TAXATION -- QUALIFIED EQUIPMENT UTILIZING POSTCONSUMER WASTE OR POSTINDUSTRIAL WASTE. (1) The following property is exempt from taxation: qualified equipment utilizing postconsumer waste or postindustrial waste used to manufacture products. This exemption shall be granted only if the list of all taxable personal property as described in section 63-302, Idaho Code, is sub-

mitted by the property owner or the agent thereof to the assessor not later than March 15 of each year. Additionally, the requirements of subsection (3) of this section shall be met.

(2) As used in this section:

(a) "Postconsumer waste" or "postindustrial waste" means only those products and materials consisting of metals, paper, glass or plastic generated by businesses or consumers which have served their intended end use or usefulness and either have been or would normally be disposed of as solid waste except for the fact that they are separated from solid waste for purposes of collection, recycling or reuse. "Postconsumer waste" or "postindustrial waste" shall not include radioactive waste, as defined in subsection (4)(g) of section 63-3029D, Idaho Code, or hazardous waste, as defined in chapter 44, title 39, Idaho Code.

(b) "Product" means any material resulting from a manufacturing process and offered for sale to the private or public sector which is composed of at least fifty percent (50%) postconsumer waste or postindustrial waste. "Product" does not include any shredded material unless such shredded material is incorporated directly into the manufacturing process.

(c) "Qualified equipment" means machinery or equipment located within Idaho which has at least an estimated three (3) years useful life and at least ninety percent (90%) of the total actual production from the equipment during the previous calendar year utilized postconsumer waste or postindustrial waste. "Qualified equipment" shall not include any machinery or equipment which is used for the collection, as defined herein, of postconsumer waste or postindustrial waste. As used in this section "collection" means:

- (i) The acquisition of materials from businesses or the general public through purchase or donation, including the organization of systems for such acquisitions;
- (ii) The preparation of materials for over-the-road transportation through cleaning, densification by shredding, baling, or any other method, or coalescence, including the organization of systems for such preparation; or
- (iii) The transportation of postconsumer waste or postindustrial waste between separate geographical locations, including the movement of materials around the manufacturing site.

(3) On the list of taxable personal property required by subsection (1) of this section, the property owner, or agent thereof, shall identify all qualified equipment, and all machinery and equipment that does not meet the definitions of qualified equipment.

The property owner, or agent thereof, shall also report use of all qualified equipment, on forms prescribed by the state tax commission.

(4) The county assessor may request additional information of the company to verify the basis of the exemption claimed in this section.

(5) The legislature declares that this exemption is necessary and just.

SECTION 23. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed a claim under the provisions of this chapter sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year in which the claim was filed a claimant must own be an owner of 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. "Household" includes persons described in subsection (9)(b) of this section.

(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, 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, worker'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 in 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.

(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 or who is a person entitled to file a claim under section 63-702, Idaho Code. "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~~ computed on the value of the claimant's 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 convincing 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 occu-

pied 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 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.

SECTION 24. That Section 63-702, Idaho Code, be, and the same is hereby amended to read as follows:

63-702. CLAIM IS PERSONAL -- EXCEPTIONS. (1) The right to file a claim under the provisions of this chapter sections 63-701 through 63-710, Idaho Code, 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~~ 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) Shall be deemed the owner of the property in any year after the year of the death of the spouse.

SECTION 25. That Section 63-703, Idaho Code, be, and the same is hereby amended to read as follows:

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 sections 63-701 through 63-710, Idaho Code.

(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 sections 63-701 through 63-710, Idaho Code, 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.

SECTION 26. That Section 63-704, Idaho Code, be, and the same is hereby amended to read as follows:

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 sections 63-701 through 63-710, Idaho Code, 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 sections 63-701 through 63-710, Idaho Code, 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 sections 63-701 through 63-710, Idaho Code, 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.

SECTION 27. That Section 63-705, Idaho Code, be, and the same is hereby amended to read as follows:

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~~ 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 (\$8900), in the 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 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 fifty dollars (\$1050), 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.

SECTION 28. That Section 63-706, Idaho Code, be, and the same is hereby amended to read as follows:

63-706. TIME REQUIREMENTS FOR FILING CLAIM. (1) Any claim for property tax reduction to be granted under the provisions of this chapter sections 63-701 through 63-710, Idaho Code, 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.

SECTION 29. That Section 63-708, Idaho Code, be, and the same is hereby amended to read as follows:

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 sections 63-701 through 63-710, Idaho Code, 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 sections 63-701 through 63-710, Idaho Code, and such sections shall, for this purpose, be considered part of this chapter sections 63-701 through 63-710, Idaho Code. 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 sections 63-701 through 63-710, Idaho Code, 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 sections 63-701 through 63-710, Idaho Code.

SECTION 30. That Section 63-709, Idaho Code, be, and the same is hereby amended to read as follows:

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 sections 63-701 through

63-710, Idaho Code, 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.

SECTION 31. That Section 63-711, Idaho Code, be, and the same is hereby amended to read as follows:

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 specified 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.

(54) 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.

(65) The county commissioners shall order all necessary adjustments to be made in the property tax records of the various county officers and taxing districts.

(76) 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 32. That Section 63-802, Idaho Code, be, and the same is hereby amended to read as follows:

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 for an amount of property tax revenues to finance the ad-valorem portion of its annual budget that exceeds the greater of:

- (a) The dollar amount of ad-valorem property 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 or change of land use classification 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 shown on the new construction roll compiled pursuant to section 63-301A, Idaho Code;~~ and by the value of annexation during the previous calendar year, as certified by the county assessor; or
 - (b) The dollar amount of ad-valorem property 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 property 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 property tax revenues to finance an annual budget does not include revenues from ~~non-ad-valorem nonproperty~~ 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 section 63-317, Idaho Code, for the preceding tax year ~~and does not include plant-facility-reserve-fund levies or school-emergency-fund-levies.~~

SECTION 33. That Section 63-902, Idaho Code, be, and the same is hereby amended to read as follows:

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 numbers 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. Prop-

erty 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.

(10) 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:

(a) Has the authority by law to place a lien on property; and

(b) Has the authority to certify such charge to the auditor; and

(c) Is required to collect such charge in the same manner provided by law for the collection of real and personal property taxes.

SECTION 34. That Section 63-1013, Idaho Code, be, and the same is hereby amended to read as follows:

63-1013. WARRANTS OF DISTRRAINT -- 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 sheriff 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.

SECTION 35. That Section 63-1311, Idaho Code, be, and the same is hereby amended to read as follows:

63-1311. 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 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.

(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 section 63-902, Idaho Code.

SECTION 36. That Chapter 13, 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 63-1311A, Idaho Code, and to read as follows:

63-1311A. ADVERTISEMENT OF AND HEARING ON FEE INCREASES. No taxing district may make a decision approving a fee increase that exceeds one hundred five per cent (105%) of the amount of the fee last collected or a decision imposing a new fee, unless it first holds a hearing upon such proposed fee increase or fee imposition at a regular or special meeting of the district's governing body and after it gives public notice of such hearing in the manner provided in this section. Any taxing district that is required to hold a hearing and give public notice of the hearing as provided in this section, and which fails to do so, shall have the validity of all or a portion of the fee increase that it collects be voidable.

The taxing district shall give public notice of its intent to make a decision on a proposed fee increase, that exceeds one hundred five per cent (105%) of the amount of fees last collected prior to such decision, or a decision to impose a new fee by giving public notice either by advertising in at least one (1) newspaper as defined in sec-

tion 60-106, Idaho Code, or by holding three (3) public meetings in three (3) different locations in the district or by a single mailing notice to all district residents, providing that the same information is given and providing the meeting shall be held not less than seven (7) days after mailing of the notice. An advertisement used to satisfy the requirements of this section shall be run once each week for the two (2) weeks preceding the week during which the hearing required by this section will be held. The advertisement shall state that the taxing district will meet on a certain day, time and place fixed in the advertisement, for the purpose of hearing public comments regarding any proposed fee increase beyond the limits prescribed by this section, or imposition of a new fee and to explain the reasons for such action.

SECTION 37. 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. 802 Any extension of time during which the credit may be allowed shall require the approval of the local impact committee.

SECTION 38. 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 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, 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 become the direct liability and responsibility of the landowner at the time of severance. At the time of severance the yield taxes become a perpetual lien on the 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 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 late charges and interest in the amount provided in sections 63-201 and 63-1001 or 63-~~1302~~904, Idaho Code, calculated from the following January 1. Yield tax amounts shall be supplied by the county assessor to the county 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 late charges and interest in the amount provided in sections 63-201 and 63-1001 or 63-~~1302~~904, Idaho Code, calculated from the following July 1. 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 late charges or interest thereon shall be apportioned among the several county funds and taxing districts as provided for the apportionment of 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 law and rules.

SECTION 39. That Section 63-2604, Idaho Code, be, and the same is hereby amended to read as follows:

63-2604. COUNTY PROPERTY TAX RELIEF FUND. (1) Any resort county which implements a sales or use tax pursuant to this chapter shall create and establish in the office of the county treasurer a county property tax relief fund into which shall be placed a minimum of fifty percent (50%) of any revenue received from the county sales or use tax. On or before the Tuesday following the first Monday in September of each year, the county treasurer shall submit to the board of county commissioners and the state tax commission a statement showing the balance in the county property tax relief fund as of September 1 of that year.

(2) No later than October 10, the balance in the county property tax relief fund, as of September 1, shall be distributed to the county and any cities within the county entitled to receive revenues from the county sales or use tax. Moneys distributed shall be in an amount proportional to the percentage the previous year's ad-valorem property tax portion of the budget subject to the limitations of section 63-2220A802, Idaho Code, for the county and each city bears to the previous year's total ad-valorem property tax portion of the budget subject to the limitations of section 63-2220A802, Idaho Code, for the county and all cities in the county.

(3) The dollar amount subject to the limitations of section 63-2220A802, Idaho Code, shall be the sum of the dollar amount of the portion of ad-valorem property taxes certified to the board of county commissioners under section 63-624A804, Idaho Code, and subject to the limitations of section 63-2220A802, Idaho Code, as if no county property tax relief fund moneys were to be distributed, and the dollar amount to be received from the property tax relief fund. The division of the resulting sum by the value subject to taxation is a quotient that shall not exceed the levy limits prescribed by Idaho Code. If these limitations are exceeded, the board of county commissioners shall reduce any applicable budget request to comply with this section. The levy set to fund this portion of the budget shall be calculated based on the budget subject to the limitations of section 63-2220A802, Idaho Code, less the money to be received from the county property tax relief fund.

SECTION 40. 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 autho-

rized 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 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 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 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 and finance association, as soon as possible, from any moneys available therefor and in excess of the amounts which the association determines will keep it self-supporting.

(2) An amount equal to the sum required by the provisions of section 63-709, Idaho Code, is continuously appropriated and shall be paid as provided by section 63-709, 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 distributed 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 63-602W, 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 63-602W, 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) ~~Each year t~~The county commissioners in each county shall take the tax charge, applicable to the ~~first--real--and--personal~~ current 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~~ the current 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 property 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 41. That Section 39-7208, Idaho Code, be, and the same is hereby amended to read as follows:

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~~ property exemptions provided under section 63-105##602BB, Idaho Code.

SECTION 42. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 through 40 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1997.

An emergency existing therefor, which emergency is hereby declared to exist, Section 41 of this act shall be in full force and effect on and after February 15, 1997.

Approved March 15, 1997.

CHAPTER 118
(H.B. No. 365)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 1998; 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 Insurance 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. INSURANCE REGULATION:				
FROM:				
Self-Governing Operating Fund	\$2,424,400	\$1,511,100	\$53,500	\$3,989,000
Federal Grant Fund	94,800	47,000		141,800
Miscellaneous Revenue Fund	<u>50,000</u>			<u>50,000</u>
TOTAL	\$2,569,200	\$1,558,100	\$53,500	\$4,180,800
B. STATE FIRE MARSHAL:				
FROM:				
Self-Governing State Fire Marshal Fund	\$ 430,500	\$ 242,600	\$20,500	\$ 693,600
GRAND TOTAL	\$2,999,700	\$1,800,700	\$74,000	\$4,874,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Insurance is authorized no more than sixty-four and one-half (64.5) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 15, 1997.

CHAPTER 119
(H.B. No. 366)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 1998; 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, 1997, through June 30, 1998:

	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	<u>50,000</u>			<u>50,000</u>
TOTAL	<u>\$2,104,800</u>	<u>\$589,900</u>	<u>\$46,300</u>	<u>\$2,741,000</u>

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, 1997, through June 30, 1998, 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 15, 1997.

CHAPTER 120
(H.B. No. 75, As Amended)

AN ACT

RELATING TO THE IDAHO DNA AND GENETIC MARKER DATABASE ACT OF 1996; AMENDING TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 55, TITLE 19, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND A STATEMENT OF PURPOSE, TO PROVIDE DEFINITIONS, TO PROVIDE THAT THE BUREAU OF FORENSIC SERVICES SHALL BE RESPONSIBLE FOR MANAGING DNA PROGRAMS, TO PROVIDE FOR IMPLEMENTATION OF THE CHAPTER AND FOR PROMULGATION OF RULES, TO PROVIDE FOR USE OF THE STATE DATABANK AND DATABASE AND DUTIES OF THE BUREAU OF FORENSIC SERVICES, TO PROVIDE FOR SCOPE OF LAW, THE OFFENDERS SUBJECT TO SAMPLE COLLECTION AND FOR EARLY COLLECTION OF SAMPLES, TO PROVIDE THE RESPONSIBILITY FOR SAMPLE COLLECTION, THE TIMING OF SAMPLE COLLECTION AND THE SITE FOR SAMPLE COLLECTION, TO PROVIDE AUTHORITY FOR ADDITIONAL SAMPLES, TO PROVIDE FOR GENETIC TESTING OF BLOOD SAMPLES GIVEN FOR ANOTHER PURPOSE, TO PROVIDE FOR APPLICABILITY OF THE CHAPTER, TO PROVIDE FOR COLLECTION AND FORWARDING OF SAMPLES, LIABILITY AND USE OF FORCE, TO PROVIDE FOR A PENALTY FOR REFUSAL TO COMPLY WITH THE CHAPTER, TO PROVIDE FOR EXPUNGEMENT OF INFORMATION, TO PROVIDE FOR LIMITATIONS ON THE DISCLOSURE OF INFORMATION, TO PROVIDE FOR DISSEMINATION OF DATA, INFORMATION, AND SAMPLES FOR FORENSIC LABORATORY ANALYSIS, TO PROVIDE FOR DISPOSAL OF SAMPLES, TO PROVIDE OPERATION WITH EXISTING LAW AND AUTHORITY OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE SEVERABILITY; AND AMENDING SECTION 9-340, IDAHO CODE, TO EXEMPT FROM DISCLOSURE RECORDS MAINTAINED AS PROVIDED IN CHAPTER 55, TITLE 19, IDAHO CODE.

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

SECTION 1. That Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 55, Title 19, Idaho Code, and to read as follows:

CHAPTER 55

THE IDAHO DNA AND GENETIC MARKER DATABASE ACT OF 1996

19-5501. LEGISLATIVE FINDINGS -- STATEMENT OF PURPOSE. The legislature finds that DNA (deoxyribonucleic acid) identification analysis is a useful law enforcement tool for identifying and prosecuting sexual and violent offenders. The purpose of this act is to assist federal, state and local criminal justice and law enforcement agencies within and outside the state in the detection and prosecution of individuals responsible for sex and other violent crimes, as well as in the exclusion of suspects who are being investigated for such crimes.

19-5502. DEFINITIONS. (1) "CODIS" means the federal bureau of investigation's combined DNA index system that allows the storage and exchange of DNA records submitted by state and local forensic laboratories.

(2) "Director" means the director of the Idaho department of law enforcement.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA profile" means the list of one (1) or more genetic types determined for an individual based on variations in DNA sequence.

(5) "DNA record" means DNA information stored in the statewide DNA database system of the bureau of forensic services or CODIS and includes information commonly referred to as a DNA profile.

(6) "DNA sample" means a body fluid or tissue sample provided by any person convicted of a qualifying sex crime or violent crime or any body fluid or tissue sample submitted to the statewide DNA database system for analysis pursuant to a criminal investigation or missing person investigation.

(7) "Forensic laboratory" means the Idaho bureau of forensic services of the Idaho department of law enforcement.

(8) "Law enforcement purpose" means to assist federal, state or local criminal justice and law enforcement agencies within and outside the state of Idaho in identification or prosecution of sex crimes, violent crimes or other crimes and the identification and location of missing and unidentified persons.

(9) "Statewide DNA databank" means the state repository of DNA samples collected under this chapter.

(10) "Statewide DNA database system" means the DNA record system administered by the Idaho bureau of forensic services.

19-5503. RESPONSIBILITY FOR MANAGING DNA PROGRAMS -- BUREAU OF FORENSIC SERVICES. The department of law enforcement through the bureau of forensic services shall be responsible for the policy management and administration of the state's database and databank identification program. The bureau of forensic services shall be responsible for liaison with the FBI regarding the state's participation in

the CODIS program.

19-5504. IMPLEMENTATION OF THE CHAPTER -- RULES. The Idaho department of law enforcement, in consultation with the Idaho attorney general's office, the Idaho department of correction, the Idaho chiefs of police association, the Idaho state sheriff's association, and the Idaho prosecuting attorney's association, shall adopt policies, procedures and rules for implementation of this chapter, and ensure that DNA samples are collected from qualifying offenders in a timely manner. The director may designate additional persons and organizations to provide consultation in implementing the provisions of this chapter.

19-5505. USE OF THE STATE DATABANK AND DATABASE -- DUTIES OF BUREAU OF FORENSIC SERVICES. (1) The bureau of forensic services shall perform or contract for DNA analysis and other genetic typing analysis for law enforcement purposes.

(2) The bureau of forensic services shall serve as a repository for DNA samples collected and shall analyze samples, or contract for analysis, and shall store, compile, correlate, maintain and use DNA and genetic marker profiles and records related to:

- (a) Forensic casework;
- (b) Offenders required to provide samples under this chapter;
- (c) The identification and location of missing persons; and
- (d) Anonymous DNA records used for research or quality control.

(3) A match between evidence DNA samples from a criminal investigation and DNA samples from a state or federal database may be used to sustain probable cause for the arrest of a suspect upon application for a warrant.

(4) The genetic markers may also be used at trial as evidence, provided that the evidence is otherwise admissible at trial. The genetic markers may also be used in developing statistical calculations of populations frequencies.

19-5506. SCOPE OF LAW -- OFFENDERS SUBJECT TO SAMPLE COLLECTION -- EARLY COLLECTION OF SAMPLES. (1) Any person, including any juvenile tried as an adult, who is convicted of, or pleads guilty to, any of the following crimes, regardless of the form of judgment or withheld judgment, and regardless of the sentence imposed or disposition rendered, shall be required to provide to the department of law enforcement, a DNA sample and a right thumbprint impression:

- (a) Aggravated arson (section 18-805, Idaho Code);
- (b) Aggravated assault (section 18-905, Idaho Code);
- (c) Aggravated battery (section 18-907, Idaho Code);
- (d) Assault with the intent to commit a serious felony (section 18-909, Idaho Code);
- (e) Battery with the intent to commit a serious felony (section 18-911, Idaho Code);
- (f) Injury to a child (section 18-1501(1), Idaho Code);
- (g) Sexual abuse of a child under the age of sixteen years (section 18-1506, Idaho Code);
- (h) Possession of sexually exploitive material for other than a commercial purpose (section 18-1507A, Idaho Code);

- (i) Lewd conduct with minor child under sixteen (section 18-1508, Idaho Code);
- (j) Sexual battery of a minor child sixteen or seventeen years of age (section 18-1508A, Idaho Code);
- (k) Murder, any degree (sections 18-4001 and 18-4003, Idaho Code);
- (l) Manslaughter (section 18-4006(1) or (2), Idaho Code);
- (m) Kidnapping, any degree (sections 18-4501 and 18-4502, Idaho Code);
- (n) Mayhem (section 18-5001, Idaho Code);
- (o) Rape (section 18-6101, Idaho Code);
- (p) Robbery (section 18-6501, Idaho Code);
- (q) Incest (section 18-6602, Idaho Code);
- (r) Crime against nature (section 18-6605, Idaho Code);
- (s) Forcible sexual penetration (section 18-6608, Idaho Code);
- (t) Racketeering (section 18-7804, Idaho Code);
- (u) Transfer of body fluid which may contain the HIV virus (section 39-608, Idaho Code);
- (v) Failure to register as sex offender (sections 18-8304 and 18-8308, Idaho Code).

(2) In addition to those crimes enumerated in subsection (1) of this section, any person, including any juvenile tried as an adult, who is convicted for an attempt to commit any of the following crimes, regardless of the form of judgment or withheld judgment, and regardless of the sentence imposed or disposition rendered, shall be required to provide to the department of law enforcement, a DNA sample and a right thumbprint impression:

- (a) Aggravated arson (section 18-805, Idaho Code);
- (b) Sexual abuse of a child under the age of sixteen years (section 18-1506, Idaho Code);
- (c) Injury to a child (section 18-1501(1), Idaho Code);
- (d) Lewd conduct with minor child under sixteen (section 18-1508, Idaho Code);
- (e) Sexual battery of a minor child sixteen or seventeen years of age (section 18-1508A, Idaho Code);
- (f) Murder, any degree (sections 18-4001 and 18-4003, Idaho Code);
- (g) Kidnapping, any degree (sections 18-4501 and 18-4502, Idaho Code);
- (h) Mayhem (section 18-5001, Idaho Code);
- (i) Rape (section 18-6101, Idaho Code);
- (j) Robbery (section 18-6501, Idaho Code);
- (k) Incest (section 18-6602, Idaho Code);
- (l) Crime against nature (section 18-6605, Idaho Code);
- (m) Forcible sexual penetration (section 18-6608, Idaho Code);
- (n) Transfer of body fluid which may contain the HIV virus (section 39-608, Idaho Code).

(3) This chapter's requirements for submission to tests and procedures for obtaining a DNA sample and thumbprint impression from the persons described above are mandatory and apply to those persons convicted of such crimes covered in this chapter prior to its effective date, and who, as a result of the offense, are incarcerated in a county jail facility or a penal facility or are under probation or

parole supervision after the effective date of this chapter.

(4) The collection of samples and impressions specified in this chapter are required regardless of whether the person previously has supplied a DNA sample to law enforcement agencies in any other jurisdiction.

(5) The requirements of this chapter are mandatory and apply regardless of whether a court advises a person that samples and impressions must be provided to the databank and database as a condition of probation or parole.

(6) Persons who have been sentenced to death, or life without the possibility of parole, or to any life or indeterminate term are not exempt from the requirements of this chapter.

19-5507. RESPONSIBILITY FOR SAMPLE COLLECTION -- TIMING OF SAMPLE COLLECTION -- SITE FOR SAMPLE COLLECTION. (1) A court shall order a DNA sample and thumbprint impression to be taken after conviction and before sentencing of any person upon application by the prosecuting attorney, the attorney general, or the department of law enforcement upon a showing that early collection of such samples will be in the best interest of justice. The DNA samples shall be collected in accordance with procedures established by the bureau of forensic services. The director may designate a state or county correctional facility for sample collection.

(2) Any person, including any juvenile tried as an adult, who comes within the terms of this chapter, and who is granted probation or who serves an entire term of confinement in a state or county facility, or who otherwise bypasses a prison inmate reception center shall, prior to physical release from custody, be required to provide a DNA sample and thumbprint impression at a department of law enforcement designated sample collection location. If the person is not incarcerated at the time of sentencing, the court shall order the person to report within ten (10) working days to the facilities designated for the collection of such specimens.

(3) The chief administrative officer of any state or local detention facility, jail or other facility shall cause a DNA sample and thumbprint impression to be collected from the person subject to this chapter during the intake process at the facility, or immediately thereafter at another facility designated for such collection, if DNA samples previously have not been taken pursuant to this chapter.

(4) The director of the department of correction shall cause a DNA sample and thumbprint impression to be collected from any person subject to the terms of this chapter who has been sentenced to serve a term of imprisonment in a state correctional institution and who has not had a complete set of DNA samples taken after conviction and before sentencing. The DNA sample and thumbprint impression shall be collected from the person during the intake process at the reception center designated by the director of the department of correction as soon as possible.

(5) Any person subject to the terms of this chapter who is serving a term of imprisonment or confinement, and who did not, for any reason, provide a DNA sample or thumbprint impression for analysis by the bureau of forensic services, shall submit to such tests as soon as practicable, but in any event prior to final discharge, parole, or

release from imprisonment or confinement. A person who was convicted prior to the effective date of this chapter is not exempt from these requirements.

(6) As a condition of probation or parole, any person subject to the terms of this chapter and who has not previously submitted a DNA sample and thumbprint impression, shall upon notice by a law enforcement agency or an agent of the department of correction, be required to provide a DNA sample and thumbprint impression if it has been determined that such sample and thumbprint impression are not in the possession of the bureau of forensic services. That person is required to have the sample and impression taken within ten (10) working days at the designated county or state facility.

(7) When the state accepts an offender from another state under any interstate compact, or under any other reciprocal agreement with any county, state or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing a DNA sample and thumbprint impression if the offender was convicted of an offense which would qualify as a crime described in section 19-5506, Idaho Code, if committed in this state, or if the person was convicted of an equivalent offense in any other jurisdiction. If the offender from another state is not confined, the samples and impression required by this chapter must be provided within ten (10) working days after the offender reports to the supervising agent or within ten (10) working days of notice to the offender, whichever occurs first. The person shall report to the department of law enforcement's designated sample collection facility or facilities to have the sample and impression taken. If the offender from another state is confined, he or she shall provide the DNA sample and thumbprint impression as soon as practicable after receipt in a state or county correctional facility or other facility, and, in any event, before completion of the person's term of imprisonment, if that person is to be discharged.

(8) Any inmate serving a term of incarceration for committing an offense listed in section 19-5506, Idaho Code, who is released on parole, furlough, or other release, and is returned to a state or local correctional institution for a violation of a condition of that release, and that inmate has not previously provided a DNA sample and thumbprint impression, shall provide a sample and impression upon returning to the state correctional institution.

19-5508. ADDITIONAL SAMPLES AUTHORIZED. Whenever the bureau of forensic services notifies the department of correction or other responsible agency that a DNA sample or thumbprint impression is not adequate for any reason, the department of correction or other custodial agency shall draw or take additional samples and impressions as necessary to satisfy the requirements of this chapter, and transmit such samples and impressions to the bureau of forensic services.

19-5509. GENETIC TESTING OF BLOOD SAMPLES GIVEN FOR ANOTHER PURPOSE. If a person has been convicted of a crime as provided by this chapter and has given a DNA sample or samples to law enforcement for any purpose, the bureau of forensic services is authorized to analyze such sample or samples for genetic markers, including DNA markers, and

including the genetic profiles from such samples in the state's convicted felon DNA databank and databases. This provision applies whether the DNA sample originally collected was from a sexual or violent offender pursuant to the databank and database program, and whether the crime committed predated the effective date of this chapter, or any amendments thereto. This provision does not relieve a person subject to the terms of this chapter from giving a DNA sample and thumbprint impression for the DNA databank and database.

19-5510. APPLICABILITY OF CHAPTER. Any person subject to the terms of this chapter who has not provided a DNA sample and thumbprint impression for any reason, including the person's release prior to the enactment of this chapter, an oversight or error, or because of the person's transfer from another jurisdiction shall give a DNA sample and thumbprint impression for inclusion in the state's DNA database and databank within ten (10) working days of such person being notified of this requirement by the department of law enforcement, the department of correction or an officer of the court. The samples and impressions shall be collected in a facility designated by the department of law enforcement.

19-5511. COLLECTION AND FORWARDING OF SAMPLES -- LIABILITY -- USE OF FORCE. (1) The director of the department of correction or the chief administrative officer of the detention facility, jail, other facility at which the DNA sample and thumbprint impression were collected shall forward the samples and impressions to the bureau of forensic services no later than ten (10) working days after the date of collection.

(2) The bureau of forensic services shall provide all specimen vials, thumbprint cards, mailing tubes, envelopes, labels and instructions for the collection of the samples and thumbprint impressions. The DNA samples and thumbprint impressions shall thereafter be forwarded to the bureau of forensic services for analysis of DNA and other genetic typing.

(3) The withdrawal of DNA samples shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist, clinical laboratory bioanalyst or trained phlebotomist may withdraw the DNA samples.

(4) The right thumbprint impression shall be taken on a form prescribed by the department of law enforcement.

(5) No person or governmental agency shall be subject to civil or criminal liability for withdrawing blood or obtaining thumbprint impressions absent a showing of reckless disregard for medically accepted practices or a showing of malice.

(6) Duly authorized law enforcement and correction personnel shall employ reasonable force in cases where an individual who is incarcerated refuses or resists submission to procedures for collecting a DNA sample or thumbprint impression authorized by this chapter, and no employee shall be subject to criminal or civil liability for the reasonable use of force absent a showing of malice.

19-5512. PENALTIES. Any person subject to the terms of this chap-

ter who fails to give a DNA sample or thumbprint impression, after a request by the bureau of forensic services, the department of correction, any law enforcement personnel, or any officer of the court, is guilty of a felony. The samples and impressions required by this chapter may be taken by the use of reasonable force once a person is imprisoned for failure to give the required sample.

19-5513. EXPUNGEMENT OF INFORMATION. (1) A person whose DNA profile has been included in the database and databank pursuant to this chapter may make a written request for expungement of materials from the database and databank on the grounds that the conviction upon which the authority for including the DNA profile was based has been reversed and the case dismissed.

(2) The person requesting expungement must send a copy of his request, with proof of service on all parties to the following: the trial court which entered the conviction or rendered disposition in the case; the bureau of forensic services; and the prosecuting attorney of the county in which he was convicted. The court has the discretion to grant or deny the request for expungement. A trial court's denial of a request for expungement is an order not subject to appeal.

(3) Except as provided below, the department of law enforcement shall expunge the DNA sample and all identifiable information in the database and databank relating to the subject of the conviction upon receipt of a court order which verifies that the applicant has made the necessary showing at a noticed hearing and which includes the following documents:

- (a) Written request for expungement pursuant to this section;
- (b) A certified copy of the court order reversing and dismissing the conviction;
- (c) Proof of written notice to the prosecuting attorney and the bureau of forensic services that such expungement is being sought; and
- (d) A court order finding that no retrial or appeal of the case is pending and verifying that at least sixty (60) days have passed since the defendant has notified the prosecuting attorney and the bureau of forensic services of the expungement request and that the court finds no reason, based on the interests of justice, to deny expungement.

(4) Upon order of the court, the department of law enforcement shall destroy the DNA sample relating to the subject of conviction, unless the department determines that the person has otherwise become obligated to submit to DNA sample and thumbprint impression as a result of a separate conviction subject to the terms of this chapter.

(5) The bureau of forensic services is not required to destroy an item of physical evidence obtained from the DNA sample if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed. Notwithstanding this subsection, no sample, physical evidence or identifiable information is affected by an order to set aside a conviction.

19-5514. LIMITATIONS ON DISCLOSURE OF INFORMATION. (1) All DNA profiles retained by the bureau of forensic services pursuant to this chapter shall be treated as confidential as provided by section

9-340(47), Idaho Code.

(2) The DNA and other genetic typing information shall be filed with the offender's file maintained by the department of law enforcement.

(3) The DNA and other genetic typing information shall not be included in the state summary criminal history information.

(4) The DNA and other genetic typing information, and thumbprint impressions, shall be released only to law enforcement agencies, including, but not limited to, parole officers of the department of correction, hearing officers of the parole authority, and prosecuting attorneys' offices, at the request of the agency, except as specified in this chapter. Dissemination of this information to law enforcement agencies and prosecuting attorneys' offices outside the state shall be done in conformity with the provisions of this chapter.

(5) Any person who, by virtue of employment or official position, or any person contracting to carry out any function under this chapter, including any officers, employees and agents of such contractor who has possession of or access to individual identifiable DNA information contained in the state DNA database or databank and who willfully discloses such information in any manner to any person or agency not entitled to receive it is guilty of a misdemeanor.

(6) Furnishing DNA or other genetic typing information or thumbprint comparison results to defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(7) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized databank system, or any of the bureau of forensic services' databases provided that the subject of the file is not identified and cannot be identified from the information disclosed. It is also not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding or in any other public record when the inclusion of the information in the public record is authorized by a court, statute or case law.

(8) The bureau of forensic services shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The department of law enforcement shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the bureau of forensic services by members of the relevant scientific community experienced in the use of DNA technology.

19-5515. DISSEMINATION OF DATA, INFORMATION, AND SAMPLES FOR FORENSIC LABORATORY ANALYSIS. (1) Nothing in this chapter shall prohibit the sharing or disseminating of population database information with the following:

- (a) Federal, state or local law enforcement agencies;
- (b) Forensic laboratories that serve federal, state and local law enforcement agencies approved by the bureau of forensic services;
- (c) A state's attorney general's office;
- (d) A prosecuting attorney's office; or
- (e) Any third party that the chief of the bureau of forensic services deems necessary to assist the bureau of forensic services with statistical analyses of the population database or to assist

in the recovery or identification of missing persons.

(2) Nothing in this chapter shall prohibit the sharing or dissemination of protocol and forensic DNA methods and quality control procedures with any of the parties identified in subsection (1) of this section.

(3) The state's DNA population database and databank may be made available to and searched by the FBI and any agency participating in CODIS.

(4) The bureau of forensic services may provide samples from the DNA samples collected pursuant to this chapter to public DNA laboratories for law enforcement purposes provided that the privacy provisions of this section are followed and each of the following conditions are met:

(a) The methodologies and procedures used by the public DNA laboratory for analysis are approved by the bureau of forensic services;

(b) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the bureau of forensic services;

(c) All provisions concerning privacy and security enumerated in this section are followed.

19-5516. DISPOSAL OF SAMPLES. The bureau of forensic services is authorized to have unused portions of samples or expired samples disposed of in the normal course of business and in an environmentally approved manner as long as such disposal method is designed to protect the identity and origin of samples from disclosure to third persons who are not part of law enforcement.

19-5517. OPERATION WITH EXISTING LAW -- AUTHORITY OF LAW ENFORCEMENT OFFICERS. Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store and use DNA or other genetic markers or thumbprint impressions for law enforcement purposes.

19-5518. 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. 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 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 or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any pre-litigation 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 confidential-

ity 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.

(44) 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.

(45) 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.

(47) Records of the department of law enforcement or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

Approved March 17, 1997.

CHAPTER 121
(H.B. No. 245)

AN ACT

RELATING TO EMERGENCY RESPONSE; AMENDING SECTION 39-7103, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-7104, IDAHO CODE, TO PROVIDE POWERS AND DUTIES OF THE MILITARY DIVISION; AMENDING SECTION 39-7105, IDAHO CODE, TO PROVIDE LOCAL RESPONSE AUTHORITIES' INTERACTION WITH THE MILITARY DIVISION; AMENDING SECTION 39-7106, IDAHO CODE, TO REVISE POWERS AND DUTIES OF LOCAL EMERGENCY RESPONSE AUTHORITIES; AMENDING SECTION 39-7108, IDAHO CODE, TO PROVIDE FOR NOTIFICATION OF RELEASE TO THE MILITARY DIVISION; AMENDING SECTION 39-7109, IDAHO CODE, TO PROVIDE FOR RIGHT TO CLAIM REIMBURSEMENT TO REST WITH THE MILITARY DIVISIONS; AMENDING SECTION 39-7110, IDAHO CODE, TO PROVIDE FOR AUTHORITY REGARDING DEFICIENCY WARRANTS TO REST WITH THE MILITARY DIVISION; AMENDING SECTION 39-7112, IDAHO CODE, TO PROVIDE AUTHORITY FOR COST RECOVERY AND CIVIL REMEDIES IN THE MILITARY DIVISION; AMENDING SECTION 39-7114, IDAHO CODE, TO PROVIDE AUTHORITY REGARDING PRIVATE EMERGENCY RESPONSE PLANS TO REST WITH THE MILITARY DIVISION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1002, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 10, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1019, IDAHO CODE, TO CREATE AN EMERGENCY RESPONSE COMMISSION IN THE OFFICE OF THE GOVERNOR.

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

SECTION 1. That Section 39-7103, Idaho Code, be, and the same is hereby amended to read as follows:

39-7103. DEFINITIONS. As used in this chapter:

(1) "~~Commission~~Military division" means the ~~state--emergency response-commission~~ military division of the office of the governor.

(2) "Emergency" means an abrupt release which in the reasonable judgment of the local emergency response authority, threatens immediate and irreparable harm to the environment or the health and safety of any individual and which requires immediate action for the containment or control of a hazardous substance.

(3) "Hazardous substance incident" means an emergency circumstance requiring a response by the state emergency response team or the local emergency response authority to a release of a hazardous substance. A hazardous substance incident may require containment or confinement or both, but does not include site cleanup or remediation efforts after the incident commander has determined the emergency has

ended.

(4) "Hazardous substance" means:

(a) Any "hazardous substance" within the scope of section 101(14) of the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 U.S.C. 9601(14);

(b) Any hazardous material within the scope of section 104 of the federal hazardous materials transportation act, 49 U.S.C. 1803, and the federal department of transportation regulations promulgated pursuant thereto; and

(c) Any extremely hazardous substance within the scope of section 302 of the federal emergency planning and community right-to-know act, 42 U.S.C. 11002.

(5) "Incident commander" is the person in charge of all responders to a hazardous substance incident and who is identified in the Idaho hazardous materials emergency incident command and response plan or the private emergency response plan.

(6) "Local emergency response authority" means those persons designated under section 39-7105, Idaho Code, by the city, county, or the commission military division to be first responders to hazardous substance incidents.

(7) "Person" means any individual, public or private corporation, partnership, joint venture, association, firm, trust, estate, the United States or any department, institution, or agency thereof, the state or any department, institution, or agency thereof, any municipal corporation, county, city, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(8) "Private emergency response plan" means a plan designed to respond to emergency releases of hazardous substances at a specific facility or under a specific set of conditions.

(9) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, dumping or disposing of a hazardous substance into the environment. "Release" does not include any discharge of a hazardous substance into the environment which is authorized by limits and conditions in a federal or state permit relating to the protection of public health or the environment so long as the permitted activity from which the release occurs is in compliance with applicable limits and conditions of the permit.

(10) "State emergency response team" means one (1) of the state emergency response teams authorized by the commission military division to respond to hazardous substance incidents.

SECTION 2. That Section 39-7104, Idaho Code, be, and the same is hereby amended to read as follows:

39-7104. ~~EMERGENCY--RESPONSE--COMMISSION~~ MILITARY DIVISION -- POWERS AND DUTIES. (1) ~~There--is--hereby--authorized--an--emergency response commission in the office of the governor;--The--commission shall--consist--of--the--following--state--and--local--officials;--industry representatives;--or--their--designees;--the--adjutant--general--of--the--Idaho national guard;--the--director--of--the--department--of--health--and--welfare;--the--state--fire--marshal;--the--director--of--the--department--of--law--enforcement;--the--director--of--the--Idaho--transportation--department;--the--direc-~~

tor of the department of agriculture; one (1) member representing Idaho cities; one (1) member of an organization representing farmers or ranchers; one (1) member representing Idaho counties; one (1) member representing hazardous waste or materials transportation industry; one (1) member representing a user of hazardous materials; one (1) member representing the Idaho state fire chief's association; one (1) member representing the Idaho county sheriff's association; one (1) member of the Idaho police chief's association; and one (1) member at large representing the citizens of the state of Idaho. The last nine (9) members shall be appointed by the governor to serve staggered three (3) year terms. The state coordinator of disaster services shall be an ex officio member of the commission. All members shall serve without compensation, except that members who are not state officers or employees shall be compensated as provided in section 59-509(g), Idaho Code. The governor shall appoint a chairman from the appointees. The attorney general shall provide legal counsel to the commission.

(2) The commission military division shall implement the provisions of this chapter and direct the activities of its staff and, in so doing, the commission military division may:

(a) Create a staff bureau of hazardous materials and, appoint a chief of that staff, with the concurrence of the governor, who shall be exempt from the requirements of the merit system, chapter 53, title 67, Idaho Code. In accordance with the laws of the state, the chief of the commission's staff may hire, fix the compensation, and prescribe the powers and duties of such other individuals, including consultants, emergency teams and committees, as may be necessary to carry out the provisions of this chapter.

(b) Create and implement state emergency response teams that have appropriately trained personnel and necessary equipment to respond to hazardous substance incidents. The commission military division shall enter into a written agreement with each entity or person providing equipment or services to a designated emergency response team. The teams shall be available and may respond to hazardous substance incidents at the direction of the commission military division or its designee or local incident commander.

(c) Contract with persons to meet state emergency response needs for the teams and response authorities.

(d) Advise, consult and cooperate with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments and other persons concerned with emergency response and matters relating to and arising out of hazardous substance incidents.

(e) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with state emergency response teams, local emergency response authorities and other interested persons.

(f) Collect and disseminate information relating to emergency response to hazardous substance incidents.

(g) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, made to the state for emergency response activities provided for in this chapter.

(h) Submit an annual report prior to February 1 to the governor and to the legislature concerning emergency response to hazardous

substance incidents.

(i) Prepare, coordinate, implement and update a statewide hazardous materials incident command and response plan that coordinates state and local emergency response authorities to respond to hazardous substance incidents within the state for approval by the legislature. The plan shall address radiation incidents. The Idaho hazardous materials incident command and response plan shall be consistent with and a part of the Idaho state disaster plan provided in section 46-1006, Idaho Code, after legislative approval.

(32) The commission military division shall have the powers and duties of a state emergency response commission under the federal emergency planning and community right-to-know act, 42 U.S.C. section 11001 et seq.; ~~except that the Idaho bureau of disaster services shall oversee the creation, annual local review, exercise and revision of county plans for hazardous substance incident response.~~

(43) The commission military division shall promulgate rules and procedures which shall govern reimbursement of claims pursuant to this chapter.

(54) All state agencies and institutions will cooperate and provide staff assistance to the commission military division in carrying out its duties under this chapter.

SECTION 3. That Section 39-7105, Idaho Code, be, and the same is hereby amended to read as follows:

39-7105. LOCAL EMERGENCY RESPONSE AUTHORITIES -- DESIGNATION. (1) It is the purpose of the provisions of this section to provide for the designation of local emergency response authorities for hazardous substance incidents.

(2) Cities and counties shall designate the local emergency response authorities for hazardous substance incidents that occur within their respective jurisdictions. Cities and counties are encouraged to appoint a response authority whose members will become trained in hazardous substance incident response.

(a) The governing body of every city shall designate by ordinance or resolution a local emergency response authority for hazardous substance incidents occurring within the corporate limits of such city. A city may designate the county as its emergency response authority and participate in the county plan for hazardous substance incident response, and shall notify the county of that designation in writing.

(b) The board of county commissioners of every county in the state shall designate by ordinance or resolution a local emergency response authority for hazardous substance incidents occurring within the unincorporated area of such county.

(c) The governing body of every city and every board of county commissioners shall notify the commission military division and Idaho emergency medical services communications center of its designated local emergency response authority. Such notification shall be in writing and shall occur as soon as practicable, and, in any event, no later than sixty (60) calendar days after this chapter becomes effective. Thereafter, any changes in such designations shall be communicated to the commission military division

and Idaho emergency medical services communications center no later than ten (10) working days before such change becomes effective.

(d) If no local emergency response authority having the ability to respond to a hazardous substance incident exists within a city or county or if such a political subdivision is unable to obtain the services of an emergency response authority by way of a mutual aid agreement, contract or otherwise, such city or county may petition the commission military division to designate an emergency response authority to respond to hazardous substance incidents within the petitioning political subdivision's jurisdiction. The commission military division, in consultation with such political subdivision, may thereafter designate appropriate local emergency response authorities.

(3) If a hazardous substance incident occurs in an area in which no local emergency response authority has been designated, or if the Idaho state police division of the department of law enforcement has been designated as the local emergency response authority, the Idaho state police division shall be the local emergency response authority for such hazardous substance incident for the purposes of this section.

SECTION 4. That Section 39-7106, Idaho Code, be, and the same is hereby amended to read as follows:

39-7106. LOCAL EMERGENCY RESPONSE AUTHORITIES -- POWERS AND DUTIES. (1) Every local emergency response authority designated in or pursuant to this chapter will respond to a hazardous substance incident occurring within its jurisdiction in a fashion consistent with the Idaho hazardous materials emergency incident command and response plan except as provided in a private emergency response plan. The local emergency response authority will also respond to a hazardous substance incident which initially occurs within its jurisdiction but which spreads to another jurisdiction. If a hazardous substance incident occurs on a boundary between two (2) jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the incident will perform the initial emergency response.

(2) The incident commander shall declare the hazardous substance incident ended when the threat to public health and safety has ended and the threat to the environment has been minimized.

(3) Mutual aid agreements or contracts are encouraged among governmental entities, private parties, local emergency response authorities and the commission military division in order to safely respond to hazardous substance incidents. Further, mutual aid agreements are encouraged among governmental entities, local emergency response authorities and the commission military division with other similar entities in other states and Canada in order to ensure appropriate response to hazardous substance incidents.

(4) Any local emergency response authority designated in or pursuant to the provisions of section 39-7105, Idaho Code, may request the commission military division to provide assistance consistent with the Idaho hazardous materials emergency incident command and response

plan.

SECTION 5. That Section 39-7108, Idaho Code, be, and the same is hereby amended to read as follows:

39-7108. NOTIFICATION OF RELEASE IS REQUIRED. (1) Any person who has responsibility for reporting a release under the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 U.S.C. 9603, shall, as soon as practicable after he has knowledge of any such reportable release other than a permitted release or as exempted in section 39-7108(3), Idaho Code, notify the commission military division of such release.

(2) Any person who has responsibility for reporting a release under the federal emergency planning and community right-to-know act, 42 U.S.C. 11001 et seq., shall as soon as practicable after he has knowledge of any such reportable release other than a permitted release notify the commission military division of such release.

(3) Any facility having a release reportable under section 39-7108(1), Idaho Code, shall not be required to report the release to the commission military division if the following circumstances are met:

(a) Such release is not reportable under subsection (2) of section 39-7108, Idaho Code.

(b) The facility has an approved private emergency response plan that details how such spills shall be responded to and reported. This provision does not relieve the facility from any reporting required under other federal statutory, regulatory or other permit authorities.

(4) The commission military division shall immediately notify the division of environmental quality within the department of health and welfare of any release reported to the commission military division. Such reporting to the commission military division shall fulfill all state reporting requirements for the division of environmental quality.

(5) Any person who does not notify the commission military division in accordance with the provisions of section 39-7108, Idaho Code, shall be liable for a civil penalty of a sum not to exceed one thousand dollars (\$1,000) for each day the violation continues to a maximum of twenty-five thousand dollars (\$25,000).

(6) No penalty pursuant to this section shall occur if an incident occurs on private property and results in no offsite environmental damage.

SECTION 6. That Section 39-7109, Idaho Code, be, and the same is hereby amended to read as follows:

39-7109. RIGHT TO CLAIM REIMBURSEMENT. (1) State emergency response teams and local emergency response authorities may submit claims to the commission military division for reimbursement of the following documented costs incurred as a result of their response to and containment of a hazardous substance incident:

(a) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response;

- (b) Compensation of employees for the time and efforts devoted specifically to the response that are not otherwise provided for in the applicant's operating budget, (e.g., overtime pay for permanent full-time and other than full-time employees, recalled personnel or responding when out of jurisdiction);
- (c) Rental or leasing of equipment used specifically for the response (e.g., protective equipment or clothing, scientific and technical equipment);
- (d) Replacement costs for equipment owned by the applicant that is contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred as a result of the response (e.g., self-contained breathing apparatus irretrievably contaminated during the response);
- (e) Decontamination of equipment contaminated during the response;
- (f) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts/specialists not otherwise provided for by the local government);
- (g) Medical monitoring or treatment of response personnel;
- (h) Laboratory costs for purposes of analyzing samples taken during the response; and
- (i) Disposal costs. Such costs may be reimbursed as provided in this chapter.

Reimbursement for the costs identified in paragraphs (a) through (c) of this subsection will not exceed the duration of the response.

(2) A private person, who is not a part of the state emergency response team or a local emergency response authority and is not liable under section 39-7111, Idaho Code, may submit a claim to the commission military division for costs identified in section 39-7109, Idaho Code, if their response was requested by the incident commander.

(3) Claims for reimbursement shall be submitted to the commission military division within sixty (60) days after termination of the hazardous substance incident for the state's determination of payment, if any.

(4) Reimbursements shall only be paid after the commission military division finds that the actions by the state emergency response team or the local emergency response authority were taken in response to a hazardous substance incident as defined in this chapter.

(5) The state of Idaho shall be subrogated to the rights of any such person so reimbursed to the extent of such reimbursement.

SECTION 7. That Section 39-7110, Idaho Code, be, and the same is hereby amended to read as follows:

39-7110. DEFICIENCY WARRANTS FOR REIMBURSEMENT OF RESPONSE COSTS.

(1) The commission military division shall review all claims for reimbursement and make recommendations as to payment or nonpayment of the claims to the board of examiners within one hundred twenty (120) days after termination of the hazardous substance incident. The board of examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing reasonable and documented costs associated with emergency response actions taken pursuant to this chapter. The costs

associated with routine firefighting procedures shall not be reimbursable costs under this chapter.

(2) Deficiency warrants authorized by the board of examiners shall not exceed the sum of one hundred thousand dollars (\$100,000) for reimbursement of all claims made as a result of a single hazardous substance incident. In the event all claims for reimbursement for a single hazardous substance incident exceeds the sum of one hundred thousand dollars (\$100,000), the board of examiners shall determine an appropriate and equitable basis of payment of reimbursements.

(3) Upon authorization of deficiency warrants by the board of examiners in accordance with the provisions of this section, the state controller shall, after notice to the state treasurer, draw deficiency warrants in the authorized amounts against the general account.

(4) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provisions of law.

SECTION 8. That Section 39-7112, Idaho Code, be, and the same is hereby amended to read as follows:

39-7112. COST RECOVERY AND CIVIL REMEDIES. (1) The commission military division shall be responsible for recovering those costs incurred by the state arising out of a hazardous substance incident identified in section 39-7109, Idaho Code, and legal costs including attorney's fees, investigation costs and litigation costs.

(2) In deciding whether to commence a cost recovery action, and against whom a cost recovery action will be filed, the commission military division in exercising its prosecutorial discretion will take into consideration the cause of the incident, the total amount of cost incurred in responding to the incident, the avoidability of the incident and such other factors as the commission military division deems appropriate.

(3) The remedy for the recovery of those emergency response costs identified in section 39-7109, Idaho Code, provided by this chapter shall be exclusive and shall not be used in conjunction with or in addition to any other remedy for recovery of such costs provided by applicable federal laws. Any person who receives compensation for the emergency response costs pursuant to any other federal or state law shall be precluded from recovering compensation for such costs pursuant to this chapter. Nothing in this chapter shall otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury or loss resulting from the release of any hazardous substance or for remedial action or the cost of remedial action for such release.

(4) It shall be the duty of the attorney general to commence any civil action brought by the commission military division pursuant to this chapter. At the request of a political subdivision of the state or a local governmental entity who has responded to or contained a hazardous substance incident, the attorney general may commence a civil action on their behalf pursuant to this chapter.

(5) Any person who renders assistance in response to a hazardous substance incident may file a civil action under the provisions of

this chapter for recoverable costs which have not been reimbursed by the state.

(6) Recoveries by the state for reimbursed costs shall be deposited in the general account fund to offset amounts paid as reimbursement.

SECTION 9. That Section 39-7114, Idaho Code, be, and the same is hereby amended to read as follows:

39-7114. PRIVATE EMERGENCY RESPONSE PLAN APPROVAL. Private emergency response plans may be prepared for any facility or specific set of conditions. A private emergency response plan must be approved by the local emergency response authority or ~~state--emergency--response commission~~ the military division unless the plan:

(1) Is a contingency plan that has been approved in the issuance of a final part B operating permit, in accordance with section 39-4401, Idaho Code, by the Idaho division of environmental quality;

(2) Is a contingency plan prepared in accordance with the requirements of ~~regulations~~ rules promulgated pursuant to section 39-4401, Idaho Code, by the Idaho division of environmental quality;

(3) Has otherwise been approved by the ~~state--emergency--response commission~~ the military division or division of environmental quality. Private emergency response plans must be submitted, for file purposes, to the local emergency response authorities and the ~~state-emergency response-commission~~ military division to qualify as a private emergency response plan under this section.

SECTION 10. That Section 46-1002, Idaho Code, be, and the same is hereby amended to read as follows:

46-1002. DEFINITIONS. As used in this act:

(1) "Bureau" means the bureau of disaster services, military division of the office of the governor.

(2) "Adjutant general" means the administrative head of the military division of the office of the governor.

(3) "Disaster" means occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or ~~man-made~~ manmade cause, including but not limited to fire, flood, earthquake, windstorm, wave action, volcanic activity, explosion, riot, or hostile military or paramilitary action.

(4) "Emergency" means occurrence or imminent threat of a disaster or condition threatening life or property which requires state emergency assistance to supplement local efforts to save lives and protect property or to avert or lessen the threat of a disaster.

(5) "Political subdivision" means any county, city, or other unit of local government.

(6) "Militia" means all able-bodied male citizens of Idaho as defined in section 46-102, Idaho Code.

(7) "Search and rescue" means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress and preserving life of, and removing survivors from the site of a disaster, emergency or hazard to a place of safety in case of lost, stranded, entrapped, or injured persons.

(8) "Disaster emergency account" means the account created under this act for the purpose of paying obligations and expenses incurred by the state of Idaho during a declared state of disaster emergency.

(9) "Commission" means the Idaho emergency response commission.

(10) "Bureau of hazardous materials" means the bureau of hazardous materials in the military division of the office of the governor.

SECTION 11. That Chapter 10, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1019, Idaho Code, and to read as follows:

46-1019. EMERGENCY RESPONSE. (1) There is hereby created an emergency response commission in the office of the governor. The commission shall consist of the following state and local officials, industry representatives, or their designees: the adjutant general of the Idaho national guard; the director of the department of health and welfare; the state fire marshal; the director of the department of law enforcement; the director of the Idaho transportation department; the director of the department of agriculture; the director of the department of lands; the director of the Idaho geological survey; the director of the department of water resources; the coordinator for INEL oversight; one (1) member representing Idaho cities; one (1) member of an organization representing farmers or ranchers; one (1) member representing Idaho counties; one (1) member representing the hazardous waste or materials transportation industry; one (1) member representing a user of hazardous materials; one (1) member representing the Idaho state fire chief's association; one (1) member representing the Idaho county sheriff's association; one (1) member of the Idaho police chief's association; and one (1) member at large representing the citizens of the state of Idaho. The last nine (9) members shall be appointed by the governor to serve staggered three (3) year terms. The manager of the bureau of disaster services and the manager of the bureau of hazardous materials shall be nonvoting members of the commission. All members shall serve without compensation, except that members who are not state officers or employees shall be compensated as provided in section 59-509(g), Idaho Code. The governor shall appoint a chairman from the appointees. The attorney general shall provide legal counsel to the commission.

(2) The commission shall act as an all-hazards advisory and coordinating body to the governor for all types of disasters and emergencies which could affect the citizens of Idaho. They shall review, evaluate, report and advise the governor on state and local plans and programs to prepare for, respond to, and recover from all types of disaster emergencies.

Approved March 17, 1997.

CHAPTER 122
(S.B. No. 1083)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-291, IDAHO CODE, TO DEFINE INSURER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-293, IDAHO CODE, TO EXPAND ACTS PROHIBITED AS INSURANCE FRAUD TO INCLUDE CERTAIN USES OF TELEPHONES, ELECTRONIC COMMUNICATION AND MAIL AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-294, IDAHO CODE, TO REQUIRE RESTITUTION IN CERTAIN CASES INVOLVING DESTRUCTION OF INSURED PROPERTY; AMENDING SECTION 41-295, IDAHO CODE, TO PROVIDE FOR PROSECUTION BY THE ATTORNEY GENERAL AND TO PROVIDE AUTHORITY OF THE PROSECUTING ATTORNEY OF RECORD; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 41-291, Idaho Code, be, and the same is hereby amended to read as follows:

41-291. DEFINITIONS. As used in this chapter:

(1) Sections 41-290 through 41-298, Idaho Code, shall be known as the Idaho Arson and Fraud Reporting-Immunity Act.

(2) "Authorized agencies" shall mean:

(a) The director, department of law enforcement;

(b) The prosecuting attorney responsible for prosecution in the county where the fire or fraud occurred;

(c) The attorney responsible for the prosecution in the county where the fire or fraud occurred as designated by the attorney general;

(d) The department of insurance.

(3) Solely for the purpose of section 41-292(1), Idaho Code, "authorized agencies" shall also include:

(a) The United States attorney's office when authorized or charged with investigation or prosecution of the fire or fraud in question;

(b) The federal bureau of investigation or any other federal agency, charged with investigation or prosecution of the fire or fraud in question.

(4) "Relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

(5) Material will be "deemed important," if within the sole discretion of the "authorized agency," such material is requested by the "authorized agency."

(6) "Action," as used in this statute, shall include nonaction or the failure to take action.

(7) "Immunity" means that no civil action may arise against any person for furnishing information pursuant to section 41-248, 41-258, 41-290, 41-292, 41-296 or 41-297, Idaho Code, where actual malice on the part of the insurance company, department of insurance, state fire

marshal, authorized agency, their employees or agents, is not present.

(8) "Financial loss" includes, but is not limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs and claims payments.

(9) "Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation and any other legal entity.

(10) "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic, law or any other licensee of the state whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

(11) "Statement" includes, but is not limited to, any notice statement, any statement submitted on applications for insurance, proof of claim, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bills for services, diagnosis, prescription, hospital or doctor records, X-rays, test results or other evidence of loss, injury or expense, whether oral, written or computer generated.

(12) "Insurer" shall mean any insurance company contemplated by title 41, Idaho Code, any business operating as a self-insured for any purpose, and any self-insured as contemplated by title 72, Idaho Code.

SECTION 2. That Section 41-293, Idaho Code, be, and the same is hereby amended to read as follows:

41-293. INSURANCE FRAUD. Insurance fraud includes:

(1) (a) Any person who, with the intent to defraud or deceive an insurer for the purpose of obtaining any money or benefit presents or causes to be presented to any insurer, a purported insurer, broker or agent, any written or oral statement including computer-generated documents as part of, or in support of, a claim for payment or other benefit ~~pursuant to an insurance policy~~, knowing that such statement contains false, incomplete, or misleading information concerning any fact or thing material to such claim; or

(b) Any person who, with intent to defraud or deceive an insurer assists, abets, solicits, or conspires with another to prepare or make any written or oral statement that is intended to be presented to any insurer, purported insurer, broker or agent, in connection with, or in support of, any claim for payment or other benefit ~~pursuant to an insurance policy or contract~~, knowing that such statement contains false, incomplete, or misleading information concerning any fact or thing material to such claim;

(c) Any insurance agent or other person who with intent to defraud or deceive an insurer presents or causes to be presented to or by an insurer, a purported insurer or agent, a materially false or altered application of insurance;

(d) Any insurance agent or other person who with intent to defraud or deceive willfully takes premium money knowing that cov-

erage will not be affected;

(e) Any medical practitioner who willfully submits a false or altered bill, with the intent of deceiving an insurer;

(f) Anyone willfully making a false statement or material misrepresentation, with the intent of deceiving an insurer, to obtain or extend workers' worker's compensation benefits;

(g) Anyone who offers or accepts a direct or indirect inducement to file a false statement of claim, with intent of deceiving an insurer.

(2) Any offense committed by use of a telephone, any means of electronic communication or mail as provided by this chapter may be deemed to have been committed at the place from which the telephone call or electronic communication was made, or mail was sent, or the offense may be deemed to have been committed at the place at which the telephone call, electronic communication or mail was received.

(3) Any violator of this section is guilty of a felony and shall be subject to a term of imprisonment not to exceed fifteen (15) years, or a fine not to exceed fifteen thousand dollars (\$15,000), or both and shall be ordered to make restitution to the insurer or any other person for any financial loss sustained as a result of a violation of this section. Each instance of violation may be considered a separate offense.

SECTION 3. That Section 41-294, Idaho Code, be, and the same is hereby amended to read as follows:

41-294. DAMAGE TO OR DESTRUCTION OF INSURED PROPERTY. Any person who wilfully burns or in any other manner injures or destroys any property which is at the time insured against loss or damage, with intent to defraud or prejudice the insurer or for personal gain, whether the same be the property of, or in possession of, such person or any other, is guilty of a felony punishable by imprisonment in the state prison not less than one (1) year nor more than fifteen (15) years, and shall be ordered to make restitution to the insurer or any other person for any financial loss sustained as a result of a violation of this section.

SECTION 4. That Section 41-295, Idaho Code, be, and the same is hereby amended to read as follows:

41-295. DUTIES OF THE INVESTIGATION SECTION. The investigation section of the department of insurance shall have the following duties:

(1) To conduct civil or criminal investigations within or outside this state as deemed necessary to determine whether any person has violated any provision of title 41, Idaho Code.

(2) For purposes of any investigation under this code, the director, or any officer designated by him, may administer oaths and affirmations, subpoena bank records, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents the director deems relevant or material to the investigation.

(3) The investigation section shall furnish all papers, docu-

ments, reports, complaints, or other facts of evidence to any police, sheriff or other law enforcement agency, when so requested, and will assist and cooperate with such law enforcement agencies.

(4) The investigation section shall refer criminal violations of the code to the attorney general or county prosecutor having jurisdiction of any such violation. The attorney general or county prosecutor shall promptly institute and prosecute such action or proceedings against such person as the information may require or justify. Whoever is the prosecuting attorney of record shall have exclusive authority in all matters regarding such action or proceeding.

(5) The investigation section shall have such other duties as the director of the department of insurance shall assign or as contained elsewhere in title 41, Idaho Code.

(6) The investigation section shall be permitted to seek court ordered restitution as reimbursement, for the cost of investigation from those individuals successfully prosecuted under section 41-293, Idaho Code.

(7) There is hereby created an account in the agency asset fund in the state treasury, to be designated as the fraud investigation and prevention account. The account shall be used by the director of the department of insurance for enforcement of this chapter, investigation of cases of insurance fraud and related violations of laws of this state.

(8) All claims against the account shall be examined, audited and allowed in the manner now or hereafter provided by law. All moneys placed in the account are hereby perpetually appropriated to the department of insurance for the purposes of the provisions of this section.

(9) Pending use for the purposes of the provisions of this section, 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 surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the account.

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 17, 1997.

CHAPTER 123
(S.B. No. 1253)

AN ACT
APPROPRIATING MONEYS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION FOR FISCAL YEAR 1998; 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	\$2,358,900	\$1,236,200	\$ 24,200	\$ 509,300	\$ 4,128,600
Federal Grant Fund	2,281,100	1,667,000		75,776,700	79,724,800
Public Instruction Fund	222,700	893,000		10,500	1,126,200
Driver Education Fund	115,900	137,700		1,943,000	2,196,600
Indirect Cost Recovery Fund	212,000	157,300			369,300
Data Processing Services Fund	131,100	39,500			170,600
Student Tuition Recovery Fund		<u>5,100</u>		<u>46,500</u>	<u>51,600</u>
TOTAL	<u>\$5,321,700</u>	<u>\$4,135,800</u>	<u>\$ 24,200</u>	<u>\$78,286,000</u>	<u>\$87,767,700</u>

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Department of Education is authorized no more than one hundred nine (109) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 17, 1997.

CHAPTER 124
(S.B. No. 1260)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF FAMILY AND COMMUNITY SERVICES FOR FISCAL YEAR 1998; 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; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SUBSTANCE ABUSE PREVENTION; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE DEVELOPMENTAL DISABILITIES PROGRAM.

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 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
DIVISION OF FAMILY AND COMMUNITY SERVICES:					
A. CHILDREN'S SERVICES:					
FROM:					
General					
Fund	\$ 6,798,000	\$ 3,634,200		\$ 2,096,700	\$ 12,528,900
Cooperative					
Welfare Fund					
(Other)	378,500	794,000		977,200	2,149,700
Cooperative					
Welfare Fund					
(Federal)	12,130,000	2,749,800		6,636,100	21,515,900
TOTAL	\$19,306,500	\$7,178,000		\$ 9,710,000	\$ 36,194,500
B. DEVELOPMENTAL DISABILITIES SERVICES:					
FROM:					
General					
Fund	\$10,903,100	\$2,296,700		\$ 1,614,500	\$ 14,814,300
Medical Assistance					
Fund		3,500			3,500
Cooperative					
Welfare Fund					
(Other)	1,309,200	94,700		11,700	1,415,600
Cooperative					
Welfare Fund					
(Federal)	11,696,100	3,597,400	\$46,700	1,492,600	16,832,800
TOTAL	\$23,908,400	\$5,992,300	\$46,700	\$ 3,118,800	\$ 33,066,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
C. MENTAL HEALTH SERVICES:					
FROM:					
General					
Fund	\$18,763,500	\$1,370,500		\$ 1,230,600	\$ 21,364,600
Cooperative					
Welfare Fund					
(Other)	6,667,500	\$1,541,400		18,200	8,227,100
Alcoholism Treatment					
Fund	513,300	149,000		1,413,100	2,075,400
Substance Abuse					
Treatment Fund					
				90,000	90,000
State Hospital					
North Income					
Fund	337,700	442,400	\$ 89,400	90,000	959,500
State Hospital					
South Income					
Fund	901,500	992,500		62,400	1,956,400
Cooperative					
Welfare Fund					
(Federal)	<u>325,500</u>	<u>2,336,900</u>	<u>89,400</u>	<u>2,532,900</u>	<u>5,195,300</u>
TOTAL	\$27,509,000	\$6,832,700	\$ 89,400	\$ 5,437,200	\$ 39,868,300
DIVISION					
TOTAL	\$70,723,900	\$20,003,000	\$136,100	\$18,266,000	\$109,129,000

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 any unexpended and unencumbered balances of the Cooperative Welfare Fund, as appropriated for the Division of Family and Community Services for fiscal year 1997, to be used for nonrecurring expenditures only for the period July 1, 1997, through June 30, 1998. 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 is hereby authorized to expend all receipts collected in the Division of Family and Community Services as noncognizable funds for the period July 1, 1997, through June 30, 1998.

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, 1997, through June 30, 1998. 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 the total moneys appropriated for Substance Abuse Prevention in Section 1 of this act for Mental Health Services, \$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. As a result of an increase in Federal Earned Income funds through the Department of Health and Welfare, Division of Family and Community Services, it is hereby declared to be the intent of the Legislature of the State of Idaho that:

(a) \$400,000 be used to purchase computer hardware and software for the Family Oriented Community User's System (FOCUS) from the effective date of this act through June 30, 1998.

(b) \$400,000 be used to purchase additional vocational and employment services for persons with developmental disabilities from accredited vocational providers consistent with the agreement reached with industry and consumers for the period July 1, 1997, through June 30, 1998.

Approved March 17, 1997.

CHAPTER 125
(S.B. No. 1028)

AN ACT

RELATING TO POWERS AND DUTIES OF SCHOOL DISTRICT TRUSTEES; AMENDING CHAPTER 5, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-514A, IDAHO CODE, TO AUTHORIZE A ONE YEAR LIMITED CONTRACT.

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

SECTION 1. That Chapter 5, 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 33-514A, Idaho Code, and to read as follows:

33-514A. ISSUANCE OF LIMITED CONTRACT. After August 1, the board of trustees may exercise the option of employing certified personnel on a one (1) year limited contract. Such a contract is specifically offered for the limited duration of the ensuing school year, and no further notice is required by the district to terminate the contract at the conclusion of the contract year.

Approved March 15, 1997.

CHAPTER 126
(S.B. No. 1042, As Amended in the House)

AN ACT

RELATING TO THE PRIVATE EMPLOYER DRUG-FREE WORKPLACE ACT; AMENDING TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 17, TITLE 72, IDAHO CODE, TO PROVIDE THE PURPOSE AND INTENT OF THE ACT, TO PROVIDE FOR THE DRUG AND ALCOHOL TESTING OF EMPLOYEES AND PROSPECTIVE EMPLOYEES BY A PRIVATE EMPLOYER, TO PROVIDE FOR THE COST OF TESTING OF CURRENT EMPLOYEES, TO PROVIDE REQUIREMENTS FOR COLLECTION OF SAMPLES AND TESTING, TO REQUIRE THAT THE PRIVATE EMPLOYER HAVE A WRITTEN TESTING POLICY TO QUALIFY FOR BENEFITS UNDER THE ACT AND TO PROVIDE REQUIREMENTS FOR THE POLICY, TO PROVIDE THE RIGHTS OF EMPLOYEES TO EXPLAIN A POSITIVE TEST RESULT AND REQUEST A RETEST, TO PROVIDE THE REQUIREMENTS UNDER THE ACT FOR AN EMPLOYER TO ESTABLISH THAT AN EMPLOYEE WAS DISCHARGED FOR WORK-RELATED MISCONDUCT, TO PROVIDE THAT DISCIPLINARY AND REFUSAL-TO-HIRE ACTIONS BY THE EMPLOYER BASED ON VIOLATIONS OF THE ALCOHOL AND DRUG TESTING PROGRAM WILL DISQUALIFY A CLAIMANT FOR UNEMPLOYMENT BENEFITS, TO PROVIDE WHEN UNDER THE ACT AN EMPLOYEE HAS FAILED TO ACCEPT SUITABLE WORK FOR PURPOSES OF ELIGIBILITY FOR UNEMPLOYMENT BENEFITS, TO PROVIDE FOR LIMITATIONS OF EMPLOYER LIABILITY, TO PROVIDE FOR A PRESUMPTION AND LIMITATION OF DAMAGES OF EMPLOYER ACTIONS BASED ON A FALSE TEST RESULT, TO PROVIDE FOR CONFIDENTIALITY OF INFORMATION, TO PROVIDE THAT POSITIVE TEST RESULTS FOR DRUGS OR ALCOHOL DO NOT RENDER THE PERSON "DISABLED" UNDER CHAPTER 59, TITLE 67, IDAHO CODE, TO PROVIDE THAT THE DRUG TESTING PROGRAM DOES NOT GIVE RISE TO A PHYSICIAN-PATIENT RELATIONSHIP AND TO PROVIDE THAT PUBLIC ENTITIES MAY CONDUCT DRUG AND ALCOHOL TESTING OF EMPLOYEES.

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 17, Title 72, Idaho Code, and to read as follows:

CHAPTER 17

IDAHO PRIVATE EMPLOYER ALCOHOL AND DRUG-FREE WORKPLACE ACT

72-1701. PURPOSE AND INTENT OF ACT. The purpose of this act is to promote alcohol and drug-free workplaces and otherwise support private employers in their efforts to eliminate substance abuse in the workplace, and thereby enhance workplace safety and increase productivity. This act establishes voluntary drug and alcohol testing guidelines for private employers that, when complied with, will find an employee who tests positive for drugs or alcohol at fault, and will constitute misconduct under the employment security law as provided in section 72-1366(e), Idaho Code, thus resulting in the denial of unemployment benefits.

72-1702. TESTING FOR DRUGS AND/OR ALCOHOL. (1) It is lawful for a

private employer to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment, provided the testing requirements and procedures are in compliance with 42 U.S.C. 12101.

(2) Nothing herein prohibits a private employer from using the results of a drug or alcohol test conducted by a third party including, but not limited to, law enforcement agencies, hospitals, etc., as the basis for determining whether an employee has committed misconduct.

(3) This act does not change the at-will status of any employee.

72-1703. COST OF TESTING OF CURRENT EMPLOYEES. (1) Any drug or alcohol testing by a private employer of current employees shall be deemed work time for purposes of compensation.

(2) All costs of drug and alcohol testing for current employees conducted under the provisions of this act, unless otherwise specified in section 72-1706(2), Idaho Code, shall be paid by the private employer.

72-1704. REQUIREMENTS FOR SAMPLE COLLECTION AND TESTING. All sample collection and testing for drugs and alcohol under this act shall be performed in accordance with the following conditions:

(1) The collection of samples shall be performed under reasonable and sanitary conditions;

(2) The private employer or private employer's agent who is responsible for collecting the sample will be instructed as to the proper methods of collection;

(3) Samples shall be collected and tested with due regard to the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;

(4) Sample collection shall be documented and the documentation procedures shall include:

(a) Labeling of samples so as reasonably to preclude the possibility of misidentification of the person tested in relation to the test result provided; and

(b) Handling of samples in accordance with reasonable chain-of-custody and confidentiality procedures;

(5) Sample collection, storage and transportation to the place of testing shall be performed so as reasonably to preclude the possibility of sample contamination and/or adulteration;

(6) Sample testing shall conform to scientifically accepted analytical methods and procedures;

(7) Drug testing shall include a confirmatory test before the result of any test can be used as a basis for action by a private employer under sections 72-1707 and 72-1708, Idaho Code. A confirmatory test refers to the mandatory second or additional test of the same sample that is conducted by a laboratory utilizing a chromatographic technique such as gas chromatography-mass spectrometry or another comparable reliable analytical method;

(8) Positive alcohol tests resulting from the use of an initial screen saliva test, must include a confirmatory test that utilizes a different testing methodology meant to demonstrate a higher degree of

reliability;

(9) Positive alcohol tests resulting from the use of a breath test must include a confirmatory breath test conducted no earlier than fifteen (15) minutes after the initial test; or the use of any other confirmatory test meant to demonstrate a higher degree of reliability.

72-1705. PRIVATE EMPLOYER'S WRITTEN TESTING POLICY -- PURPOSES AND REQUIREMENTS FOR COLLECTION AND TESTING. (1) A private employer must have a written policy on drug and/or alcohol testing that is consistent with the requirements of this act, including a statement that violation of the policy may result in termination due to misconduct.

(2) A private employer will receive the full benefits of this act, even if its drug and alcohol testing policy does not conform to all of the statutory provisions, if it follows a drug or alcohol testing policy that was negotiated with its employees' collective bargaining representative or that is consistent with the terms of the collective bargaining agreement.

(3) Testing for the presence of drugs or alcohol by a private employer shall be carried out within the terms of a written policy that has been communicated to affected employees, and is available for review by prospective employees.

(4) The private employer must list the types of tests an employee may be subject to in their written policy, which may include, but are not limited to, the following:

- (a) Baseline;
- (b) Preemployment;
- (c) Post-accident;
- (d) Random;
- (e) Return to duty;
- (f) Follow-up;
- (g) Reasonable suspicion.

72-1706. RIGHT OF EMPLOYEE OR PROSPECTIVE EMPLOYEE TO EXPLAIN POSITIVE TEST RESULT AND REQUEST FOR RETEST. (1) Any employee or prospective employee who tests positive for drugs or alcohol must be given written notice of that test result, including the type of substance involved, by the private employer. The employee must be given an opportunity to discuss and explain the positive test result with a medical review officer or other qualified person.

(2) Any employee or prospective employee who has a positive test result may request that the same sample be retested by a mutually agreed upon laboratory. A request for retest must be done within seven (7) working days from the date of the first confirmed positive test notification and may be paid for by the employee or prospective employee requesting the test. If the retest results in a negative test outcome, the private employer will reimburse the cost of the retest, compensate the employee for his time if suspended without pay, or if terminated solely because of the positive test, the employee shall be reinstated with back pay.

72-1707. DISCHARGE FOR WORK-RELATED MISCONDUCT -- FAILURE OR REFUSAL OF TESTING. A private employer establishes that an employee was discharged for work-related misconduct, as provided in section

72-1366(e), Idaho Code, upon a showing that the employer has complied with the requirements of this act and that the discharge was based on:

(1) A confirmed positive drug test or a positive alcohol test, as indicated by a test result of not less than .02 blood alcohol content (BAC), but greater than the level specified in the employer's substance abuse policy;

(2) The employee's refusal to provide a sample for testing; or

(3) The employee's alteration or attempt to alter a test sample by adding a foreign substance for the purpose of making the sample more difficult to analyze; or

(4) The employee's submission of a sample that is not his or her own.

72-1708. PRIVATE EMPLOYER'S DISCIPLINARY OR REHABILITATIVE ACTIONS BASED ON TESTING -- CLAIMANT INELIGIBLE FOR BENEFITS. (1) Upon receipt of a confirmed positive drug or alcohol test result or other proof which indicates a violation of a private employer's written policy, or upon the refusal of an employee to provide a test sample, or upon an employee's alteration of or attempt to alter a test sample, a private employer may use that test result or the employee's conduct as the basis for disciplinary or refusal-to-hire action that will result in a claimant's ineligibility to receive benefits under the provisions of section 72-1366(d), (e), (f) or (g), Idaho Code. Actions by the private employer may include, but are not limited to, the following:

(a) A requirement that the employee enroll in a private employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;

(b) Suspension of the employee with or without pay for a period of time;

(c) Termination of the employee;

(d) Other disciplinary measures in conformance with the private employer's usual procedures, including any collective bargaining agreement.

(2) Action taken pursuant to this section shall not create any cause of action against the private employer.

72-1709. FAILURE OF CLAIMANT TO ACCEPT SUITABLE WORK. If a claimant for unemployment benefits does not accept otherwise suitable work, as contemplated in section 72-1366(d), (f) or (g), Idaho Code, because he is required to take a preemployment drug or alcohol test, the claimant has failed to accept suitable work, unless the claimant is required to pay for costs associated with a negative drug or alcohol test result.

72-1710. LIMITATIONS OF EMPLOYER LIABILITY. (1) No cause of action arises in favor of any person based upon the absence of a private employer established program or policy of drug or alcohol testing in accordance with this act.

(2) No cause or action arises in favor of any person against a private employer for any of the following:

(a) Failure to test for drugs or alcohol, or failure to test for a specific drug or other substance;

- (b) Failure to test for, or if tested, a failure to detect, any specific drug or other physical abnormality, problem or defect of any kind; or
- (c) Termination or suspension of any drug or alcohol testing program or policy.

72-1711. FALSE TEST RESULT -- PRESUMPTION AND LIMITATION OF DAMAGES IN CLAIM AGAINST PRIVATE EMPLOYER. (1) No cause of action arises in favor of any person against a private employer who has established a program of drug and alcohol testing in accordance with this act, and who has taken any action based on its established substance abuse and/or disciplinary policies, unless the private employer's action was based on a false test result, and the private employer knew or clearly should have known that the result was in error.

(2) In any claim where it is alleged that a private employer's action was based on a false test result:

- (a) There is a rebuttable presumption that the test result was valid if the private employer complied with the provisions of section 72-1704, Idaho Code;
- (b) The private employer is not liable for monetary damages if his reliance on a false test result was reasonable and in good faith; and
- (c) There is no private employer liability for any action taken related to a "false negative" drug or alcohol test.

72-1712. CONFIDENTIALITY OF INFORMATION. (1) All information, interviews, reports, statements, memoranda or test results, written or otherwise, received through a substance abuse testing program shall be kept confidential, and are intended to be used only for a private employer's internal business use; or in a proceeding related to any action taken by or against a private employer under section 72-1707, 72,1708 or 72-1711, Idaho Code, or other dispute between the private employer and the employee or applicant; or as required to be disclosed by the United States department of transportation law or regulation or other federal law; or as required by service of legal process.

(2) The information described in subsection (1) of this section shall be the property of the private employer.

(3) A private employer, laboratory, medical review officer, employee assistance program, drug or alcohol rehabilitation program and their agents, who receive or have access to information concerning test results shall keep the information confidential, except as provided in subsection (4) of this section.

(4) Nothing in this chapter prohibits a private employer from using information concerning an employee or job applicant's substance abuse test results in a lawful manner with respect to that employee or applicant as provided in chapter 2, title 44, Idaho Code.

72-1713. EMPLOYEE NOT "DISABLED." An employee or prospective employee whose drug or alcohol test results are verified or confirmed as positive in accordance with the provisions of this act shall not, by virtue of those results alone, be defined as a person with a "disability" for purposes of chapter 59, title 67, Idaho Code.

72-1714. NO PHYSICIAN-PATIENT RELATIONSHIP CREATED. A physician-patient relationship is not created between an employee or prospective employee, and the private employer or any person performing a drug or alcohol test, solely by the establishment of a drug or alcohol testing program in the workplace.

72-1715. PUBLIC ENTITIES MAY CONDUCT PROGRAMS. The state of Idaho and any political subdivision thereof may conduct drug and alcohol testing of employees under the provisions of this chapter.

Approved March 15, 1997.

CHAPTER 127
(S.B. No. 1045)

AN ACT

RELATING TO THE CONSUMER PROTECTION ACT; AMENDING SECTION 48-619, IDAHO CODE, TO PROVIDE THAT NO PRIVATE ACTION MAY BE BROUGHT UNDER THE ACT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION ACCRUES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 48-619, Idaho Code, be, and the same is hereby amended to read as follows:

48-619. LIMITATION OF ACTION. No private action may be brought under this act more than two (2) years after the cause of action accrues.

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 15, 1997.

CHAPTER 128
(S.B. No. 1060)

AN ACT

RELATING TO CRIME VICTIMS COMPENSATION; AMENDING SECTION 72-1003, IDAHO CODE, TO ADD "TERRORISM" TO FURTHER DEFINE THE TERM "CRIMINALLY INJURIOUS CONDUCT."

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

SECTION 1. That Section 72-1003, Idaho Code, be, and the same is hereby amended to read as follows:

72-1003. DEFINITIONS. As used in this chapter:

(1) "Claimant" means any of the following claiming compensation under this chapter:

- (a) A victim;
- (b) A dependent of a deceased victim; or
- (c) An authorized person acting on behalf of any of them, including parent(s), legal guardian(s), and sibling(s), of a victim who is a minor.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this chapter which the claimant has received or which is readily available to him from:

- (a) The offender;
- (b) The government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two (2) or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this chapter;
- (c) Social security, medicare, and medicaid;
- (d) Worker's compensation;
- (e) Wage continuation programs of any employer;
- (f) Proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; or
- (g) A contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this chapter shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this chapter are a primary source.

(3) "Commission" means the industrial commission.

(4) "Criminally injurious conduct" means intentional, knowing, or reckless conduct that:

(a) Occurs or is attempted in this state or occurs outside the state of Idaho against a resident of the state of Idaho and which occurred in a state which does not have a crime victims compensation program for which the victim is eligible as eligibility is set forth in this statute;

(b) Constitutes an act of terrorism as defined by 18 U.S.C. 2331, committed outside the United States against a resident of this state;

(c) Results in injury or death; and

(cd) Is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death; provided that criminally injurious conduct shall include violations of the provisions of section 18-4006 3(b), 18-8004, 18-8007, 67-7034 or 67-7035, Idaho Code.

(5) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the

victim for care or support and includes a child if under the age of eighteen (18) or incapable of self-support and unmarried and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(6) "Injury" means actual bodily harm or disfigurement and, with respect to a victim, includes pregnancy, venereal disease, mental or nervous shock, or extreme mental distress. For the purposes of this chapter, "extreme mental distress" means a substantial personal disorder of emotional processes, thought or cognition which impairs judgment, behavior or ability to cope with the ordinary demands of life.

(7) "Victim" means a person who suffers injury or death as a result of:

(a) Criminally injurious conduct;

(b) His good faith effort to prevent criminally injurious conduct; or

(c) His good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

(8) "Welfare benefits" as used in subsection (2) of this section, shall include sums payable to or on behalf of an indigent person under chapter 35, title 31, Idaho Code.

Approved March 15, 1997.

CHAPTER 129
(S.B. No. 1090)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO CLARIFY THE SPECIAL LICENSE PLATE INITIAL PROGRAM AND ANNUAL PROGRAM FEES; AMENDING SECTION 49-404A, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTIONS 49-406 AND 49-406A, IDAHO CODE, TO PROVIDE FOR THE ISSUANCE OF A SINGLE SPECIAL LICENSE PLATE, TO CLARIFY THE LICENSE PLATE FEE AND TO DELETE OBSOLETE PROVISIONS OF LAW; AMENDING SECTION 49-407, IDAHO CODE, TO PROVIDE FOR DISPLAY OF A SINGLE LICENSE PLATE ON THE VEHICLE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-408, IDAHO CODE, TO PROVIDE FOR ISSUANCE AND DISPLAY OF A SINGLE SPECIAL LICENSE PLATE, AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 49-409, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES, TO CLARIFY OWNERSHIP OF LICENSE PLATES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 49-414 AND 49-416, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 49-443, IDAHO CODE, TO PROVIDE FOR ISSUANCE AND DISPLAY OF A SINGLE LICENSE PLATE FOR CERTAIN VEHICLES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-402, Idaho Code, be, and the same is

hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds, designed for the purpose of carrying passengers and not used for hire shall be:

Vehicles one (1) and two (2) years old\$48.00
Of the registration fees collected for vehicles one (1) and two (2) years old, \$36.48 shall be deposited to the highway distribution account and \$11.52 shall be deposited to the restricted highway fund.

Vehicles three (3) and four (4) years old\$36.00
Of the registration fees collected for vehicles three (3) and four (4) years old, \$33.48 shall be deposited to the highway distribution account and \$2.52 shall be deposited to the restricted highway fund.

Vehicles five (5) and six (6) years old\$36.00
Of the registration fees collected for vehicles five (5) and six (6) years old, \$26.28 shall be deposited to the highway distribution account and \$9.72 shall be deposited to the restricted highway fund.

Vehicles seven (7) and eight (8) years old\$24.00
Of the registration fees collected for vehicles seven (7) and eight (8) years old, \$22.68 shall be deposited to the highway distribution account and \$1.32 shall be deposited to the restricted highway fund.

Vehicles over eight (8) years old\$24.00
Of the registration fees collected for vehicles over eight (8) years old, \$16.08 shall be deposited to the highway distribution account and \$7.92 shall be deposited to the restricted highway fund.

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers ~~ending in~~ numbered 1, and proceeding consecutively through December for holders of validation registration stickers ~~ending in~~ numbered 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all motor vehicles equipped to carry passengers and oper-

ated primarily for hire exclusively within the limits of an incorporated city and adjacent thereto, when the service outside the city is a part of a regular service rendered inside the city, and for school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twelve dollars and forty-eight cents (\$12.48).

(3) For all hearses, ambulances and wreckers the annual fee shall be twenty-nine dollars and forty cents (\$29.40), and these vehicles shall bear passenger car plates. No operator of a hearse, ambulance, or wrecker shall be entitled to operate them by virtue of any dealer's license that may have been issued under the provisions of this chapter.

(4) For all motorcycles and all-terrain vehicles the annual fee shall be nine dollars (\$9.00). For operation of an ATV off the public highways, the fee specified in section 67-7122, Idaho Code, shall also be paid.

(5) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(6) Registration fees shall not be subject to refund.

(7) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96) hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

(8) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars (\$25.00) and an annual program fee of fifteen dollars (\$15.00) for all special license plate programs except for those license plates issued pursuant to sections 49-403, 49-403A, 49-404, 49-406, 49-406A, 49-410, 49-415 and 49-415B, 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416 and 49-418, Idaho Code. For special plates issued pursuant to sections 49-406 and 49-406A, Idaho Code, there shall be an initial program fee of twenty-five dollars (\$25.00) but there shall be no annual renewal fee. For special plates issued pursuant to sections 49-417 and 49-417A, Idaho Code, there shall be an initial program fee of thirty-five dollars (\$35.00) and an annual program fee of twenty-five dollars (\$25.00). The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of special license plate programs which are provided to the public as a personal alternative to the standard license plate requirements.

SECTION 2. That Section 49-404A, Idaho Code, be, and the same is hereby amended to read as follows:

49-404A. MEMBERS OF THE ARMED FORCES RESERVE -- SPECIAL PLATES.

(1) Any active member of the armed forces reserves of the United States who is the owner of a vehicle required to be registered under section 49-402(1), Idaho Code, may, upon application to the department, register not more than two (2) passenger motor vehicles and receive for each vehicle special license plates in lieu of regular numbered plates. The special license plates shall be designated by the department with the word "RESERVIST" centered along the bottom edge and be numbered in sets of two (2) with a different number following appropriate letters as follows: United States Army Reserve: Army (number); United States Navy Reserve: Navy (number); United States Marine Corps Reserve: USMC (number); United States Air Force Reserve: USAF (number); and United States Coast Guard Reserve: USCG (number). Proof of being an active member in the United States armed forces reserves must be furnished to the department before special plates will be issued. Special license plates issued under this section shall be issued under the staggered registration process provided for in section 49-402(1), Idaho Code.

(2) Any branch of the armed forces reserves of the United States shall, prior to an individual's discharge from duty in that branch of the armed forces reserve, require that the special armed forces reserve license plates either be turned back to the department or exchanged for other proper license plates as a condition of discharge.

(3) In addition to the regular registration fee required in section 49-402(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402(98), Idaho Code. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program which is provided to the public as a personal alternative to the standard license plate requirement. When a plate holder transfers or assigns his title or interest in the vehicle registered under this section, the registration shall expire, but the special plates may be transferred to another vehicle upon payment of the required transfer fee. Special plates shall only be displayed after receipt of the new registration.

(4) The design and numbering scheme of the military reservist special plate shall be coordinated by the department with representatives of the armed forces reserves. However, the department shall have the final approval of the plate design and numbering scheme to ensure conformity within existing issues of plates and to contain costs within the limit of the fees received from applicants.

SECTION 3. That Section 49-406, Idaho Code, be, and the same is hereby amended to read as follows:

49-406. IDAHO OLD TIMER -- SPECIAL LICENSE PLATE PROGRAM -- REGISTRATION AND STANDARD LICENSE PLATES. (1) Any motor vehicle manufactured prior to January 1, 1943, that is maintained to its original likeness using original-type parts and materials, without major modi-

fications shall be known as an "Idaho Old Timer." Any motor vehicle which is altered from its original design is not an "Idaho Old Timer" as herein defined.

(2) Any motor vehicle which qualifies as an "Idaho Old Timer" shall be used for exhibits, parades, tours, club activities and such occasional use as is necessary for operation and maintenance of the vehicle, and shall not be used for business or commercial purposes or as customary and usual transportation.

(3) Applicants for a special "Idaho Old Timer" license plates shall pay an initial program fee of twenty-five dollars (\$25.00) and a the license plate manufacturing fee of ten dollars--(\$10.00) required in section 49-450, Idaho Code, for each set of "Idaho Old Timer" plates which shall be displayed on the rear of the vehicle. The initial program fee shall be deposited in the state highway account, and the plate manufacturing fee shall be deposited in the plate manufacturing account.

(4) Once every three (3) years, on a schedule set by the department, an ownership verification form shall be mailed to each plate holder on file with the department. The owner shall provide such information as is requested by the department to verify ownership of the vehicle(s) and that the special license plate(s) is still in use by the owner. A fee of three dollars (\$3.00) shall be charged by the department for each vehicle. This fee shall be deposited in the state highway account to defray costs of the license plate program. If the owner no longer has an interest in a vehicle(s) the owner may retain the plates as specified in subsection (7) of this section. If the ownership verification form is not returned by the date specified by the department, the registration record will be purged from the files of the department. Any further use of the plate is lost to the owner and the plate number becomes available for issue to another applicant.

~~During the year of general~~ reissue of license plates as specified in section 49-443(2), Idaho Code, ~~reissue of "Old Timer" plates~~ shall not be required unless there is a general consensus among the majority of plate holders that a new plate design is needed. Representatives of the plate holders shall make the request known to the department a ~~minimum of one hundred eighty (180) days before the first month of general reissue.~~ The cost of manufacturing a new design will be set by the department based upon the cost of manufacturing supplies and administering the reissue. The equivalent costs of each ~~set of~~ plates will be charged to each plate holder who purchases the new plates. If a new plate design is authorized, the design and color shall be approved by representatives of the interest group. The design, color and numbering scheme shall also be subject to approval of the department. The existing plate design will be canceled and all plate holders, present and future shall purchase and display the new plates.

(5) An applicant for the special "Idaho Old Timer" plates shall execute an affidavit on a form provided by the department that the vehicle qualifies as an old timer and shall only be used for the purposes allowed.

The department shall have the authority to refuse to issue a plates and may demand the return of such plates if the applicant has failed to comply with the provisions of this section.

(6) If an "Idaho Old Timer" is to be used as customary and usual

transportation, or for business or commercial purposes, the owner shall register the vehicle under the provisions of section 49-402, or section 49-434, Idaho Code, as applicable, and shall obtain and display the standard issue of license plates after payment of the plate fee required in section 49-450, Idaho Code. It shall be permissible to display both the standard issue of plates and the special "Idaho Old Timer" plates.

(7) Whenever title or interest in an Old Timer vehicle is transferred or assigned, the transferor may retain the plates for use on another vehicle which qualifies by providing the information required in subsection (5) of this section and by paying the required transfer fee. If the vehicle is also registered under the provisions of section 49-402 or section 49-434, Idaho Code, the provisions of section 49-431, Idaho Code, relating to the procedure for assignment and transfer of interest, shall apply.

~~{8}--"Old Timer" plate holders on record with the department on January 1, 1994, may retain the black on silver plate design in effect that date. If a new license plate was purchased and the special program fee of fifteen dollars (\$15.00) was paid the plate holder may request a refund of the special program fee less an administrative cost as determined by the department. A request for refund must be made in writing and must be received by the department no later than December 31, 1995. No request for refund shall be honored after that date. If the plate holder no longer has the black on silver plate, a new black on silver plate may be requested from the department.~~

~~"Old Timer" plate holders who were first-time applicants and purchased a maroon on silver plate after January 1, 1994, shall request a black on silver plate from the department. The maroon on silver design will become invalid on December 31, 1995.~~

SECTION 4. That Section 49-406A, Idaho Code, be, and the same is hereby amended to read as follows:

49-406A. IDAHO CLASSIC -- SPECIAL LICENSE PLATE PROGRAM -- REGISTRATION AND STANDARD LICENSE PLATES. (1) Any motor vehicle or motorcycle which is at least thirty (30) years old that does not qualify as an "Idaho Old Timer" and that is maintained to its original likeness using original-type parts and materials, without major modifications shall be known as an "Idaho Classic." Any motor vehicle which is altered from its original design is not an "Idaho Classic" as herein defined.

(2) Any motor vehicle or motorcycle which qualifies as an "Idaho Classic" shall be used for exhibits, parades, tours, club activities and such occasional use as is necessary for operation and maintenance of the vehicle, and shall not be used for business or commercial purposes or as customary and usual transportation.

(3) Applicants for a special "Idaho Classic" license plates shall pay an initial program fee of twenty-five dollars (\$25.00) and a the license plate manufacturing fee of ten dollars--(\$10.00) required in section 49-450, Idaho Code, for each set of Idaho classic plates which shall be displayed on the rear of the vehicle. The initial program fee shall be deposited in the state highway account, and the plate manufacturing fee shall be deposited in the plate manufacturing account.

(4) Once every three (3) years, on a schedule set by the department, an ownership verification form shall be mailed to each plate holder on file with the department. The owner shall provide such information as is requested by the department to verify ownership of the vehicle(s) and that the special plate(s) is still in use by the owner. A fee of three dollars (\$3.00) shall be charged by the department for each vehicle. This fee shall be deposited in the state highway account to defray costs of the license plate program. If the owner no longer has an interest in a vehicle(s) the owner may retain the plates as specified in subsection (7) of this section. If the ownership verification form is not returned by the date specified by the department, the registration record will be purged from the files of the department. Any use of the plate(s) is lost to the owner and the plate number becomes available for issue to another applicant.

~~During the year of a general~~ reissue of license plates as specified in section 49-443(2), Idaho Code, ~~the reissue of "Classic" plates~~ shall not be required unless there is a general consensus among the majority of plate holders that a new plate design is needed. Representatives of the plate holders shall make the request known to the department ~~a minimum of one hundred eighty (180) days before the first month of general reissue.~~ The cost of manufacturing a new design will be set by the department based upon the cost of manufacturing supplies and administering the reissue. The equivalent cost of each ~~set of~~ plates will be charged to each plate holder who purchases the new plates. If a new plate design is authorized, the design and color shall be approved by representatives of the interest group. The design, color and numbering scheme shall also be subject to the approval of the department. The existing plate design will be canceled and all plate holders, present and future shall purchase and display the new plates.

(5) An applicant for the special "Idaho Classic" plates shall execute an affidavit on a form provided by the department that the vehicle or motorcycle qualifies as an "Idaho Classic" and shall only be used for the purposes allowed.

The department shall have the authority to refuse to issue the plates and may demand the return of such plates if the applicant has failed to comply with the provisions of this section.

(6) If an "Idaho Classic" is to be used as customary and usual transportation, or for business or commercial purposes, the owner shall register the vehicle under the provisions of section 49-402, or section 49-434, Idaho Code, as applicable, and shall obtain and display the standard issue of license plates after payment of the plate fee required in section 49-450, Idaho Code. It shall be permissible to display both the standard issue of plates and the "Idaho Classic" plates.

(7) Whenever title or interest in an Idaho classic motor vehicle or motorcycle is transferred or assigned, the transferor may retain the special plates for use on another vehicle which qualifies by providing the information required in subsection (5) of this section and by paying the required transfer fee. If the vehicle is also registered under the provisions of section 49-402 or section 49-434, Idaho Code, the provisions of section 49-431, Idaho Code, relating to the procedure for assignment and transfer of interest, shall apply.

(8) ~~Classic plate holders on record with the department on January 1, 1994, may retain the black on white design in effect on that date. If a new license plate was purchased and the special program fee of fifteen dollars (\$15.00) was paid, the plate holder may request a refund of the special program fee less an administrative cost as determined by the department. A request for refund must be made in writing and must be received by the department no later than December 31, 1995. No request for refund shall be honored after that date. If the plate holder no longer has the black on white plates, a new black on white plate shall be requested from the department.~~

~~Vintage plate holders who were first-time applicants and purchased a blue on silver plate after January 1, 1994, shall request a black on white plate from the department. The blue on silver design will become invalid on December 31, 1995.~~

SECTION 5. That Section 49-407, Idaho Code, be, and the same is hereby amended to read as follows:

49-407. YEAR OF MANUFACTURE PLATES. Pursuant to rules and regulations of the department, any person who is the owner of a motor vehicle thirty (30) years or older which is registered under section 49-402(1) or (2), Idaho Code, may display on the rear of the vehicle an authentic Idaho plates manufactured in the same year as the vehicle.

In addition to the regular registration fee required in section 49-402(1) and (2), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402(98), Idaho Code.

SECTION 6. That Section 49-408, Idaho Code, be, and the same is hereby amended to read as follows:

49-408. STREET ROD. (1) Any motor vehicle manufactured prior to the year 1949, or designed and manufactured to resemble such a vehicle and which has been certified as a street rod ~~by the United Street Rods of Idaho,~~ may be registered as a street rod under the provisions of this section.

(2) Any street rod shall have all equipment in operating condition which was specifically required by law as a condition for its first sale after manufacture. No law requiring any particular equipment or specifying any standards to be met by motor vehicles shall apply to street rods unless it so specifically states.

(3) Upon receipt of an application on a form prescribed by the department for a special street rod automobile plates, accompanied by other documentation required in this section, the department shall issue to the applicant a special street rod automobile plates which shall be displayed on the rear of the vehicle. The registration certificate need not specify the weight of the street rod, and the plates issued shall bear no date but shall bear the inscription "Street Rod," "Idaho," a picture of a 1929 highway roadster, and the registration number issued for the street rod, and the plates shall be valid upon annual renewal under section 49-402, Idaho Code, as long as the vehicle is in existence. The plates will be issued for the applicant's use

only for the particular vehicle, and in the event of a transfer of title, the transferor may hold the plates and transfer them it to another qualifying street rod.

(4) In addition to the regular registration fee required in section 49-402(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402(98), Idaho Code.

(5) The department has the power to revoke any registration issued under this section for cause shown for failure of the applicant to comply with the provisions of this section.

SECTION 7. That Section 49-409, Idaho Code, be, and the same is hereby amended to read as follows:

49-409. PERSONALIZED LICENSE PLATES. (1) Any person who is the registered owner of a vehicle may apply to the department for personalized license plates in lieu of regular numbered plates except for a vehicle registered under sections 49-434 or 49-435, Idaho Code. In addition to the regular registration fees required in section 49-402(1), (2), (3) and (4) and (6) and section 49-422, Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402(98), Idaho Code. The personalized license plates shall be of the same color and design as other license plates, and shall consist of numbers or letters, or any combination thereof, not exceeding seven (7) positions. No more than one (1) particular combination of letters and numbers shall be in existence at any one (1) time. The form for application of the plates will be as prescribed by the director and, in his discretion, may refuse to issue the plates.

(2) When personalized license plates are issued for a vehicle, the regular license plates for that vehicle ~~must be surrendered to the department unless the regular license plates are~~ belong to the registrant and may be transferred to another vehicle owned by the personalized plate applicant. ~~Personalized plates must also be surrendered upon failure to pay the annual fee for personalized license plates.~~

SECTION 8. That Section 49-414, Idaho Code, be, and the same is hereby amended to read as follows:

49-414. LEGISLATIVE LICENSE PLATES -- FEES. (1) Special legislative license plates shall be issued by the department upon application and payment of the required fees. Each legislator is eligible for special license plates. The registration period shall be for one (1) year, from January 1 through December 31, and may be renewed, as long as the legislator holds office. The plates shall bear either the inscription "House" or "Senate", shall contain a consecutive numbering from one (1) through the maximum number of members in each body with the numbers to be assigned by the speaker of the house of representatives and the president pro tempore of the senate, and shall otherwise comply with the provisions of section 49-443, Idaho Code.

(2) In addition to the regular registration fee required in section 49-402(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee as specified in section

49-402(98), Idaho Code.

SECTION 9. That Section 49-416, Idaho Code, be, and the same is hereby amended to read as follows:

49-416. STATEHOOD CENTENNIAL LICENSE PLATES. (1) Statehood centennial license plates are available to owners of motor vehicles required to be registered under section 49-402(1) or section 49-402(3), Idaho Code, upon application at a county assessor's office or at the department. Availability of statehood centennial plates for other classes of vehicle registrations shall be as authorized by rules and regulations of the department. In addition to the regular registration fee required in section 49-402(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee as specified in section 49-402(98), Idaho Code. All revenues from such initial registration and annual renewal fees shall be deposited in the highway distribution account.

(2) The statehood centennial license plates shall be of a color and design approved by the department, utilizing a numbering system approved by the board. The statehood centennial license plates must be surrendered upon failure to pay the annual special fee and renewal fees.

(3) Any person who applies for statehood centennial license plates, may also apply for personalized numbers and/or letters on those plates, as provided for in section 49-409, Idaho Code.

SECTION 10. That Section 49-443, Idaho Code, be, and the same is hereby amended to read as follows:

49-443. LICENSE PLATES TO BE FURNISHED BY DEPARTMENT -- FORM AND CONTENTS. (1) The assessor or the department shall furnish to every owner whose vehicle is registered by that office, pursuant to sections 49-402 and 49-402A, Idaho Code, one (1) license plate for vehicles registered under the provisions of section 49-406, 49-406A or 49-408, Idaho Code, or a motorcycle, trailer, truck-tractor, or semitrailer, and two (2) license plates for every other motor vehicle. If a vehicle is issued one (1) plate only, that plate shall be displayed on the rear of the vehicle. For vehicles registered under the provisions of section 49-407, Idaho Code, the applicant shall provide one (1) plate to be displayed on the rear of the vehicle.

Commencing January 1, 1992, the color and design of the plates shall be comparable to the color and design of the statehood centennial issue of license plates with blue numerals and letters on a multicolored red, white and blue background. Each license plate must bear upon its face the inscriptions "Famous Potatoes" and "Scenic Idaho."

Every license plate shall have displayed upon it the registration number assigned to the vehicle and its owner and the name "Idaho" which may be abbreviated. The plates issued under the provisions of section 49-402(1), Idaho Code, and the required letters and numerals, including an identification of the county in which the motor vehicle to which the plates will be affixed is registered, shall be of sufficient size to be plainly readable from a distance of seventy-five (75)

feet during daylight, and each license plate and registration sticker shall be treated with a fully reflectorized material according to specifications prescribed by the board.

(2) License plates shall be valid for a period of seven (7) years beginning with the date of issuance of new plates. At the end of the sixth year, the registered owner shall receive notice of the date upon which the plates will expire. The department shall implement a plate-number reservation program beginning prior to the 1999 plate issue and following once every seven (7) years thereafter, for a limited plate-number sequence in each county which chooses to offer a reservation program. Requests for license plate number reservations shall be submitted to the county during the open reservation period established by the department. The department may charge a minimal fee as determined by the board to recover costs to the department for reservation of license plate numbers.

(3) If a license plate number has expired as provided in subsection (2) of this section and the number was not reserved, or if the vehicle registration is not renewed within sixty (60) days of its expiration, the plate number shall be available for use by another registrant. To obtain a specific number in the recycled license plate number file, the owner of a registered vehicle shall pay a one (1) time fee as determined by rule of the board.

The provisions of this subsection shall apply only to vehicles registered under the provisions of section 49-402(1), Idaho Code, and section 49-434(1), Idaho Code, as it applies to noncommercial vehicles.

(4) License plates issued for vehicles required to be registered in accordance with the provisions of sections 49-402 and 49-402A, Idaho Code, shall be issued color coded registration validation stickers showing the year of registration. Each registration validation sticker shall bear a number from 1 through 12, which number shall correspond to the month of the calendar year in which the registration of the vehicle expires and shall be affixed to the lower right-hand corner of the plates within the outlined rectangular area.

(5) License plates for utility trailers registered under the provisions of section 49-402A, Idaho Code, which are issued for five (5) or ten (10) years and license plates for trailers, rental utility trailers and semitrailers registered under the provisions of section 49-434, Idaho Code, which are issued for five (5) years shall use the design in effect on the date of manufacture. If a design change occurs, plates from the effective date of the design change shall be manufactured using the new design. Unexpired plates need not be reissued to conform to a design change.

(6) For license plates which are lost, stolen, mutilated, or illegible, the owner shall apply for a duplicate or substitute. The assessor shall also furnish for each registration, and to validate the license plate, a pressure-sensitive, serially-numbered registration sticker. License plates issued for state, county and city motor vehicles shall be permanent and remain on the vehicle for which issued from year to year, and need no renewal or validation sticker.

(7) Whenever a vehicle is completely destroyed by fire or accident and the operator submits satisfactory proof of that destruction to the department or appropriate assessor's office, the registration

use increment and fees shall be transferred to the replacement vehicle for a service transfer fee of five dollars (\$5.00), which fee shall be retained by the registering authority. None of the original fees shall be subject to refund.

(8) The department shall furnish to every owner whose vehicle is registered under sections 49-434 and 49-435, Idaho Code, a pressure-sensitive, serially-numbered registration sticker to validate the license plate.

(9) The board shall have authority to require the return to the department of all license plates and registration stickers upon termination of the lawful use of them by the owner.

(10) The board may promulgate such rules as are necessary to implement the provisions of this section.

SECTION 11. This act shall be in full force and effect on and after January 1, 1998.

Approved March 15, 1997.

CHAPTER 130
(S.B. No. 1094)

AN ACT

RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-102, IDAHO CODE, TO FURTHER DEFINE TERMS, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING CHAPTER 1, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-103, IDAHO CODE, TO GOVERN THE LIABILITY FOR WORKER'S COMPENSATION COVERAGE OF TEMPORARY AND PROFESSIONAL EMPLOYERS.

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

SECTION 1. 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 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 con-

victed of a criminal offense, any juvenile who has been found to be within the purview of chapter ~~18~~ 5, title ~~16~~ 20, Idaho Code, and who has been informally diverted under the provisions of section ~~16-1807A~~ 20-511, 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.

(9) 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.

(10) "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.

(11) "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.

(12) (a) "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 workers there employed. If the employer is secured, it means his surety so far as applicable.

(b) "Professional employer" means a professional employer as defined in chapter 24, title 44, Idaho Code.

(c) "Temporary employer" means the employer of temporary employees as defined in section 44-2403(7), Idaho Code.

(d) "Work site employer" means the client of the temporary or professional employer with whom a worker has been placed.

(13) "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.

(15) "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.

(16) "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.

(17) "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 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.

(18) "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.

(19) "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.

(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) "~~Silicosis~~Silicosis" means the characteristic fibrotic condition of the lungs caused by the inhalation of silicon dioxide (SiO_2) dust.

(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.

(22) "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.

(23) "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.

(24) "Secretary" means the secretary of the commission.

(25) "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.

(26) "State" includes any state, district, commonwealth, zone or territory of the United States or any province of Canada.

(27) "Surety" means any insurer authorized to insure or guarantee payment of worker's compensation liability of employers in any state; it also includes the state insurance fund, a self-insurer and an inter-insurance exchange.

(28) "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.

(29) "Wages" and "wage earning capacity" prior to the injury or disablement from occupational disease mean 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.

(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.

(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.

(32) "Worker's compensation law" or "workmen's compensation law" means and includes the worker's compensation law of this state and any like or similar law of any state, United States, territory, or province of Canada.

SECTION 2. That Chapter 1, 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 72-103, Idaho Code, and to read as follows:

72-103. TEMPORARY AND PROFESSIONAL EMPLOYERS. (1) So long as the temporary or professional employer, or work site employer, has worker's compensation insurance covering an injured worker, or is a qualified self-insurer covering an injured worker under this title:

(a) The work site employer shall have all of the protections and immunities granted any other employer by this title and shall not be regarded as a third party under section 72-223, Idaho Code.

(b) The temporary or professional employer shall have all of the protections and immunities granted any other employer by this title and shall not be regarded as a third party under section 72-223, Idaho Code, if it exercised the right of control sufficient to be an employer as defined in section 72-102, Idaho Code, and insures its worker's compensation liability accordingly.

(2) Whenever the parties to a temporary or professional employer arrangement contemplated by subsection (1) of this section comply with that subsection, no penalties under the worker's compensation law for being uninsured shall apply to the temporary or professional employer, or the work site employer, and no violation of any provision of title 41, Idaho Code, shall occur.

(3) Whenever there is a temporary or professional employer arrangement as contemplated by subsection (1) of this section, the parties to such arrangement shall have the option to determine for themselves, in writing, whether the temporary or professional employer or the work site employer will be the party to secure liability as

required by section 72-301, Idaho Code, and the party so obligated to secure such liability may do so in any manner permitted by this title. In the event that the parties to such an arrangement do not exercise the option provided in this subsection, the obligation to secure such liability shall be with the temporary or professional employer.

Approved March 15, 1997.

CHAPTER 131
(S.B. No. 1105)

AN ACT

RELATING TO ACTIONS AGAINST LAW ENFORCEMENT OFFICERS; AMENDING SECTION 6-610, IDAHO CODE, TO DEFINE LAW ENFORCEMENT OFFICER, TO REQUIRE BONDS FOR PROSECUTION OF A CIVIL ACTION AGAINST A LAW ENFORCEMENT OFFICER, TO PROVIDE FOR AWARD OF COSTS, TO PROVIDE THE ABILITY TO EXCEPT TO THE FAILURE TO POST A BOND OR THE SUFFICIENCY OF A BOND AND TO PROVIDE FOR DISMISSAL FOR FAILURE TO POST A BOND OR FOR INSUFFICIENCY.

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

SECTION 1. That Section 6-610, Idaho Code, be, and the same is hereby amended to read as follows:

6-610. ACTIONS AGAINST PUBLIC LAW ENFORCEMENT OFFICERS. (1) For purposes of this section, a "law enforcement officer" shall be defined as any court personnel, sheriff, constable, peace officer, state police officer, correctional, probation or parole official, prosecuting attorney, city attorney, attorney general, or their employees or agents, or any other person charged with the duty of enforcement of the criminal, traffic or penal laws of this state or any other law enforcement personnel or peace officer as defined in chapter 51, title 19, Idaho Code.

(2) Before any civil action may be filed against any sheriff, constable, peace officer, state police officer, or any other person charged with the duty of enforcement of the criminal laws of this state, law enforcement officer or service of civil process on any law enforcement officer, when such action arises out of, or in the course of the performance of his duty, or in any action upon the bond of any such law enforcement officer, the proposed plaintiff or petitioner, as a condition precedent thereto, shall prepare and file with, and at the time of filing the complaint or petition in any such action, a written undertaking with at least two (2) sufficient sureties in an amount to be fixed by the court, conditioned upon the The purpose of this requirement is to ensure diligent prosecution of such a civil action brought against a law enforcement officer, and in the event judgment in the said cause shall be entered against the plaintiff or petitioner, for the payment to the defendant or respondent of all costs and expenses that may be awarded against such the plaintiff or petitioner, including an award of reasonable attorney's fees to be fixed

as determined by the court.

(3) In any such civil action, the prevailing party therein shall, in addition to an award of costs as otherwise provided, recover from the losing party therein such sum as counsel as shall be allowed by the court shall be entitled to an award of costs as otherwise provided by law. The official bond of any such law enforcement officer under this section shall be liable for any such costs and attorney fees.

(4) At any time within twenty (20) days after the service of summons during the course of a civil action against a law enforcement officer, the defendant or respondent may except to either the plaintiff's or petitioner's failure to file a bond or to the sufficiency of the sureties or to the amount of the bond. If he fails to do so, he is deemed to have waived said objections.

(5) When the defendant or respondent excepts to the plaintiff's or petitioner's failure to post a bond under this section, the judge shall dismiss the case.

(6) When the defendant or respondent excepts to the sufficiency of the sureties is excepted to, they the sureties must justify in the same manner as provided in section 8-405, Idaho Code be justified by the plaintiff or petitioner. Upon failure to justify, or if others in their place fail to justify at the time and place appointed, the judge must forthwith dismiss the action case.

(7) When the amount of the bond is excepted to, a hearing shall may be held upon notice thereof to the plaintiff or petitioner by the defendant or respondent of not less than two (2) nor more than five (5) ten (10) working days after the date of the exceptions is filed, before the judge of the court in which the action is brought. If it appears that the undertaking filed bond is insufficient in amount, the judge shall order a new bond sufficient in amount to be filed within five (5) days of the date of such order is received by the plaintiff or petitioner. If no such increased bond be so is filed as required by the order of the court, the judge must--forthwith shall dismiss the action.

Approved March 15, 1997.

CHAPTER 132
(S.B. No. 1118)

AN ACT

RELATING TO HIGHWAY DISTRICTS; AMENDING SECTION 40-906, IDAHO CODE, TO REVISE PROCEDURES FOR EXPENDITURES FOR WHICH BIDS ARE REQUIRED.

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

SECTION 1. That Section 40-906, Idaho Code, be, and the same is hereby amended to read as follows:

40-906. EXPENDITURES FOR WHICH BIDS REQUIRED. When the expenditure contemplated exceeds five thousand dollars (\$5,000), or ten but not twenty-five thousand dollars (\$1025,000) if--for--equipment;--it

shall--be--contracted--for--and--let--to--the--lowest--responsible--bidder the district 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 district 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 district finds that it is impractical or impossible to obtain three (3) quotations for the proposed transaction, the district may acquire the property in any manner the district deems best. The district 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 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.

Approved March 15, 1997.

CHAPTER 133
(S.B. No. 1122)

AN ACT

RELATING TO ASSUMED BUSINESS NAMES; AMENDING SECTION 53-503, IDAHO CODE, TO PROVIDE THAT AN ASSUMED BUSINESS NAME SHALL NOT INCLUDE WORDS OR ABBREVIATIONS FALSELY IMPLYING THE EXISTENCE OF A FORMALLY ORGANIZED OR REGISTERED ENTITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 53-503, Idaho Code, be, and the same is hereby amended to read as follows:

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; which name shall not include words or abbreviations which falsely imply the existence of a formally organized or registered entity.

(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 gov-

ernment 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".

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 15, 1997.

CHAPTER 134
(S.B. No. 1142)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-417A, IDAHO CODE, TO PROVIDE THAT CERTAIN FEES FROM TIMBER SPECIAL LICENSE PLATES SHALL BE DEPOSITED WITH THE STATE TREASURER AND CREDITED TO THE DEPART-

MENT OF LANDS FOR USE IN EDUCATIONAL EFFORTS REGARDING MANAGEMENT AND CONSERVATION OF FOREST RESOURCES AS AGREED UPON BY THE DEPARTMENT OF LANDS AND THE IDAHO FOREST PRODUCTS COMMISSION.

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

SECTION 1. That Section 49-417A, Idaho Code, be, and the same is hereby amended to read as follows:

49-417A. IDAHO TIMBER SPECIAL PLATES. (1) On and after July 1, 1995, any person who is the owner of a vehicle registered under the provisions of section 49-402, Idaho Code, may apply for Idaho timber special license plates.

(2) In addition to the regular operating fee, the applicant shall be charged a fee of thirty-five dollars (\$35.00) for the initial issuance of the plates, and twenty-five dollars (\$25.00) upon each succeeding annual registration. Twenty-five dollars (\$25.00) of the initial fee and fifteen dollars (\$15.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Ten dollars (\$10.00) of each initial fee and ten dollars (\$10.00) of each renewal fee shall be deposited by the state treasurer in the department of lands fund for use in reforestation activities on state lands, provided however, that prior to the beginning of any fiscal year, the state board of land commissioners may agree that funds made available under this section to the department of lands for the coming year would better further reforestation objectives of the management and conservation of forest resources on public and private lands in the state if expended for educational efforts set forth in this section.

Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. He may only display the plates after receipt of new registration from the department.

(3) The Idaho timber license plate shall be of a color and design acceptable to the members of the Idaho forest products commission and approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the director of the department of lands from funds appropriated to that department.

(4) Sample Idaho timber plates may be purchased for a fee of thirty dollars (\$30.00), twelve dollars (\$12.00) of which shall be deposited in the state highway account and eighteen dollars (\$18.00) of which shall be deposited in the department of lands fund for use in reforestation activities or educational efforts as set forth in this section.

(5) Ten dollars (\$10.00) of each initial fee and ten dollars (\$10.00) of each renewal fee of each timber special license plate, and eighteen dollars (\$18.00) for each sample timber special license plate, shall be deposited with the state treasurer and credited to the department of lands. Funds so deposited and subsequently directed by the state board of land commissioners for educational efforts as set forth in this section shall be expended as agreed by the state board

of land commissioners upon recommendations developed jointly by the department of lands and the Idaho forest products commission. Such efforts may include signs or other appropriate means designed to help build public understanding of reforestation or the management and conservation of forest resources on public and private lands in Idaho.

Approved March 15, 1997.

CHAPTER 135
(S.B. No. 1143)

AN ACT

RELATING TO ALLOWABLE GROSS LOADS ON THE HIGHWAYS; AMENDING SECTION 49-1013, IDAHO CODE, TO PROVIDE ADDITIONAL PENALTIES FOR MULTIPLE VIOLATIONS OF SIZE AND WEIGHT LAWS ARISING FROM A SINGLE WEIGHING OF A VEHICLE OR COMBINATION OF VEHICLES, AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 49-1013, Idaho Code, be, and the same is hereby amended to read as follows:

49-1013. PENALTIES FOR VIOLATIONS. (1) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this chapter, except that violations of law as specified in paragraphs (a), (b) and (c) of subsection (3) of this section shall constitute an infraction.

(2) Persons convicted of violations of the provisions of sections 49-1003 and 49-1005 through 49-1012, Idaho Code, shall be subject to punishment by a fine of not to exceed three hundred dollars (\$300) or by imprisonment in the county jail for not more than thirty (30) days or by a combination of such fine and imprisonment.

(3) Persons convicted of violations of the provisions of sections 49-1001, 49-1002, and 49-1004, Idaho Code, shall be subject to a penalty as prescribed herein:

(a) One (1) pound through one thousand (1,000) pounds overweight shall be five dollars (\$5.00) and shall constitute an infraction.

(b) One thousand one (1,001) pounds through two thousand (2,000) pounds overweight shall be fifteen dollars (\$15.00) and shall constitute an infraction.

(c) Two thousand one (2,001) pounds through four thousand (4,000) pounds overweight shall be twenty-five dollars (\$25.00) and shall constitute an infraction.

(d) Four thousand one (4,001) pounds through fifteen thousand (15,000) pounds overweight shall be twenty-five dollars (\$25.00) plus \$.1341 per pound for each additional pound over four thousand (4,000) pounds overweight.

(e) Fifteen thousand one (15,001) pounds through twenty thousand (20,000) pounds overweight shall be one thousand five hundred dollars (\$1,500) plus twenty cents (\$.20) per pound for each addi-

tional pound over fifteen thousand (15,000) pounds overweight.

(f) Twenty thousand one (20,001) pounds and greater shall be two thousand five hundred dollars (\$2,500) plus thirty cents (\$.30) per pound for each additional pound over twenty thousand (20,000) pounds overweight.

(g) In addition to the penalties specified in this subsection, one hundred fifty dollars (\$150) for failure to deploy a variable load suspension axle which results in adjacent axles exceeding allowable weight by two thousand one (2,001) pounds or more.

(4) Persons convicted of or receiving an infraction judgment for violating two (2) or more of the provisions of sections 49-1001, 49-1002 or 49-1004, Idaho Code, at any one (1) time shall be assessed the full amount of the penalty for the primary violation. In addition to the assessment of the penalty for the primary violation, the person convicted of or receiving an infraction judgment shall be assessed a penalty of ten dollars (\$10.00) for each additional misdemeanor conviction or five dollars (\$5.00) for each additional infraction judgment for violations of section 49-1001, 49-1002 or 49-1004, Idaho Code, committed at the same time.

(5) All moneys collected as a result of the penalties prescribed in subsections (3) and (4) of this section, shall be deposited into the highway distribution account.

Approved March 15, 1997.

CHAPTER 136
(S.B. No. 1172)

AN ACT

RELATING TO DEER AND ELK TAGS; AMENDING SECTION 36-408, IDAHO CODE, TO PROVIDE FOR THE SALE OF SET-ASIDE TAGS BY COMMISSION RULE AND TO PROVIDE FOR THE ALLOCATION OF DEER AND ELK TAGS BY COMMISSION RULE; AND AMENDING SECTION 36-2107, IDAHO CODE, TO PROVIDE FOR THE OUTFITTERS AND GUIDES BOARD TO DESIGNATE BY RULE THE NUMBER OF ALLOCATED TAGS TO AUTHORIZED OUTFITTING OPERATING AREAS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 36-408, Idaho Code, be, and the same is hereby amended to read as follows:

36-408. COMMISSION'S AUTHORITY -- TAGS -- PERMITS -- NONRESIDENTS LIMITED -- OUTFITTERS SET-ASIDE. (a) Tags and Permits -- Method of Use. The commission is hereby authorized to prescribe the number and kind of wildlife that may be taken under authority of the several types of tags and permits provided for in this title, and the manner in which said tags and permits shall be used and validated.

(b) Limit -- Licenses, Tags or Permits -- Controlled Hunts. The commission is hereby authorized to establish a limit annually as to the number of each kind and class of licenses, tags, or permits to be

sold or issued and is further authorized to limit the number or prohibit entirely, the participation by nonresidents in controlled hunts.

(c) Outfitters Set-aside. When the commission establishes a limit as to the number of nonresident deer tags and nonresident elk tags, it shall set aside annually a maximum of twenty-five per cent (25%) of the nonresident deer tag and nonresident elk tag limit. The set-aside tags shall be sold ~~on-a-first-come,-first-served-basis~~ pursuant to commission rule, only to persons that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

In order for a person to purchase any set-aside nonresident deer tag or nonresident elk tag, that person's outfitter must submit an application with the proper fees as required by the director. If any nonresident deer tags or nonresident elk tags set aside pursuant to this subsection are unsold by July 1 of the year in which they were set aside, they may be sold by the department to the general public who are nonresidents. The commission may promulgate all necessary rules to implement the provisions of this subsection.

(d) Deer and Elk Tag Allocation. If the commission limits the number of deer or elk tags available for use in any game management area, unit or zone, the commission may allocate by rule a number of deer or elk tags for use by hunters that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

(e) Special Game Tags. The commission is hereby authorized to issue two (2) special bighorn sheep tags per year. One special bighorn sheep tag shall be auctioned off by an incorporated nonprofit organization dedicated to wildlife conservation, selected by the commission. The tag shall be issued by the department of fish and game to the highest eligible bidder. No more than five per cent (5%) of the successful bid for the tag may be retained by the organization. The commission is also authorized to issue one (1) special bighorn sheep tag which will be disposed of by lottery. The lottery permit can be marketed by the department of fish and game or a nonprofit organization dedicated to wildlife conservation selected by the commission. The tag will be issued by the department of fish and game to an eligible person drawn from the lottery provided in this subsection. No more than twenty-five per cent (25%) of gross revenue can be retained for administrative costs by the organization. All net proceeds for the tag disposed of by lottery pursuant to this subsection shall be remitted to the bighorn sheep account which is hereby created in the dedicated fund. Moneys in the account shall be utilized by the department in solving problems between bighorn sheep and domestic sheep, solving problems between wildlife and domestic animals or improving relationships between sportsmen and private landowners by being utilized in the veterinarian program established in subsection (e)9 of section 36-106, Idaho Code, and may be expended pursuant to appropriation. The tags to be issued pursuant to this subsection shall be taken from the nonresident bighorn sheep tag quota. The net proceeds shall be forwarded to the director for deposit in the fish and game trust account and shall be used for bighorn sheep research and management purposes only from the special bighorn sheep tag auctioned off by an incorporated nonprofit association. Moneys raised pursuant to this subsection

may not be used to transplant additional bighorn sheep into that portion of southwest Idaho south of the Snake river and west of U.S. highway no. 93, nor for litigation or environmental impact statements involving bighorn sheep. No transplants of bighorn sheep accomplished with moneys raised pursuant to this subsection shall occur in any area until hearings are conducted in the area.

SECTION 2. That Section 36-2107, Idaho Code, be, and the same is hereby amended to read as follows:

36-2107. POWERS AND DUTIES OF BOARD. The board which may by written agreement authorize the bureau of occupational licenses as agent to act in its interest, shall have the following duties and powers:

(a) To conduct examinations to ascertain the qualifications of applicants for outfitter's or guide's licenses, and to issue such licenses to qualified applicants, with such restrictions and limitations thereon as the board may find reasonable.

(b) To prescribe and establish rules of procedure and regulations to carry into effect the provisions of this act including, but not limited to, regulations prescribing all requisite qualifications of training, experience, knowledge of rules and regulations of governmental bodies, condition and type of gear and equipment, examinations to be given applicants, whether oral, written or demonstrative, or a combination thereof.

(c) To conduct hearings and proceedings to suspend, revoke or restrict the licenses of outfitters or guides, and to suspend, revoke or restrict said licenses for due cause in the manner hereinafter provided.

(d) The board is expressly vested with the power and the authority to enforce the provisions of this chapter and make and enforce any and all reasonable rules ~~and regulations~~ which shall by it be deemed necessary and which are not in conflict with the provisions of this chapter, for the express purpose of safeguarding the health, safety, welfare and freedom from injury or danger of those persons utilizing the services of outfitters and guides, and for the conservation of wildlife and range resources.

(e) The board shall have the power to cooperate with the federal and state government through its appropriate agency or instrumentality in matters of mutual concern regarding the business of outfitting and guiding in Idaho.

(f) The board shall have the power throughout the state of Idaho to request the attendance of witnesses and the production of such books, records and papers as may be required at any hearing before it, and for that purpose the board may request a district court to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers. Subpoenas shall be directed to the sheriff of any county in the state of Idaho where such witness resides or may be found. Subpoenas shall be served and returned in the same manner as subpoenas in a criminal case. The fees and mileage of the sheriff and witnesses shall be the same as that allowed in district court criminal cases, which fees and mileage shall be paid from any funds in the state treasury available therefor in the same manner as other expenses of the board are paid. Disobedience of any subpoena

issued by the district court or the refusal by any witness in failing to testify concerning any matter regarding which he may lawfully be interrogated, or the failure to produce any books, records or papers shall constitute a contempt of the district court of any county where such disobedience or refusal occurs, and said court, or any judge thereof, by proceedings for contempt in said court, may, if such contempt be found, punish said witness as in any other case of disobedience of a subpoena issued from such court or refusal to testify therein.

(g) The board shall have the power to appoint an executive director to serve at the pleasure of the board. The executive director shall carry out such administrative duties as delegated to the director by the board. The board may, in its discretion, refuse, sustain or reverse, by majority vote, any action or decision of the executive director. The executive director shall be exempt from the provisions of chapter 53, title 67, Idaho Code, and shall receive a salary that is fixed by the board.

(h) The board shall have the power to hire enforcement agents in order to conduct investigations and enforce the provisions of this chapter. All enforcement agents appointed by the board who are certified by the Idaho peace officer standards and training advisory council, shall have the power of peace officers limited to:

1. Enforcement of the provisions of this chapter.
2. Responding to express requests from other law enforcement agencies for aid and assistance in enforcing other laws. For purposes of this section, such a request from a law enforcement agency shall mean only a request as to a particular and singular violation or suspicion of violation of law, and shall not constitute a continuous request for assistance outside the purview of enforcement of the provisions of this chapter.

(i) By August 1 of each year, the board shall provide to the director of the department of fish and game, in a manner and form prescribed by the director, the number of each species of big game taken in each management unit by clients of licensed outfitters between July 1 of the immediately preceding calendar year and June 30 of the current calendar year.

By January 15 of each year, each nonresident licensee, permittee or tagholder shall provide to the department of fish and game, in a manner and form provided by the director, the number of each species of big game taken by that person in each management unit in the previous calendar year. And, if such person was accompanied by or had in employ a licensed outfitter, the name and license number of such outfitter shall also be provided on such form.

(j) The board shall by rule designate the number of deer or elk tags allocated pursuant to section 36-408(d), Idaho Code, among the authorized operating areas within the game management area, unit or zone.

CHAPTER 137
(S.B. No. 1203)

AN ACT

RELATING TO STATE PROPERTY; AMENDING CHAPTER 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5707A, IDAHO CODE, TO DIRECT THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES TO PROVIDE PROCEDURES GOVERNING THE MANAGEMENT OF STATE-OWNED DWELLINGS.

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 67-5707A, Idaho Code, and to read as follows:

67-5707A. PROCEDURES FOR STATE-OWNED DWELLINGS. The department of administration shall adopt, by rule, the procedures to be followed by each state agency in managing the acquisition, rental, tax status, and recordkeeping of state-owned dwellings.

Approved March 15, 1997.

CHAPTER 138
(S.B. No. 1245)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS; APPROPRIATING AND TRANSFERRING CERTAIN MONEYS TO THE PARKS AND RECREATION FUND; AND REAPPROPRIATING CERTAIN FUNDS FOR CAPITAL OUTLAY.

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

SECTION 1. There is hereby appropriated to the Department 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General					
Fund	\$ 939,500	\$ 582,700	\$ 58,000		\$ 1,580,200
Parks and Recreation					
Fund	377,400	415,700	74,100		867,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Recreational					
Fuels Fund		31,100	15,000		46,100
Parks and Recreation Registration Fund		33,000			33,000
Federal Grant Fund	14,800	3,100		\$ 36,400	54,300
Indirect Cost Recovery Fund	22,400	6,000			28,400
Miscellaneous Revenue Fund	4,300	31,900			36,200
TOTAL	\$1,358,400	\$1,103,500	\$ 147,100	\$ 36,400	\$ 2,645,400
B. PARK OPERATIONS: FROM:					
General Fund	\$3,332,900	\$ 553,100	\$ 32,000		\$ 3,918,000
Parks and Recreation Fund	932,600	627,300			1,559,900
Recreational Fuels Fund			679,400		679,400
Public Recreation Enterprise Fund	176,400	490,500	951,900		1,618,800
Parks and Recreation Expendable Trust Fund	85,100	359,600			444,700
Federal Grant Fund	380,400	126,400			506,800
Miscellaneous Revenue Fund		55,000			55,000
TOTAL	\$4,907,400	\$2,211,900	\$1,663,300		\$ 8,782,600
C. PARK DEVELOPMENT: FROM:					
General Fund	\$ 223,100		\$ 215,000		\$ 438,100
Parks and Recreation Fund	81,700	\$ 47,100			128,800
Recreational Fuels Fund	133,200	6,600	998,700		1,138,500
Parks and Recreation Expendable Trust Fund			10,000		10,000
TOTAL	\$ 438,000	\$ 53,700	\$1,223,700		\$ 1,715,400
D. RECREATION RESOURCES: FROM:					
General Fund	\$ 106,300	\$ 33,400			\$ 139,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Parks and Recreation Fund		33,200		\$ 12,000	45,200
Recreational Fuels Fund	321,000	114,800	\$ 850,500	1,476,300	2,762,600
Parks and Recreation Registration Fund	145,800	233,900	61,900	5,080,700	5,522,300
Petroleum Violation Escrow Fund				1,200,000	1,200,000
Federal Grant Fund	63,200	91,400	2,000	710,800	867,400
Indirect Cost Recovery Fund	115,600	11,500	1,000		128,100
TOTAL	\$ 751,900	\$ 518,200	\$ 915,400	\$8,479,800	\$10,665,300
E. LAVA HOT SPRINGS FOUNDATION:					
FROM:					
Public Recreation Enterprise Fund	\$ 453,600	\$ 419,800	\$ 3,000		\$ 876,400
GRAND TOTAL	\$ 7,909,300	\$ 4,307,100	\$ 3,952,500	\$ 8,516,200	\$ 24,685,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Parks and Recreation is authorized no more than one hundred forty-seven and seventy-four one hundredths (147.74) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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.

SECTION 3. There is hereby appropriated and transferred to the Parks and Recreation Fund the following amounts: \$25,000 from the Tourism and Promotion Fund; \$25,000 from the State Highway Fund; and \$25,000 from the Recreational Vehicle Fund. These appropriations will provide the matching fund support of the Gateway Visitor Centers in the Administration Program in Section 1 of this act.

SECTION 4. There is hereby reappropriated to the Department of Parks and Recreation the unexpended and unencumbered balances of the funds appropriated for Capital Outlay in the Park Development Program for fiscal year 1997, to be used for the Park Development Program for the period July 1, 1997, through June 30, 1998.

Approved March 15, 1997.

CHAPTER 139
(S.B. No. 1247)

AN ACT

APPROPRIATING MONEYS FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR FISCAL YEAR 1998; 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. RETIREMENT ADMINISTRATION:				
FROM:				
Public Employee Retirement System Fund	\$1,766,900	\$3,526,500	\$ 38,500	\$5,331,900
II. PORTFOLIO INVESTMENT:				
FROM:				
Public Employee Retirement System Fund	\$ 236,300	\$ 196,800	\$ 9,500	\$ 442,600
III. 401(k) ADMINISTRATION:				
FROM:				
401(k) Administration Fund		\$ 5,000		\$ 5,000
GRAND TOTAL	\$2,003,200	\$3,728,300	\$ 48,000	\$5,779,500

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, 1997, through June 30, 1998, 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 15, 1997.

CHAPTER 140
(S.B. No. 1248)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF COMMERCE FOR FISCAL YEAR 1998; 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General					
Fund	\$1,607,400	\$ 968,900	\$20,500		\$ 2,596,800
Tourism					
Promotion					
Fund	426,600	2,062,500	2,500	\$ 2,450,600	4,942,200
Seminars and					
Publications					
Fund		356,100			356,100
Miscellaneous					
Revenue					
Fund		86,000			86,000
Federal Grant					
Fund	<u>362,000</u>	<u>129,300</u>	<u>2,500</u>	<u>14,720,200</u>	<u>15,214,000</u>
TOTAL	<u>\$2,396,000</u>	<u>\$3,602,800</u>	<u>\$25,500</u>	<u>\$17,170,800</u>	<u>\$23,195,100</u>

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, 1997, through June 30, 1998, 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 15, 1997.

CHAPTER 141
(S.B. No. 1250)

AN ACT

APPROPRIATING MONEYS FOR THE AGRICULTURAL RESEARCH AND COOPERATIVE EXTENSION SERVICE FOR FISCAL YEAR 1998; REAPPROPRIATING ANY UNEXPENDED AND UNENCUMBERED BALANCES; SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION; 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 Board of Regents of the University of Idaho for the Agricultural Research and Cooperative Extension Service Program the following amounts from the listed funds, to be expended according to the designated standard classifications for the period July 1, 1997, through June 30, 1998:

FROM:	
General Fund	\$19,645,900
Equine Education Fund	135,000
Federal Grant Fund	4,384,900
Miscellaneous Revenue Fund	<u>181,900</u>
TOTAL	\$24,347,700

SECTION 2. There is hereby reappropriated to the Board of Regents of the University of Idaho for the Agricultural Research and Cooperative Extension Service Program, subject to the provisions of Section 3 of this act, the unexpended and unencumbered balance of any appropriation contained in Section 1, Chapter 319, Laws of 1996, to be used for nonrecurring expenditures for the period July 1, 1997, through June 30, 1998.

SECTION 3. The reappropriation for the General Fund granted in Section 2 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is zero, the reappropriation for the General Fund in Section 2 is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount reappropriated in Section 2 of this act shall be in the proportion that the reappropriation for the Agricultural Research and Cooperative Extension Service Program bears to the total General Fund reappropriation authority granted to all state agencies.

SECTION 4. Of the appropriation made from the General Fund in Section 1 of this act, it is legislative intent that \$68,000 be designated for priority research projects as follows: \$19,000 for sugar beet rhizomania research; and \$49,000 for development of an information database on the use of zinc-phosphide technology in control of agricultural crop damage brought about by voles.

Approved March 15, 1997.

CHAPTER 142
(H.B. No. 42, As Amended)

AN ACT

RELATING TO JUVENILE CORRECTIONS; AMENDING SECTION 20-509, IDAHO CODE, TO PROVIDE THAT A JUVENILE FORMALLY CHARGED OR INDICTED AS AN ADULT UNDER THE SECTION OR TRANSFERRED FOR CRIMINAL PROSECUTION AS

AN ADULT PURSUANT TO A WAIVER SHALL BE HELD IN THE COUNTY JAIL OR OTHER ADULT PRISON FACILITY, UNLESS THE COURT, UPON A FINDING OF GOOD CAUSE, ORDERS OTHERWISE.

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

SECTION 1. That Section 20-509, Idaho Code, be, and the same is hereby amended to read as follows:

20-509. VIOLENT OFFENSES, CONTROLLED SUBSTANCES VIOLATIONS NEAR SCHOOLS AND OFFENDERS. (1) Any juvenile, age fourteen (14) years to age eighteen (18) years, who is alleged to have committed any of the following crimes or any person under age fourteen (14) who is alleged to have committed any of the following crimes and, pursuant to section ~~16-1806~~ 20-508, Idaho Code, has been ordered by the court to be held for adult criminal proceedings:

- (a) Murder of any degree or attempted murder;
- (b) Robbery;
- (c) Rape, but excluding statutory rape;
- (d) Forcible sexual penetration by the use of a foreign object;
- (e) Infamous crimes against nature, committed by force or violence;
- (f) Mayhem;
- (g) Assault or battery with the intent to commit any of the above serious felonies;
- (h) A violation of the provisions of section 37-2732(a)(1)(A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school;
- (i) Arson in the first degree and aggravated arson;

shall be charged, arrested and proceeded against by complaint, indictment or information as an adult. All other felonies or misdemeanors charged in the complaint, indictment or information, which are based on the same act or transaction or on one or more acts or transactions as the violent or controlled substances offense shall similarly be charged, arrested and proceeded against as an adult. Any juvenile proceeded against pursuant to this section shall be accorded all constitutional rights, including bail and trial by jury, and procedural safeguards as if that juvenile were an adult defendant.

(2) Once a juvenile has been formally charged or indicted pursuant to this section or has been transferred for criminal prosecution as an adult pursuant to a the waiver hearing-or-information-and provisions of section 20-508, Idaho Code, or this section, the juvenile shall be held in a county jail or other adult prison facility unless the court, after finding good cause, orders otherwise.

(3) Once a juvenile has been found to have committed the offense for which the juvenile was charged, indicted or transferred, or has been found guilty or pled guilty to a lesser offense or amended charge growing out of or included within the original charge, whether or not such lesser offense or amended charge is included within the acts enu-

merated in subsection (1) of this section, the juvenile shall thereafter be handled in every respect as an adult. For any subsequent violation of Idaho law, the juvenile shall be handled in every respect as an adult.

(34) The sentencing judge of any juvenile convicted pursuant to this section may choose to sentence the convicted person in accordance with the juvenile sentencing options set forth in this act, if a finding is made that adult sentencing measures would be inappropriate.

Approved March 17, 1997.

CHAPTER 143
(H.B. No. 127)

AN ACT

RELATING TO RETENTION AND STORAGE OF CITY RECORDS; AMENDING SECTION 50-908, IDAHO CODE, TO PROVIDE FOR OPTICAL SCANNING OF RECORDS; AND AMENDING CHAPTER 9, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-910, IDAHO CODE, TO PROVIDE 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 50-908, Idaho Code, be, and the same is hereby amended to read as follows:

50-908. MANNER OF COPYING RECORDS, DOCUMENTS -- DISPOSITION OF ORIGINALS. (a) Whenever any officer of a city is required or authorized, by law, to record, copy, file, recopy or replace any document, plat, paper, written instrument or book, on file or on 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 in accordance with standards not less than those now approved for permanent records by the American national bureau of standards institute (ANSI).

(b) Whenever any record or document is copied or reproduced by microfilm or other ~~mechanical~~ process as herein provided, it shall be made in duplicate, and the custodian thereof shall place one (1) copy in a fireproof vault or fireproof storage place, and he shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than original size, or for preparing for persons entitled thereto copies of the record or document.

(c) Any such document, plat, paper, written instrument or book reproduced as provided in this section, the original of which is not less than ten (10) years old, may be disposed of only upon order of the governing body and the reproductions substituted therefor as public records; provided, however, that written notice be given on "permanent records" to the Idaho State Historical Society sixty (60) days prior to the disposal of any such original.

SECTION 2. That Chapter 9, Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 50-910, Idaho Code, and to read as follows:

50-910. PHOTOGRAPHIC OR DIGITAL RETENTION OF CITY RECORDS. (1) A city officer may receive, file or record documents in his office in paper form. When permitted by law, a city 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 transmission (FAX), magnetic tape or disk, photographic film, optical disk and an electronically transmitted data stream.

(2) A city 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 city 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 March 17, 1997.

CHAPTER 144
(H.B. No. 136)

AN ACT

RELATING TO THEFT OF TELECOMMUNICATIONS SERVICES; AMENDING SECTION 18-6713, IDAHO CODE, TO PROVIDE DEFINITIONS, TO MAKE UNLAWFUL CERTAIN INTENTIONAL ACTS REGARDING THE CREATION, USE OR DISTRIBUTION OF CLONE OR COUNTERFEIT CELLULAR TELEPHONES AND RELATED PARAPHERNALIA AND TO PROVIDE PENALTIES; AND AMENDING SECTION 18-6714, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION AND TO PROVIDE PENALTIES.

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

SECTION 1. That Section 18-6713, Idaho Code, be, and the same is hereby amended to read as follows:

18-6713. THEFT OF TELECOMMUNICATION SERVICES. (1) As used in this section:

(a) "Clone cellular telephone" or "counterfeit cellular telephone" is a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer.

(b) "Cloning paraphernalia" means materials that, when possessed in combination, are capable of creating a cloned cellular telephone. These materials include: scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the cloned phone with a false electronic serial number and mobile identification number combination, a computer containing such software and lists of electronic serial number and mobile identification number combinations.

(c) "Electronic serial number" means the unique number that was programmed into a cellular telephone by its manufacturer which is transmitted by the cellular phone and used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device.

(d) "EPROM" or "erasable programmable read-only memory" means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultra-violet light.

(e) "Illegal telecommunications equipment" means any instrument, apparatus, equipment, or device which is designed or adapted, and otherwise used or intended to be used for the theft of any telecommunication service or for concealing from any supplier of telecommunication service or lawful authority the existence, place of origin, use or destination of any telecommunication.

(f) "Intercept" means to electronically capture, record, reveal or otherwise access the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver of the signals, by means of any instrument,

device or equipment.

(g) "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.

(h) "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.

(bi) "Telecommunication service" means a service which, in exchange for a pecuniary consideration, provides or offers to provide transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire, or the projection of energy without physical connection.

(2) It is unlawful intentionally to:

(a) Make illegal telecommunications equipment; or

(b) Sell, give, or furnish to another or advertise or offer for sale illegal telecommunications equipment; or

(c) Sell, give, or furnish to another or advertise or offer for sale any plans or instructions for making, assembling, or using illegal telecommunications equipment; or

(d) Use or possess illegal telecommunications equipment.

(3) It is unlawful intentionally to:

(a) Make clone cellular telephones; or

(b) Sell, give or furnish to another or advertise or offer for sale clone cellular telephones; or

(c) Sell, give or furnish to another or advertise or offer for sale any plans or instructions for making, assembling, or using clone cellular telephones; or

(d) Use or possess illegal cloning paraphernalia; or

(e) Use a clone cellular telephone or counterfeit telephone to facilitate the commission of a felony.

(4) It is theft of telecommunications services to use, receive, or control telecommunications services without paying the pecuniary consideration regularly charged by the supplier of the telecommunication services used, received or controlled.

(a) Actual knowledge by the supplier of the telecommunication services that a person is or has been using, receiving or controlling the services shall not be a defense to the crime of theft of telecommunication services.

(45) A person who violates the provisions of subsections (2)(d) or--(3) of this section commits a crime and shall be punished as follows:

(a) The first conviction shall be a misdemeanor, which shall be punished by a fine not to exceed three hundred dollars (\$300) or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment.

(b) Conviction of a second or subsequent violation shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

(56) A person who violates the provisions of either subsections (2)(a), (b) or (c) of this section commits a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by imprisonment in the county jail for a term not to exceed one (1) year,

or by both such fine and imprisonment.

(7) A person who violates the provisions of subsection (3) of this section commits a felony.

(68) In a prosecution for violation of the provisions of subsection (2), or (3) or (4) of this section, the element of intent may be established by proof that the defendant obtained such services by any of the following means:

(a) By use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(b) Without the consent of the supplier of the telecommunication services, the installation, connection, or alteration of any equipment, cable, wire, antenna or facilities capable of either physically, inductively, acoustically, or electronically enabling a person to use, receive or control telecommunication services without paying the regular pecuniary charge;

(c) By any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(d) By making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise used or intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the use, existence, place of origin, or destination of any telecommunications.

(79) The supplier of telecommunication services which is directly affected by the commission of any of the acts prohibited under subsections (2), and (3) and (4) of this section shall, regardless of whether there was a criminal conviction, have a civil cause of action against the person who commits any of the prohibited acts. The prevailing party shall be awarded all reasonable costs of litigation, including but not limited to, attorney's fees and court costs. If the supplier prevails, he shall recover additionally:

(a) Actual damages; or

(b) Liquidated damages of ten dollars (\$10.00) per day for each day of the violation or five hundred dollars (\$500), whichever is greater; or

(c) If actual damages are greater than five hundred dollars (\$500), and, if proven, punitive damages.

(810) Nothing in this section shall be construed to make unlawful the interception or receipt by any person or the assisting, including the manufacture or sale, of such interception or receipt, of any satellite cable programs for private viewing as defined and specifically permitted under the Cable Communications Policy Act of 1984.

SECTION 2. That Section 18-6714, Idaho Code, be, and the same is hereby amended to read as follows:

18-6714. AIDING THE AVOIDANCE OF TELECOMMUNICATIONS CHARGES. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) Publishes the number or code of an existing, canceled,

revoked, expired, or nonexistent credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges; or

(b) Publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in section 18-6713~~(i)~~~~(a)~~, Idaho Code, with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be ~~fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months; or both such fine and imprisonment~~ punished according to the provisions of section 18-6713, Idaho Code.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons either orally; in person; by telephone radio, or television; or in a writing of any kind.

Approved March 17, 1997.

CHAPTER 145
(H.B. No. 174)

AN ACT

RELATING TO CERTIFICATED SCHOOL EMPLOYEES; AMENDING SECTION 33-1004G, IDAHO CODE, TO CLARIFY APPLICATION PROCEDURE FOR AN EARLY RETIREMENT INCENTIVE.

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

SECTION 1. That Section 33-1004G, Idaho Code, be, and the same is hereby amended to read as follows:

33-1004G. EARLY RETIREMENT INCENTIVE. (1) Each certificated employee of an Idaho public school district as defined in section 33-1001 13., Idaho Code, 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 certified 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 before August 15 of the year ~~during which the~~ 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~~ is contracted with an Idaho public school

district for the entire school year during the year of application and has not been terminated or on a leave of absence for the current or upcoming school year.

(2) (a) Full-time qQualifying 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
at 63 years of age and over	0% of allocation

(b) Certified employees working less than full-time in the application year will have the incentive payment prorated according to their full-time equivalent (FTE) percentage.

(c) Incentive payments for certified employees not placed on the experience and education multiplier table as provided in section 33-1004A, Idaho Code, will be calculated using the BA column of the table.

(3) Incentives and the employer's share of FICA benefits shall be paid directly--from by the state department of education to the employee Idaho public school district with which the applicant was last contracted on or before September-1 July 31 of the year of application and acceptance.

(4) Incentives shall not be considered salary-as-defined-in-section-59-1302(31)-Idaho-Code additional compensation flowing from the employment relationship and subject to federal and state tax laws. Incentives shall not be considered salary for purposes of the public employee retirement system.

(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.

(6) Any applicant choosing to withdraw their application must notify the state superintendent of public instruction in writing no later than June 20 in the year of application.

Approved March 17, 1997.

CHAPTER 146
(H.B. No. 222)

AN ACT

RELATING TO COUNTY LICENSE TAXES AND PAWBROKERS; AMENDING SECTION 63-2302, IDAHO CODE, TO PROVIDE THAT A BUSINESS LICENSE TO OPERATE A BUSINESS WITHIN THE COUNTY SHALL NOT BE REQUIRED IF THE BUSINESS IS LOCATED AND LICENSED WITHIN AN INCORPORATED CITY; AND AMENDING

SECTION 63-2303, IDAHO CODE, TO PROVIDE THE LICENSE FEE FOR A PAWNBROKER WHOSE BUSINESS IS LOCATED WITHIN THE COUNTY AND NOT WITHIN THE LIMITS OF AN INCORPORATED CITY.

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

SECTION 1. That Section 63-2302, Idaho Code, be, and the same is hereby amended to read as follows:

63-2302. LICENSE TO BE PROCURED BEFORE COMMENCING BUSINESS. A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the treasurer of the county where the applicant desires to transact the business which license authorizes the party obtaining it in his city or particular locality in the county to transact the business described in the license. Separate licenses must be obtained for each branch, establishment or separate house of business located in the same county.

No license issued under this chapter ~~authorizes~~ shall be required of any person to carry on any business within the limits of any incorporated city having power by its charter to impose or levy city license taxes, unless if such person; ~~in addition to the license provided by this chapter;~~ also procures the license required by the ordinances or orders of such city.

SECTION 2. That Section 63-2303, Idaho Code, be, and the same is hereby amended to read as follows:

63-2303. PAWNBROKER'S LICENSE. Each pawnbroker whose business is located in the county and outside the limits of an incorporated city must obtain a pawnbroker's license from the treasurer and must pay therefor fifty dollars (\$50.00) per calendar quarter.

Approved March 17, 1997.

CHAPTER 147
(H.B. No. 241, As Amended)

AN ACT

RELATING TO COUNTY HOSPITAL BOARDS; AMENDING SECTION 31-3603, IDAHO CODE, TO PROVIDE THAT THE COUNTY COMMISSIONER MEMBER OF THE BOARD MAY BE AN EX OFFICIO MEMBER WITHOUT VOTING PRIVILEGES OR MAY BE APPOINTED AS A VOTING MEMBER, AND TO PROVIDE THAT IF THE APPOINTMENT INCLUDES VOTING PRIVILEGES, THE COUNTY COMMISSIONERS SHALL ADJUST THE NUMBER OF MEMBERS ON THE COUNTY HOSPITAL BOARD TO ENSURE AN ODD NUMBER OF VOTING MEMBERS.

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

SECTION 1. That Section 31-3603, Idaho Code, be, and the same is hereby amended to read as follows:

31-3603. MEMBERS OF BOARD. (1) The board of county commissioners shall, within thirty (30) days after the adoption of the order creating such board, appoint an odd number, not less than five (5) nor more than fifteen (15) persons, as members of such hospital board and shall make such appointments a matter of record in the minutes of the board. Provided however, if the appointed county commissioner member of the hospital board is appointed with voting privileges as provided in subsection (4) of this section, the board of county commissioners shall appoint another member to ensure that the county hospital board members appointed as provided in this subsection comprise an even number of members of not less than six (6) nor more than fourteen (14) persons.

(2) The county hospital board may, in its discretion, later change the number of members of the board, within the prescribed limits, but no such change in the number of members of the hospital board shall serve to terminate any terms to be served by present members of the hospital board.

(3) Vacancies on the county hospital board shall be filled by the board of county commissioners. In filling vacancies, the board of county commissioners shall review and consider, but shall not be bound by, a list of three (3) nominees for each position to be filled and submitted to them by the county hospital board. The members of the board shall be selected as nearly as practicable from the several localities of the county and shall qualify by taking and subscribing the usual oath of office. The county hospital board shall file with the board of county commissioners a blanket bond covering all of its members in the sum of not less than ten thousand dollars (\$10,000) to be approved by the board of county commissioners, which bond shall have the conditions usually included in the bonds of public officers. The members of the county hospital board shall be selected without regard for partisan political affiliations.

(4) One (1) member of the board of county commissioners shall be appointed to the board either as an ex officio member without vote, or as a voting member, as determined by the board of county commissioners at the time of the appointment. If the county commissioner member is appointed as a voting member, the board of county commissioners shall also appoint another member to the hospital board as provided in subsection (1) of this section to ensure the board is comprised of an odd number of voting members.

(5) In addition to the appointed members of the county hospital board, the chief executive officer ~~and one (1) member of the board of county commissioners~~ shall be an ex officio members of the county hospital board, but without vote.

Approved March 17, 1997.

CHAPTER 148
(H.B. No. 293, As Amended)

AN ACT
RELATING TO ZONING; AMENDING SECTION 31-3805, IDAHO CODE, TO STRIKE
REFERENCES TO RECORD OF SURVEY, TO PROVIDE FOR CONSIDERATION OF

ANY OTHER PLAT OR MAP RECOGNIZED BY THE CITY OR COUNTY FOR DIVISION OF LAND AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 31-3806, IDAHO CODE, TO STRIKE REFERENCES TO RECORD OF SURVEY, TO PROVIDE FOR CONSIDERATION OF ANY OTHER PLAT OR MAP RECOGNIZED BY THE CITY OR COUNTY FOR DIVISION OF LAND AND TO MAKE A TECHNICAL CORRECTION.

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 chapter, no subdivision plat, or amendment to a subdivision plat ~~or record of survey~~ or any other plat or map recognized by the city or county for the division of land 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 entity by the owner thereof; or by the person, firm or corporation filing the subdivision plat; or amendment to a subdivision plat ~~or record of survey~~ or any other plat or map recognized by the city or county for the division of land; or

(b) The owner or person, firm or corporation filing the subdivision plat; or amendment to a subdivision plat ~~or record of survey~~ or any other plat or map recognized by the city or county for the division of land has provided for underground tile or other like satisfactory underground conduit for lots of one (1) acre or less, or a suitable system for lots of more than one (1) acre which will deliver 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 or the city council, as provided by city ordinance, 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 a negotiated area of city impact pursuant to chapter 65, title 67, Idaho Code, or 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 irrigation system.

(iii) For proposed subdivisions located outside an area of city impact 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 outside an area of city impact in counties without a zoning ordinance, such irrigation system must be approved by the board of county commissioners with the advice of 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. 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) ~~t~~That suitable water deliveries have not been provided; and

(ii) ~~t~~That the purchaser of the lot must remain subject to all assessments levied by the irrigation entity; and

(iii) ~~t~~That the individual purchaser shall be responsible to pay such legal assessments; and

(iv) ~~t~~That the assessments are a lien on the land within the irrigation entity; and

(v) ~~t~~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, or amendment to a subdivision plat or record-of-survey or any other plat or map recognized by the city or county for the division of land fails to comply with either subsection (1) or (2) 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, or amendment to a subdivision plat or record-of-survey or any other plat or map recognized by the city or county for the division of land shall be liable to any purchaser for the costs of the lot's exclusion plus all assessments due and owing or the actual cost of installation of an irrigation delivery system not to exceed one thousand five hundred dollars (\$1,500) per lot. The pur-

chaser 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 entity within whose boundaries the land is located, a copy of the disclosure statement required by subsection (2) 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 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 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. The purchaser and irrigation entity shall have two (2) years from the date of discovery of the violation to initiate any legal action.

Approved March 17, 1997.

CHAPTER 149
(S.B. No. 1020)

AN ACT

RELATING TO CRIMES AND PUNISHMENTS; AMENDING CHAPTER 30, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3005, IDAHO CODE, TO PROHIBIT AND PROVIDE PENALTIES FOR IMPERSONATION OF PUBLIC AUTHORITY AND INTIMIDATION BY FALSE ASSERTION OF PUBLIC AUTHORITY.

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

SECTION 1. That Chapter 30, 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 18-3005, Idaho Code, and to read as follows:

18-3005. INTIMIDATION BY FALSE ASSERTION OF AUTHORITY. (1) Any person who either:

(a) Deliberately impersonates or falsely acts as a public officer or tribunal, public employee or any law enforcement authority in connection with or relating to any actual or purported legal process affecting persons or property; or

(b) Simulates legal process including, but not limited to, actions affecting title to real or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings; knowing or having reason to know the contents of any such documents or proceedings or the basis for

any action to be fraudulent; or

(c) While acting falsely in asserting authority of law takes action against persons or property; or

(d) While acting falsely in asserting authority of law attempts in any way to influence, intimidate, or hinder a public official or law enforcement officer in the discharge of his official duties by means of, but not limited to, threats of or actual physical abuse, harassment, or through the use of simulated legal process;

Is punishable by imprisonment in the county jail for a period not to exceed one (1) year, or by a fine not to exceed one thousand dollars (\$1,000) or both.

(2) (a) Nothing in this section shall make unlawful any act of any law enforcement officer or legal tribunal which is performed under lawful authority; and

(b) Nothing in this section shall prohibit individuals from assembling freely to express opinions or designate group affiliation or association; and

(c) Nothing in this section shall prohibit or in any way limit a person's lawful and legitimate access to the courts or prevent a person from instituting or responding to legitimate and lawful legal process.

Approved March 17, 1997.

CHAPTER 150
(S.B. No. 1072)

AN ACT

RELATING TO THE JUDGES' RETIREMENT FUND; AMENDING SECTION 1-2009, IDAHO CODE, TO PROVIDE THAT A JUSTICE OR JUDGE WHO SERVES OR HAS SERVED IN OFFICE MAY AT ANY TIME PRIOR TO RECEIVING RETIREMENT COMPENSATION ELECT A REDUCED RETIREMENT COMPENSATION TO ENABLE A SPOUSE TO RECEIVE AN INCREASED BENEFIT ALLOWANCE; AMENDING CHAPTER 20, TITLE 1, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 1-2010, IDAHO CODE, TO PROVIDE FOR A DEATH BENEFIT CONSISTING OF A JUSTICE'S OR JUDGE'S ACCUMULATED CONTRIBUTIONS TO THE JUDGES' RETIREMENT FUND TO THE EXTENT THAT THE ACCUMULATED CONTRIBUTIONS EXCEED COMPENSATION BENEFITS AND ALLOWANCES PAID TO THE JUSTICE, JUDGE, OR A SPOUSE AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE AND APPLICATION OF CERTAIN SECTIONS.

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

SECTION 1. That Section 1-2009, Idaho Code, be, and the same is hereby amended to read as follows:

1-2009. BENEFIT TO SURVIVING SPOUSE OF JUSTICE OR JUDGE. The legislature hereby finds and declares that the payment of allowances to the surviving spouses of justices of the Supreme Court and judges of the district court of the state of Idaho, serves the public purpose of promoting the public welfare by encouraging experienced jurists to

continue their service and that their continued service and increased efficiency will be secured in the expectation that the legislature will fairly provide for their surviving spouses, and that such continued service and increased efficiency of such jurists, secure in this knowledge, will be of substantial benefit to the state.

The surviving spouse, of any justice or judge entitled to benefits under this chapter who dies on or after July 1, 1965, shall receive an allowance from the judges' retirement fund, payable monthly, and as hereinafter provided.

(a) In the case of a justice or judge receiving retirement compensation at the time of death, allowance to his surviving spouse shall commence immediately and be payable to such spouse from such fund in an amount equal to thirty per cent (30%) of the retirement compensation being paid to such justice or judge.

(b) In the case of a justice or judge under the age of sixty-five (65) years and not receiving retirement compensation at the time of death, commencing immediately, the surviving spouse shall be paid an allowance from such fund in the amount of thirty per cent (30%) of the retirement compensation to which the justice or judge would have been entitled if then of the age of sixty-five (65) years.

(c) In the case of a justice or judge of age sixty-five (65) years or older and not receiving retirement compensation at the time of death, commencing immediately, his surviving spouse shall receive an allowance payable from the fund in an amount equal to thirty per cent (30%) of the retirement compensation to which the justice or judge would have been entitled if then retired.

(d) Each justice or judge upon retirement or upon termination who serves or has served in office may elect at any time prior to receiving retirement compensation file a written election with the Supreme Court to receive a reduced retirement compensation in the amount of eighty-five per cent (85%) of the retirement compensation to which the justice or judge would have been entitled, and the justice or judge having elected to receive the lesser retirement compensation, at the time of the justice's or judge's death, the allowance to his surviving spouse shall commence immediately and be payable to such spouse from such fund in an amount equal to fifty per cent (50%) of the retirement compensation to which the justice or judge would have been entitled prior to electing a reduced retirement compensation.

(e) The allowance to the surviving spouse shall be based upon the current annual compensation of the office held by the deceased justice or judge, as distinguished from the salary of the office at the time of death or retirement. The allowance shall be paid until death of the surviving spouse.

SECTION 2. That Chapter 20, Title 1, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 1-2010, Idaho Code, and to read as follows:

1-2010. DEATH BENEFIT. (1) The death benefit of a deceased justice or judge is the excess, if any, of the justice's or judge's accumulated contributions to the judges' retirement fund, including accrued interest at the rate provided in section 1-2001(5), Idaho

Code, over the aggregate of all retirement compensation payments and allowances ever made to the justice, judge or spouse from the judges' retirement fund.

(2) The death benefit is payable, and all other retirement compensation benefits and allowances shall cease, upon the death of the justice, judge, or spouse receiving a retirement compensation or allowance.

(3) The death benefit shall be paid to the beneficiary named by the justice or judge in a written designation of beneficiary on file with the Supreme Court if the beneficiary is surviving at the time the death benefit is payable; otherwise the death benefit shall be paid to the estate of the deceased justice or judge for distribution in accordance with the laws of descent and distribution of the state of Idaho as they may then be in effect.

SECTION 3. This act shall be in full force and effect on and after July 1, 1997, but provided that Section 2 of this act shall apply only in the event of the death of a justice, judge or spouse occurring on or after July 1, 1997.

Approved March 17, 1997.

CHAPTER 151
(S.B. No. 1078)

AN ACT

RELATING TO PARTNERSHIPS AND LIMITED LIABILITY COMPANIES; AMENDING SECTION 53-204, IDAHO CODE, TO PERMIT A LIMITED LIABILITY COMPANY TO SERVE AS REGISTERED AGENT FOR A LIMITED PARTNERSHIP; AMENDING SECTION 53-208, IDAHO CODE, TO DELETE THE REQUIREMENT THAT THE CERTIFICATE OF A LIMITED PARTNERSHIP SHALL SET FORTH THE DATE THE LIMITED PARTNERSHIP IS TO DISSOLVE; AMENDING SECTION 53-254, IDAHO CODE, TO DELETE THE REQUIREMENT THAT A CERTIFICATE FILED BY A GENERAL PARTNER TO AMEND A STATEMENT IN THE APPLICATION FOR A FOREIGN LIMITED PARTNERSHIP MUST BE VERIFIED; AMENDING SECTION 53-343A, IDAHO CODE, TO ESTABLISH FEES FOR EXECUTION OF WITHDRAWAL NOTICE AND AMENDMENT OF LIMITED LIABILITY PARTNERSHIP APPLICATION, TO CLARIFY THAT NO FEE SHALL BE CHARGED FOR FILING NOTICE OF CHANGE OF REGISTERED OFFICE OR AGENT, AND TO DELETE THE REQUIREMENT FOR NOTIFICATION OF DISSOLUTION; AND AMENDING SECTION 53-608, IDAHO CODE, TO DELETE THE REQUIREMENT THAT THE ARTICLES OF ORGANIZATION OF A LIMITED LIABILITY COMPANY SHALL SET FORTH THE DATE THE COMPANY IS TO DISSOLVE.

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

SECTION 1. That Section 53-204, Idaho Code, be, and the same is hereby amended to read as follows:

53-204. REGISTERED AGENT. Each limited partnership shall continuously maintain in this state a registered agent for service of process

on the limited partnership, which agent must be an individual resident of this state, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to do business in this state.

SECTION 2. That Section 53-208, Idaho Code, be, and the same is hereby amended to read as follows:

53-208. CERTIFICATE OF LIMITED PARTNERSHIP. (a) In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate shall be on a form prescribed by the secretary of state and shall set forth:

- (1) The name of the limited partnership;
- (2) The name and address of the registered agent for service of process required to be maintained by section 53-204, Idaho Code;
- (3) The name and the business address of each general partner; and
- ~~(4) The latest date upon which the limited partnership is to dissolve; and~~
- ~~(5) Any other matters the general partners determine to include therein.~~

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

SECTION 3. That Section 53-254, Idaho Code, be, and the same is hereby amended to read as follows:

53-254. CHANGES AND AMENDMENTS IN FOREIGN LIMITED PARTNERSHIPS. If any material statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any material respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed ~~and verified~~ by a general partner, correcting such statement.

SECTION 4. That Section 53-343A, Idaho Code, be, and the same is hereby amended to read as follows:

53-343A. REGISTERED LIMITED LIABILITY PARTNERSHIPS. 1. To become and to continue as a registered limited liability partnership, a partnership shall file with the secretary of state an application stating the name of the partnership; the address of its principal office; the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership will be required to maintain; the state in which the partnership is organized; the name and address of at least one (1) partner; a brief statement of the business in which the partnership engages; any other matters that the partnership determines to include; and that the partnership thereby applies for status as a registered limited liabil-

ity partnership.

2. The application shall be executed by a partner in writing or by another method authorized by the secretary of state.

3. The application shall be accompanied by a fee of one hundred dollars (\$100) if typed and completely included on the standard form prescribed by the secretary of state or one hundred twenty dollars (\$120) if not typed or if attachments are included.

4. The secretary of state shall register as a registered limited liability partnership any partnership that submits a completed application with the required fee.

5. Registration is effective immediately after the date an application is filed, and remains effective until it is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a withdrawal notice. The withdrawal notice shall be on a form prescribed by the secretary of state. The fee for filing a withdrawal notice shall be twenty dollars (\$20.00).

6. The status of a partnership as a registered limited liability partnership, and the liability of the partners thereof, shall not be affected by (i) errors in the information stated in an application under subsection 1. of this section or (ii) changes after the filing of such an application or notice in the information stated in the application notice. However, a change in the name or the principal office of the registered limited liability partnership shall be effective only upon filing of an amendment to its application for registration on a form prescribed by the secretary of state. The name or address of any partner disclosed on the application for registration may be amended in the same manner. The fee for filing an amendment to the application for registration shall be thirty dollars (\$30.00).

7. A registered limited liability partnership shall notify the secretary of state on a form to be provided by the secretary of state within sixty (60) days of any change in the ~~principal office~~; registered office or registered agent of the partnership. There shall be no fee for filing the notice of change of registered office or registered agent.

8. A registered agent may resign by delivering a notice of resignation to the secretary of state. The secretary of state shall mail copies of the notice to the registered limited liability partnership at its principal office and its registered office. The appointment of the registered agent terminates thirty (30) days after receipt of the notice by the secretary of state or on the appointment of a successor registered agent, whichever occurs first.

~~9. A registered limited liability partnership shall notify the secretary of state on a form to be provided by the secretary of state within sixty (60) days of its dissolution.~~

SECTION 5. That Section 53-608, Idaho Code, be, and the same is hereby amended to read as follows:

53-608. ARTICLES OF ORGANIZATION. The articles of organization shall be set forth in a form prescribed by the secretary of state:

(1) A name for the limited liability company that satisfies the

requirements of section 53-602, Idaho Code;

(2) The address of the registered office and the name and business, residence, or mailing address of the registered agent required to be maintained by the provisions of section 53-604, Idaho Code;

~~(3) The latest date certain upon which the limited liability company is to dissolve;~~

~~(4)~~ If management of the limited liability company is vested in a manager or managers, a statement to that effect;

(54) If the management of the limited liability company is vested in its members, the name and address of one (1) or more of the initial members of the limited liability company;

(65) If the management of the limited liability company is vested in a manager or managers, the name and address of one (1) or more of the initial managers of the limited liability company;

(76) If the limited liability company is a professional service limited liability company, the principal profession for which members are duly licensed or otherwise legally authorized to render professional services.

Approved March 17, 1997.

CHAPTER 152

(S.B. No. 1113, As Amended)

AN ACT

RELATING TO THE PUBLIC RECORDS ACT; AMENDING SECTION 9-338, IDAHO CODE, TO AUTHORIZE THE CUSTODIAN TO MAKE CERTAIN INQUIRIES OF A PERSON WHO APPLIES FOR A PUBLIC RECORD, TO PROVIDE FOR A FEE FOR LABOR COSTS IF CERTAIN CIRCUMSTANCES OCCUR AND TO PROVIDE THE PUBLIC AGENCY MAY NOT CHARGE ANY COST OR FEE FOR COPIES OR LABOR WHEN THE REQUESTER DEMONSTRATES CERTAIN CONDITIONS; AND AMENDING SECTION 9-348, IDAHO CODE, TO PROVIDE THAT THE PROHIBITION FOR PROVIDING MAILING OR TELEPHONE LISTS DOES NOT APPLY TO LISTS TO BE USED TO GIVE NOTICE REQUIRED BY ANY STATUTE, ORDINANCE, RULE, LAW OR BY ANY GOVERNING AGENCY.

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

SECTION 1. That Section 9-338, Idaho Code, be, and the same is hereby amended to read as follows:

9-338. PUBLIC RECORDS -- RIGHT TO EXAMINE. (1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or using equipment designated by the custodian.

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

(4) The custodian shall make no inquiry of any person who applies for a public record, except that to verify the identity of a person requesting a record in accordance with section 9-342, Idaho Code, to ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 9-348, Idaho Code, or as otherwise provided by law. The person may be required to make a written request and provide their name, a mailing address and telephone number.

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

(6) Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

(7) Examination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours. In this event, the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public agency having custody of such records, out of funds provided in advance by the person examining such records, at other than regular office or working hours.

(8) (a) A public agency or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law. The actual cost shall not include any administrative or labor costs resulting from locating and providing a copy of the public record; provided however, that a public agency or public official may establish a fee to recover the actual labor cost associated with locating and copying documents if:

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

(ii) The request includes records from which nonpublic information must be deleted; or

(iii) The actual labor associated with locating and copying documents for a request exceeds two (2) person hours.

(b) For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:

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

(b) The standard cost, if any, for selling the same information in the form of a publication.

The custodian may require advance payment of the cost of copying. Any money received by the public agency shall be credited to the

account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund.

(c) The public agency may not charge any cost or fee for copies or labor when the requester demonstrates either:

(i) The inability to pay; or

(ii) That the public's interest or the public's understanding of the operations or activities of government or its records would suffer by the assessment or collection of any fee.

(9) A public agency shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.

(10) Nothing contained herein shall prevent a public agency from disclosing statistical information that is not descriptive of an identifiable person or persons.

SECTION 2. That Section 9-348, Idaho Code, be, and the same is hereby amended to read as follows:

9-348. PROHIBITION ON DISTRIBUTION OR SALE OF MAILING OR TELEPHONE NUMBER LISTS -- PENALTY. (1) Except as provided in subsections (2), (3), (4), (5), (6), and (7) and (8) of this section, in order to protect the privacy of those who deal with public agencies:

(a) No agency may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list; and

(b) No list of persons prepared by the agency may be used as a mailing list or a telephone number list except by the agency or another agency without first securing the permission of those on the list.

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

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

(4) The provisions of this section shall not apply to agencies which issue occupational or professional licenses.

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

(6) This section does not apply to a corporate information list developed by the office of the secretary of state containing the name, address, registered agent, officers and directors of corporations authorized to do business in this state or to a business information list developed by the department of commerce containing the name, address, telephone number or other relevant information of Idaho businesses or individuals requesting information regarding the state of Idaho or to business lists developed by the department of agricul-

ture, division of marketing and development, used to promote food and agricultural products produced in Idaho.

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

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

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

Approved March 17, 1997.

CHAPTER 153
(S.B. No. 1207)

AN ACT

RELATING TO LOSSES OF MONEY OR INDEBTEDNESS; AMENDING CHAPTER 10, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1014A, IDAHO CODE, TO REQUIRE REPORTING TO THE STATE TREASURER BY STATE AGENCIES OR OFFICERS OF LOSSES OF MONEY IN EXCESS OF TWO HUNDRED DOLLARS OR LOSSES OF EVIDENCES OF INDEBTEDNESS WITHIN A TIME CERTAIN.

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

SECTION 1. That Chapter 10, 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 59-1014A, Idaho Code, and to read as follows:

59-1014A. ACCOUNTING FOR LOSSES. All state officers and agencies shall, immediately upon discovering any loss of money in excess of two hundred dollars (\$200) or evidences of indebtedness of the officer or agency, report the same, in writing within five (5) working days of the discovery of the loss to the state treasurer or shall notify the state treasurer by telephone within one (1) working day of the discovery of the loss.

Approved March 17, 1997.

CHAPTER 154
(H.B. No. 129, As Amended)

AN ACT

RELATING TO ASSESSMENTS UPON PEAS AND LENTILS; AMENDING SECTION 22-3503, IDAHO CODE, TO FURTHER DEFINE TERMS AND MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-3515, IDAHO CODE, TO IMPOSE AN ASSESSMENT OF TWO PERCENT OF THE NET RECEIPTS UPON PEAS, LENTILS, CHICKPEAS AND GARBANZOS, AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 22-3503, Idaho Code, be, and the same is hereby amended to read as follows:

22-3503. DEFINITIONS. As used in the act, unless the context requires otherwise:

(1) The term "peas and lentils" means dry peas, or lentils, chickpeas and garbanzos grown in the state of Idaho except it does not include wrinkled varieties of peas grown for seed or chickpeas or garbanzos grown south of the Salmon River.

(2) "Commercial channels" means the sale of peas or lentils for use as 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 pea or lentil product produced from peas or lentils.

(3) "Commission" means the Idaho pea and lentil commission.

(4) "First purchaser" means any person, group, association, partnership, or corporation that buys peas or lentils from the grower in the first instance, or any lienholder, public or private, including the Commodity Credit Corporation, who may possess peas or lentils from the grower under any lien.

(5) "Grower" means any landowner personally engaged in growing peas or lentils, a tenant of the landowner personally engaged in growing peas or lentils, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, sharecropper or any and all other business units, devices and arrangements, who has grown or marketed peas or lentils in either of the preceding two (2) years.

(6) "Sale" includes any pledge, mortgage, trade, or contract device, or delivery of peas or lentils for sale or payment after harvest to any person, public or private.

(7) "Deliver" means placing of peas or lentils into the primary channels of trade.

(8) "Dealer" means any person, group, association, partnership or corporation which acts as principal or agent or otherwise in selling, marketing, warehousing, or distributing dry peas or lentils not produced by such person, group, association, partnership or corporation.

(9) "Processor" means any person, group, association, partnership or corporation which acts as principal or agent or otherwise in processing dry peas or lentils not produced by such person, group, association, partnership or corporation.

SECTION 2. That Section 22-3515, Idaho Code, be, and the same is hereby amended to read as follows:

22-3515. IMPOSITION OF ASSESSMENT. (1) (a) ~~From and after the first day of July, 1986, through June 30, 1987, there is hereby levied and imposed an assessment of ten cents (10¢) per cwt. on lentils, nine cents (9¢) per cwt. on dry green and yellow and other smooth varieties of peas, nine cents (9¢) per cwt. on Austrian winter varieties of peas and nine cents (9¢) per cwt. on smooth green and yellow seed peas sold on or after July 1, 1986, but before July 1, 1987, dockage free weight, grown in the state of Idaho and sold or contracted through commercial channels.~~

~~From and after the first day of July, 1987, through June 30, 1988, there is hereby levied and imposed an assessment of twelve cents (12¢) per cwt. on lentils, eleven cents (11¢) per cwt. on dry green and yellow and other smooth varieties of peas, eleven cents (11¢) per cwt. on Austrian winter varieties of peas and eleven cents (11¢) per cwt. on smooth green and yellow seed peas sold on or after July 1, 1987, but before July 1, 1988, dockage free weight, grown in the state of Idaho and sold or contracted through commercial channels.~~

~~From and after the first day of July, 1988, there is hereby levied and imposed an assessment of fourteen cents (14¢) per cwt. on lentils, thirteen cents (13¢) per cwt. on dry green and yellow and other smooth varieties of peas, thirteen cents (13¢) per cwt. on Austrian winter varieties of peas and thirteen cents (13¢) per cwt. on smooth green and yellow seed peas sold on or after July 1, 1988, dockage free weight, grown in the state of Idaho and sold or contracted through commercial channels, and each and every crop grown thereafter. The assessment provided in this subsection shall be due on or before the time when such peas and lentils are first sold or contracted in the commercial channels and shall be paid at such time or times as the commission may, by rule or regulations prescribe.~~

~~(b) From and after the first day of July 1, 1986, through June 30, 1987, there is hereby levied and imposed an assessment of ten cents (10¢) per cwt. on chickpeas or garbanzos sold after July 1, 1986, but before July 1, 1987, dockage free weight, grown north of the Salmon River and sold or contracted through commercial channels.~~

~~From and after July 1, 1987 through June 30, 1988, there is hereby levied and imposed an assessment of twelve cents (12¢) per cwt. on chickpeas or garbanzos sold after July 1, 1987, but before July 1, 1988, dockage free weight, grown north of the Salmon River and contracted through commercial channels.~~

From and after July 1, 1988 1997, there is hereby levied and imposed an assessment of ~~fourteen cents (14¢) per cwt.~~ two percent (2%) of the net receipts at the first point of sale, to be deducted by the first purchaser from the price paid to the grower on dry peas or lentils grown in Idaho, or chickpeas or garbanzos grown north of the Salmon River, sold after July 1, 1988 1997, dockage free weight, grown north of the Salmon River and sold or contracted through commercial channels, and each and every crop grown thereafter. The assessment provided in this subsection shall be due on or before the time when such chickpeas or garbanzos are first sold or contracted in the commercial channels and shall be paid at such time or times as the com-

~~mission may by rule or regulation prescribe. The Idaho pea and lentil commission shall contract with the Idaho bean commission for any domestic advertising.~~

(2) The assessment shall be levied and assessed to the grower at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the grower at the time of sale or in case of a lienholder who may possess such peas or lentils under his lien, the assessment shall be deducted by the lienholder from the proceeds of the claims secured by such lien at the time the peas or lentils are pledged or mortgaged. The assessment shall be deducted as provided in this section whether the peas or lentils are stored in this or any other state. The commission may, however, permit any federal corporation, such as the Commodity Credit Corporation, to waive its responsibility for the collection of the assessment, provided the amount of the assessment is one dollar (\$1.00) or less.

(3) The assessment shall be levied on peas and lentils grown and delivered on seed or grower contracts. The assessment shall be levied and assessed to the grower at the time of settlement and shall be deducted by the seed company, corporation, cooperative, partnership, or person from the price paid to the grower at the time of settlement for fulfillment of conditions as set forth in grower contracts.

(4) The assessment shall not be levied on peas and lentils retained and used by the grower for his own seed and feed.

(5) The assessment constitutes a lien prior to all other liens and encumbrances upon such peas or lentils except liens which are declared prior by operation of a statute of this state.

Law Without Signature.

CHAPTER 155
(H.B. No. 182, As Amended)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-105, IDAHO CODE, TO RECOGNIZE THE AUTHORITY OF DULY ELECTED OFFICIALS OF INCORPORATED CITIES TO DECREASE SPEED LIMITS ON STATE HIGHWAYS IN CITIES, EXCLUDING CONTROLLED ACCESS AND INTERSTATE HIGHWAYS; AMENDING SECTION 49-201, IDAHO CODE, TO PROVIDE AUTHORITY OF THE IDAHO TRANSPORTATION BOARD IN RELATION TO THE DULY ELECTED OFFICIALS OF INCORPORATED CITIES REGARDING DECREASING SPEED LIMITS ON CERTAIN HIGHWAYS IN DISTRICTS WITHIN THE CITIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-202, IDAHO CODE, TO PROVIDE FOR PLACEMENT AND MAINTENANCE OF TRAFFIC CONTROL DEVICES BY LOCAL AUTHORITIES AND TO AUTHORIZE INCORPORATED CITIES AS LOCAL AUTHORITIES TO SET LOWER SPEED LIMITS ON PORTIONS OF STATE HIGHWAYS, EXCLUDING INTERSTATE AND CONTROLLED ACCESS HIGHWAYS, THAT PASS THROUGH RESIDENTIAL, URBAN AND BUSINESS DISTRICTS; AMENDING SECTION 49-207, IDAHO CODE, TO PROVIDE THAT THE DULY ELECTED OFFICIALS OF INCORPORATED CITIES MAY IMPOSE LOWER SPEED LIMITS ON CERTAIN HIGHWAYS THAT PASS THROUGH CERTAIN DISTRICTS; AMENDING SECTION 49-208, IDAHO CODE, TO PROVIDE POWERS OF LOCAL AUTHORITIES

AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 49-654, IDAHO CODE, TO PROVIDE MAXIMUM SPEED LIMITS WITHIN CERTAIN DISTRICTS.

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

SECTION 1. That Section 49-105, Idaho Code, be, and the same is hereby amended to read as follows:

49-105. DEFINITIONS -- D.

(1) "Dealer" means every person in the business of buying, selling or exchanging five (5) or more new or used vehicles, new or used motorcycles, snow machines or motor scooters, travel trailers, all-terrain vehicles or motor homes in any calendar year, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, or who has an established place of business for the sale, lease, trade, or display of these vehicles. No insurance company, bank, finance company, public utilities company, or other person coming into possession of any vehicle, as an incident to its regular business, who shall sell that vehicle under any contractual rights it may have, shall be considered a dealer. See also "salvage pool", section 49-120, Idaho Code.

(2) "Dealer's selling agreement." (See "Franchise", section 49-107, Idaho Code)

(3) "Department" means the Idaho transportation department acting directly or through its duly authorized officers and agents, except in chapters 6 and 9, title 49, Idaho Code, where the term means the Idaho department of law enforcement, except as otherwise specifically provided.

(4) "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a vehicle dealership who, in the event of the owner's death, is entitled to inherit the ownership interest in the dealership under the same terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a dealership, has been appointed by a court as the legal representative of the dealer's property.

(5) "Director" means the director of the Idaho transportation department, except in chapters 6, 9 and 22, title 49, Idaho Code, where the term means the director of the Idaho department of law enforcement.

(6) "Disqualification" as defined in 49 CFR part 383, means withdrawal by the department of commercial vehicle driving privileges.

(7) "Distributor" means any person, firm, association, corporation or trust, resident or nonresident, who has a franchise from a manufacturer of vehicles to distribute vehicles in this state, and who in whole or in part sells or distributes new vehicles to dealers or who maintains distributor representatives.

(8) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

(9) "Distributor representative" means any person, firm, association, corporation or trust, and each officer and employee thereof

engaged as a representative of a distributor or distributor branch of vehicles for the purpose of making or promoting the sale of vehicles, or for supervising or contacting dealers or prospective dealers.

(10) "District" means:

(a) Business district. The territory contiguous to and including a highway when within any six hundred (600) feet along the highway there are buildings in use for business or industrial purposes, including hotels, banks or office buildings, railroad stations and public buildings which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the highway.

(b) Residential district. The territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred (300) feet or more is in the main improved with residences, or residences and buildings in use for business.

(c) Urban district. The territory contiguous to and including any highway which is built up with structures devoted to business, industry or dwelling houses. For purposes of establishing speed limits in accordance with the provisions of section 49-654, Idaho Code, no state highway or any portion thereof lying within the boundaries of an urban district is subject to the limitations which otherwise apply to nonstate highways within an urban district. Provided, this subsection shall not limit the authority of the duly elected officials of an incorporated city acting as a local authority to decrease speed limits on state highways passing through any district within the incorporated city.

(11) "Documented vessel" means a vessel having a valid marine document as a vessel of the United States.

(12) "Drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one (1) or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicles within a certain distance or time limit.

(13) "Driver" means every person who drives or is in actual physical control of a vehicle.

(14) "Driver's license" means a license or permit issued by the department or by any other jurisdiction to an individual which authorizes the individual to operate a motor vehicle or commercial motor vehicle on the highways in accordance with the requirements of title 49, Idaho Code.

(15) "Driver's license -- classes of" are issued for the operation of a vehicle based on the size of the vehicle or the type of load and mean:

(a) Class A. This license shall be issued and valid for the operation of any combination of motor vehicles with a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds, provided the manufacturer's gross vehicle weight rating (GVWR) of the vehicle(s) being towed is in excess of ten thousand (10,000) pounds. Persons holding a valid class A license may also operate vehicles requiring a class B, C,

or D license.

(b) Class B. This license shall be issued and valid for the operation of any single vehicle with a manufacturer's gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds, or any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds manufacturer's gross vehicle weight rating (GVWR). Persons holding a valid class B license may also operate vehicles requiring a class C license or a class D license.

(c) Class C. This license shall be issued and valid for the operation of any single vehicle or combination of vehicles that does not meet the definition of class A or class B, as defined in this section, but that either is designed to transport sixteen (16) or more people including the driver, or is of any size which does not meet the definition of class A or class B and is used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F. Persons holding a valid class C license may also operate vehicles requiring a class D license.

(d) Class D. This license shall be issued and valid for the operation of a motor vehicle that is not a commercial vehicle as defined in section 49-123, Idaho Code.

(e) "Seasonal driver's license" means a special restricted class B or C driver's license to operate certain commercial vehicles in farm-related industries under restrictions imposed by the department. As used in this definition, "farm-related industry" shall mean custom harvesters, farm retail outlets and suppliers, agricultural businesses and livestock feeders. Seasonal driver's licenses are not valid for driving vehicles carrying any quantities of hazardous material requiring placarding, except for diesel fuel in quantities of one thousand (1,000) gallons or less, liquid fertilizers, i.e., plant nutrients, in vehicles or implements of husbandry with total capacities of three thousand (3,000) gallons or less, and solid fertilizers, i.e., solid plant nutrients, that are not mixed with any organic substance.

(16) "Driver's license endorsements" means special authorizations that are required to be displayed on a driver's license which permit the driver to operate certain types of commercial vehicles or commercial vehicles hauling certain types of cargo, or to operate a motorcycle.

(a) "Endorsement T -- Double/triple trailer" means this endorsement is required on a class A license to permit the licensee to operate a vehicle authorized to tow more than one (1) trailer.

(b) "Endorsement H -- Hazardous material" means this endorsement is required on a class A, B or C license if the driver is operating a vehicle used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F.

(c) "Endorsement P -- Passenger" means this endorsement is required on a class A, B or C license to permit the licensee to

operate a vehicle designed to transport sixteen (16) or more people including the driver.

(d) "Endorsement N -- Tank vehicle" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle which is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in federal regulations 49 CFR part 171. This definition does not include portable tanks having a rated capacity under one thousand (1,000) gallons.

(e) "Endorsement M -- Motorcycle" means this endorsement is required on a driver's license to permit the driver to operate a motorcycle.

(17) "Driveway" means a private road giving access from a public way to a building on abutting grounds.

(18) "Dromedary tractor" means every motor vehicle designed and used primarily for drawing a semitrailer and so constructed as to carry manifested cargo in addition to a part of the weight of the semitrailer.

SECTION 2. That Section 49-201, Idaho Code, be, and the same is hereby amended to read as follows:

49-201. DUTIES OF BOARD. (1) With the exception of requirements for sections 49-217 and 49-218 and chapters 6 and 9, title 49, Idaho Code, which shall be the responsibility of the director of the department of law enforcement, and section 49-447, Idaho Code, which shall be the responsibility of the director of the department of parks and recreation, the board shall adopt and enforce administrative rules and may designate agencies or enter into agreements with private companies or public entities as may be necessary to carry out the provisions of this title. It shall also provide suitable forms for applications, registration cards, vehicle licenses, and all other forms requisite for the purpose of the provisions of this title, and shall prepay all transportation charges.

(2) The board may enter into agreements, compacts or arrangements with other jurisdictions on behalf of Idaho for the purpose of conforming procedures for proportional registration of commercial vehicles and other types of reciprocal agreements. Copies of agreements, compacts or arrangements shall be placed on file in the department and the board shall, as to all filings and adoption, conform with the provisions of chapter 52, title 67, Idaho Code. The board may approve, on a case by case basis, exemption from operating fees for private non-profit entities who are bringing public interest programs into the state. These entities may not be in competition with companies who transport goods and services for hire.

(3) The board shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this title for use upon highways within the state. The uniform system shall correlate with, and so far as possible, conform to the system set forth in the most recent edition of the manual on uniform traffic control devices for streets and highways and other standards

issued or endorsed by the federal highway administrator.

(4) Whenever the board shall determine upon the basis of an engineering and traffic investigation that any maximum speed is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the state highway or interstate highway system, the board may determine and declare a reasonable and safe maximum limit, thereat, not exceeding a maximum limit of seventy-five (75) miles per hour on interstate highways and sixty-five (65) miles per hour on state highways, which shall be effective when appropriate signs giving notice are erected. The speed limit may be declared to be effective at all times or at the times as indicated upon the signs. Differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs. The authority of the board to establish speed limits on state highways pursuant to this section does not restrict the authority of the duly elected officials of an incorporated city acting in the capacity of a local authority to establish lower speed limits for portions of state highways, excluding controlled access and interstate highways, that pass through residential, urban or business districts within the jurisdiction of the incorporated city, for the purpose of enhancing motorist and pedestrian safety.

(5) The board shall adopt and enforce rules as may be consistent with and necessary to determine the classification of and the basis on which fees shall be computed.

SECTION 3. That Section 49-202, Idaho Code, be, and the same is hereby amended to read as follows:

49-202. DUTIES OF DEPARTMENT. (1) All registration and driver's license records in the office of the department shall be public records and open to inspection by the public during normal business hours. If the department has contracted for a service to be provided by another entity, an additional fee shall be charged by that contractor whether the service is rendered during normal business hours, other than normal business hours or on weekends.

(2) In addition to other fees required by law to be collected by the department, the department shall collect the following:

- (a) For certifying a copy of any record pertaining to any vehicle license, any certificate of title, or any driver's license . \$8.00
- (b) For issuing every Idaho certificate of title \$8.00
- (c) For furnishing a duplicate copy of any Idaho certificate of title \$8.00
- (d) For issuance or transfer of every certificate of title on a new or used vehicle or other titled vehicle in an expedited manner (rush titles), in addition to any other fee required by this section \$15.00
- (e) For furnishing a replacement of any receipt of registration \$3.00
- (f) For answering inquiries as to registration or ownership of motor vehicles or driver's license records, per vehicle registration, accident report records, title or per driver's license

record \$4.00
 Additional contractor fee, not to exceed \$4.00
 (g) For services in furnishing copies of files of vehicle or other registrations, vehicle titles, or driver's licenses per hour \$10.00
 (h) Placing "stop" cards in vehicle registration or title files, each \$12.00
 (i) For issuance of an assigned or replacement vehicle identification number (VIN) \$10.00
 (j) For a vehicle identification number (VIN) inspection whether conducted by a city or county peace officer or any other peace officer or designated agent of the state of Idaho, per inspection \$3.00
 (k) For all replacement registration stickers, each \$1.00
 (l) For issuing letters of temporary vehicle clearance to Idaho based motor carriers \$10.00
 (m) For all sample license plates, each \$12.00
 (n) For filing release of liability statements \$2.00
 (3) The fees required in this section shall not apply when the service is furnished to any federal, state, county or city peace officer when such service is required in the performance of their duties as peace officers.

(4) The department may enter into agreements with private companies or public entities to provide the services for which a fee is collected in subsection (2)(f) of this section. Such private contractor shall collect the fee prescribed and remit the fee to the department. The contractor shall also collect and retain the additional fee charged for his services.

(5) The department shall pay three dollars (\$3.00) of the fee collected by a county assessor or other agent of the department as provided in subsection (2)(a) through (f) of this section, to the county assessor of the county or agent collecting such fee, which shall be deposited with the county treasurer and credited to the county current expense fund. The remainder of the fees collected as provided in that subsection shall be paid by the department to the state treasurer and placed in the state highway account. The fee collected under subsection (2)(j) of this section for a VIN inspection shall be placed in the city general fund if conducted by a city peace officer, in the county current expense fund if conducted by a county peace officer, shall be retained by the special agent authorized to perform the inspection, or paid to the state treasurer and placed to the credit of the department of law enforcement if conducted by the Idaho state police division or in the state highway account if conducted by the department.

(6) The department as often as practicable may provide to law enforcement agencies the record of stolen and recovered motor vehicles and suspensions and revocations of driver licenses via the Idaho law enforcement telecommunications system (ILETS).

(7) The department shall provide the forms prescribed in chapter 5 of this title, shall receive and file in its office in Boise, Idaho, all instruments required in chapter 5 of this title to be filed with the department, shall prescribe a uniform method of numbering certificates of title, and maintain in the department indices for such cer-

tificates of title. All indices shall be by motor or identification number and alphabetical by name of the owner, and the department shall maintain two (2) separate files on each vehicle, one, a motor or identification number file, the other a file by the name of the owner.

(8) The department shall file each registration received under a distinctive registration number assigned to the vehicle and to the owner thereof, alphabetically under the name of the owner, and numerically and alphabetically under the name of the vehicle.

(9) The department shall not renew a driver's license when fees required by law have not been paid or where fees for past periods are due, owing and unpaid including nonsufficient fund checks.

(10) The department shall not grant the registration of a vehicle when:

(a) The applicant is not entitled to registration under the provisions of this title; or

(b) The applicant has neglected or refused to furnish the department with the information required in the appropriate form or reasonable additional information required by the department, or has failed to comply with the provisions of section 49-436, Idaho Code, in past registration periods; or

(c) The fees required by law have not been paid, or where fees for past registration periods are due, owing and unpaid including nonsufficient fund checks.

(11) The department has the authority to request any person, based upon evidence, to submit to medical, highway, or written examinations, to protect the safety of the public upon the highways.

(12) The department shall revoke the registration of any vehicle:

(a) Which the department shall determine is unsafe or unfit to be operated or is not equipped as required by law;

(b) Whenever the person to whom the registration card or registration plate has been issued shall make or permit to be made any unlawful use of the same or permit their use by a person not entitled thereto;

(c) For any violation of vehicle registration requirements by the owner or operator in the current or past registration periods;

(d) Whenever a motor carrier as defined in section 61-801, Idaho Code, has his permit revoked for any cause except at the request of the permit holder, as provided in section 61-808, Idaho Code, or whenever an interstate carrier has his registration revoked by reason of a revocation of his interstate commerce commission operating authority;

(e) For nonpayment by the owner or operator of the vehicle of use fees computed under sections 49-434 and 49-435, Idaho Code;

(f) For failure of the owner or operator to file the reports required or nonpayment of fees assessed against the owner by the department pursuant to audit under the provisions of section 49-436, Idaho Code;

(g) Identified by any city or county administering a program established by ordinance for the inspection and readjustment of motor vehicles (which program is part of an approved state implementation plan adopted by both the state and federal governments under 42 USC section 7410) as having failed to comply with an ordinance requiring motor vehicle emission inspection and read-

justment; provided that no vehicle shall be identified to the department under this subsection (g) unless (i) the city or county certifies to the department that the owner of the motor vehicle has been given notice and had the opportunity for a hearing concerning compliance with the ordinance and has exhausted all remedies and appeals from any determination made at such hearing; and (ii) the city or county reimburses the department for all direct costs associated with the registration revocation procedure.

(13) The department shall not reregister or permit a vehicle to operate on a special trip permit until all fees, penalties and interest have been paid.

(14) The department shall institute educational programs, demonstrations, exhibits and displays.

(15) The department shall cancel a driver's license when fees required by law have not been paid or where fees for past periods are due, owing and unpaid including nonsufficient fund checks.

(16) The department shall examine persons and vehicles by written, oral and physical tests without compulsion except as provided by law.

(17) The department shall employ expert and special help as needed in the department.

(18) The department shall compile accident statistics and disseminate information relating to those statistics.

(19) The department shall cooperate with the United States in the elimination of road hazards, whether of a physical, visual or mental character.

(20) The department shall place and maintain traffic-control devices, conforming to the board's manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this title or to regulate, warn, or guide traffic. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the department except by the latter's permission, except where the duly elected officials of an incorporated city have established speed limits lower than those set by the department on the portion of state highways, excluding controlled access and interstate highways, that pass through residential, urban or business districts within the jurisdiction of the incorporated city. The placement and maintenance of such a traffic control device by a local authority shall be made according to the board's manual and specifications for a uniform system of traffic control devices.

(21) The department may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall find that the structure cannot with safety to itself withstand vehicles traveling at a speed otherwise permissible under this title, shall determine and declare the maximum speed of vehicles which the structure can safely withstand, and shall cause or permit suitable signs stating the maximum speed to be erected and maintained before each end of the structure.

(22) Whenever the department shall determine on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the department may determine and declare a minimum speed limit below which no person shall drive a vehicle except when neces-

sary for safe operation or in compliance with law, and that limit shall be effective when posted upon appropriate fixed or variable signs, except in cases where the duly elected officials of an incorporated city have established speed limits lower than those set by the department on portions of state highways, excluding controlled access and interstate highways, that pass through residential, urban or business districts within the jurisdiction of the incorporated city.

(23) The department shall regulate or prohibit the use of any controlled-access highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(24) The department shall erect and maintain traffic-control devices on controlled-access highways on which any prohibitions are applicable.

(25) Wherever a highway crosses one or more railroads at grade, the department or local authorities within their respective jurisdictions shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when in the determination of public highway agencies the existence of stop signs at a given crossing would constitute a greater hazard than their absence based on a recognized engineering study.

Nothing in this subsection shall be construed as granting immunity to any railroad company as to liability, if any, for an accident which might occur at a crossing where stop signs are erected and in place, but liability, if any, shall be determined as provided by law. Liability on the part of governmental authorities on account of absence of any stop sign at a crossing shall be determined as provided by law.

(26) The department and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of those zones and when signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey those directions.

(27) The department and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this title or title 40, Idaho Code.

(28) The department and local highway authorities within their respective jurisdictions may place official traffic-control devices prohibiting, limiting or restricting the stopping, standing or parking of vehicles on any highway where such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles unduly interferes with the free movement of traffic thereon.

(29) On any informational material printed after July 1, 1995, by or at the order of the department and distributed to counties, school districts or individuals for the purpose of assisting a person to suc-

cessfully pass a driver's license test, the department shall include material about the state's open range law and responsibilities, liabilities and obligations of drivers driving in the open range.

SECTION 4. That Section 49-207, Idaho Code, be, and the same is hereby amended to read as follows:

49-207. MUNICIPAL REGISTRATION PROHIBITED -- POWER TO ENACT REGULATORY ORDINANCES NOT ABOLISHED. (1) Authorities of counties and cities shall have no power to pass, enforce or maintain any ordinance requiring from any owner of a vehicle or any dealer to which this title shall be applicable, any tax, license or permit for the free use of the public highways of a county or city, or prohibiting or excluding any owner or dealer from the free use of such highways or excluding or prohibiting any vehicle registered in compliance with the provisions of this title from the free use of the highways. Powers given by general statutes to local authorities in cities to enact general ordinances applicable equally and generally to all vehicles and the use of highways to bring about the orderly passage of vehicles upon certain highways in such cities where the traffic is heavy and continuous, and powers given to cities to regulate vehicles offered to the public for hire, or processions, assemblages or parades on the highways or in public places shall remain in full force and effect, and all ordinances which may have been or which may be enacted in pursuance of those powers shall remain in full force and effect. These provisions of law shall not be construed to prevent cities from enacting and enforcing general ordinances prescribing additional requirements as to speed, manner of driving, or operating vehicles on any of the highways of such cities, and prescribing other requirements pertaining to signals to be given by drivers or operators of motor vehicles, the carrying of lights on motor vehicles, the turning of motor vehicles on highways, and requirements for motor vehicles in passing other vehicles and pedestrians.

(2) Whenever local authorities in their respective jurisdictions, including the duly elected officials of an incorporated city acting in the capacity of a local authority, determine on the basis of an engineering or traffic investigation, or and the residential, urban or business character of the neighborhood abutting the highway in an residential, business or urban district that the speed limit permitted under this title is greater ~~or less~~ than is reasonable and safe under the conditions found to exist upon a highway or part of a highway or because of the residential, urban or business character of the neighborhood abutting the highway in an residential, business or urban district, the local authority may determine and declare a reasonable and safe maximum limit which:

(a) Decreases the limit within an residential, business or urban district; or

~~(b) Increases the limit within a nonresidential area of an urban district but not to more than sixty-five (65) miles per hour; or~~

~~(c) Decreases the limit outside an urban district.~~

(3) Local authorities in their respective jurisdictions shall determine by an engineering or traffic investigation the proper maximum speed not exceeding a maximum limit of sixty-five (65) miles per

hour for all arterial highways and shall declare a reasonable and safe maximum limit which may be greater or less than the limit permitted under this title for an urban district.

(4) Any ~~altered~~ decreased speed limit established shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice are erected upon the highway. ~~Any alteration of maximum limits on state highways or extensions in a municipality by local authorities shall not be effective until the alteration has been approved by~~ according to requirements of the department.

(5) Upon the decision of the duly elected officials of an incorporated city to decrease the speed limit on highways within the city, excluding controlled access and interstate highways, the city will notify in writing the local district office of the department prior to implementing the change in speed limits. The department shall have thirty (30) days from the day written notice is received to assist implementation, such as providing transitional speed limit signs and taking other steps necessary to preserve public safety.

SECTION 5. That Section 49-208, Idaho Code, be, and the same is hereby amended to read as follows:

49-208. POWERS OF LOCAL AUTHORITIES. (1) The provisions of this title shall not be deemed to prevent local authorities with respect to highways under their jurisdiction and within the reasonable exercise of the police power from:

- (a) Regulating or prohibiting stopping, standing or parking;
- (b) Regulating traffic by means of peace officers or traffic-control devices;
- (c) Regulating or prohibiting processions or assemblages on the highways;
- (d) Designating particular highways for use by traffic moving in one direction;
- (e) Establishing speed limits for vehicles in public parks;
- (f) Designating any highway as a through highway or designating any intersection or junction of highways as a stop or yield intersection or junction;
- (g) Restricting the use of highways as authorized in chapter 10, title 49, Idaho Code;
- (h) Regulating or prohibiting the turning of vehicles or specified types of vehicles;
- (i) Altering or establishing speed limits;
- (j) Designating no-passing zones;
- (k) Prohibiting or regulating the use of controlled-access highways by any class or kind of traffic;
- (l) Prohibiting or regulating the use of heavily traveled highways by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;
- (m) Establishing minimum speed limits;
- (n) Prohibiting pedestrians from crossing a highway in a business district or any designated highway except in a crosswalk;
- (o) Restricting pedestrian crossings at unmarked crosswalks;
- (p) Establishing the maximum speed of vehicles on a bridge or

other elevated structure;

(q) Requiring written accident reports;

(r) Regulating persons propelling pushcarts;

(s) Regulating persons upon skates, coasters, sleds and other toy vehicles;

(t) Adopting and enforcing temporary or experimental regulations as may be necessary to cover emergencies or special conditions†.

(u) Prohibiting drivers of ambulances from exceeding maximum speed limits;

(v) Adopting such other traffic regulations as are specifically authorized by this title;

(w) Allowing the duly elected officials of an incorporated city acting in the capacity as a local authority to establish maximum speed limits on portions of state highways, excluding controlled access and interstate highways, in residential, urban or business districts within the jurisdiction of the incorporated city, so long as the maximum speed limit established by the incorporated city is lower than the maximum speed limit established by the department and is intended to promote motorist and pedestrian safety.

(2) No ordinance or regulation enacted under paragraphs (d) through (p) of subsection (1) of this section shall be effective until traffic-control devices giving notice of local traffic regulations are erected upon or at the entrances to the highway or part affected as may be most appropriate.

(3) No local authority shall erect or maintain any traffic-control device at any location so as to require traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the department.

(4) Local authorities by ordinance may adopt by reference all or any part of title 49, Idaho Code, without publishing or posting in full the provisions thereof, provided that not less than one (1) copy is available for public use and examination in the office of the clerk.

(5) Local authorities may adopt an ordinance establishing procedures for the abatement and removal of abandoned, junk, dismantled or inoperative vehicles or their parts from private or public property, including highways, provided the ordinance is not in conflict with the provisions of this title.

SECTION 6. That Section 49-654, Idaho Code, be, and the same is hereby amended to read as follows:

49-654. BASIC RULE AND MAXIMUM SPEED LIMITS. (1) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding highway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather

or highway conditions.

(2) Where no special hazard exists that requires lower speed for compliance with subsection (1) of this section the limits as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of the maximum limits:

- (a) Thirty-five (35) miles per hour or a lesser maximum speed adopted pursuant to section 49-207(2)(a), Idaho Code, in any residential, ~~neighborhood-of-any~~ business or urban district;
- (b) Thirty-five (35) miles per hour in any urban district;
- (c) Seventy-five (75) miles per hour on interstate highways;
- (d) Sixty-five (65) miles per hour in other locations.

Law Without Signature.

CHAPTER 156
(S.B. No. 1161)

AN ACT

RELATING TO OFF-PREMISES OUTDOOR ADVERTISING; AMENDING CHAPTER 19, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-1910A, IDAHO CODE, TO PROVIDE THAT REMOVAL OF OFF-PREMISES OUTDOOR ADVERTISING IS PROHIBITED WITHOUT COMPENSATION, TO DEFINE TERMS AND TO PROVIDE WHAT CONSTITUTES A COMPELLED REMOVAL; AND AMENDING SECTION 40-506, IDAHO CODE, TO PROVIDE A CORRECT CITATION.

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

SECTION 1. That Chapter 19, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-1910A, Idaho Code, and to read as follows:

40-1910A. REMOVAL OF OFF-PREMISES OUTDOOR ADVERTISING PROHIBITED WITHOUT COMPENSATION. (1) No governmental entity, including the state, or any municipality, county or other political subdivision shall remove or cause to be removed any legally placed off-premises outdoor advertising without paying compensation in cash or other method of payment mutually agreed upon, to the owner of the off-premises outdoor advertising based upon the fair market value of the off-premises outdoor advertising removed or proposed to be removed.

(2) As used in this section:

- (a) "Off-premises outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform and which is situated in order to be visible from any highway, or other traveled way and which is located on property which is separate from and not adjoining the premises or property on which the advertised activity is carried out.
- (b) "Fair market value of the off-premises outdoor advertising" means the value of the off-premises outdoor advertising which

shall include consideration of the income derived from the same and which shall otherwise be determined in the same manner as provided in section 7-711, Idaho Code.

(c) "Legally placed" means, in reference to off-premises outdoor advertising, off-premises outdoor advertising which was erected in compliance with state laws and local ordinances, in effect at the time of erection or which was subsequently brought into compliance with state laws and local ordinances, except that the term does not apply to any off-premises outdoor advertising whose use is modified after erection in a manner which causes it to become illegal. Nothing herein shall require the payment of compensation for the removal by a governmental entity of any off-premises or other outdoor advertising which is, without authorization, erected or located in or upon a public right-of-way unless the same was legally placed thereon prior to the premises becoming a public right-of-way.

(d) "Relocation" means removal of off-premises outdoor advertising and construction within the same market area of new off-premises outdoor advertising to substitute for the off-premises outdoor advertising removed.

(3) It is a policy of this state to encourage governmental entities and owners of off-premises outdoor advertising to enter into relocation agreements in lieu and instead of paying the compensation provided herein, to continue development in a planned manner without expenditures of public funds while allowing continued maintenance of private investment and a medium of public communication. The state, cities, counties and all other political subdivisions are specifically empowered to enter into relocation agreements on whatever terms are agreeable to the off-premises outdoor advertising owner and the governmental entity and to adopt rules, ordinances or resolutions providing for relocation of off-premises outdoor advertising, provided that nothing herein shall require compensation other than the actual cost of relocation unless the said owner is reasonably unable to acquire an alternate permissible location of comparable cost and value within the same market area. Notwithstanding anything to the contrary herein, this section shall not be construed to prohibit a governmental entity from entering into any relocation agreement upon such terms as shall be otherwise lawful.

(4) The requirement by a local governmental entity that legally placed off-premises advertising be removed as a condition or prerequisite for the issuance or continued effectiveness of a permit, license or other approval for any use, structure, development or activity other than off-premises outdoor advertising constitutes a compelled removal requiring compensation under this section unless the permit, license or approval is requested for the construction of a building or structure which cannot be built without physically removing the off-premises outdoor advertising.

SECTION 2. That Section 40-506, Idaho Code, be, and the same is hereby amended to read as follows:

40-506. COMPENSATION FOR TAKING CERTAIN PROPERTY. (1) The department is authorized to acquire by purchase, gift or condemnation, all

advertising displays and any property rights pertaining to them, when those advertising displays are required to be removed under the provisions of chapter 159, title 40, Idaho Code.

(2) In any appropriation for this purpose the department shall pay compensation under existing eminent domain law only for the following:

(a) The taking from the owner of a sign, display, or device of all right, title, leasehold, and interest in the sign, display or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain signs, displays and devices on that property. Where setback easements restricting the erection of structures or advertising displays have been recorded by the state on land where those structures have been erected, the landowner of the land shall be deemed to have been fully compensated for them.

(3) In any action at law instituted by the department under this section the state shall not be required, as a prerequisite, to the taking of or appropriation to comply with section 7-704(2) or section 7-707(6), Idaho Code.

Law Without Signature.

CHAPTER 157
(H.B. No. 287)

AN ACT

RELATING TO THE BARLEY COMMISSION; AMENDING SECTION 22-4003, IDAHO CODE, TO PROVIDE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-4009, IDAHO CODE, TO PROVIDE A REFERENCE TO RULES; AMENDING SECTION 22-4010, IDAHO CODE, TO PROVIDE THAT AUDITS SHALL BE PERFORMED EVERY SECOND YEAR BUT SHALL ADDRESS EVERY YEAR DISTINCTLY; AMENDING SECTION 22-4015, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION, TO PROVIDE REFERENCES TO SELLERS, TO PROVIDE FOR DISCONTINUATION OF REFUNDS UPON COMPLETION OF A REFERENCE AND TO PROVIDE AN EXEMPTION FROM TAX IMPOSED BY THE COMMISSION IF A SIMILAR TAX IS PAID ELSEWHERE; AND AMENDING SECTION 22-4016, IDAHO CODE, TO PROVIDE FOR DELIVERY OF DOCUMENTS TO SELLERS.

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

SECTION 1. That Section 22-4003, Idaho Code, be, and the same is hereby amended to read as follows:

22-4003. DEFINITIONS. As used in this chapter:

(1) "Commercial channels" means the sale of barley for use as 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 barley or product produced from barley.

- (2) "Commission" means the Idaho barley commission.
- (3) "Crop reduction program" means an offer by an agency of the United States government to give growers an amount of barley as payment for reducing planted acreage of barley.
- (4) "Delivery" means placing of barley into the primary channels of trade.
- (5) "First purchaser" means any person, group, association or partnership that buys barley ~~from the grower~~ in this state in the first instance, or any lienholder, public or private, including the commodity credit corporation, who may possess ~~barley~~ barley from the grower under any lien.
- (6) "Grower" means any landowner personally engaged in growing barley, a tenant of the landowner personally engaged in growing barley, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, shareholder or any and all other business units, devices and arrangements.
- (7) "Sale" includes any pledge, mortgage or delivery of barley for sale after harvest to any person, public or private.
- (8) "Seller" means any person or entity, including growers, who sells barley in the first instance.

SECTION 2. That Section 22-4009, Idaho Code, be, and the same is hereby amended to read as follows:

22-4009. DUTIES AND POWERS OF COMMISSION. (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of the provisions of this chapter, the commission shall, in conjunction with the Idaho grain producers 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 barley and barley products.
 - (c) To give, publicize and promulgate reliable information showing the value of barley and barley products for any purpose for which it is found useful and profitable.
 - (d) To make public and encourage the widespread national and international use of the special kinds of barley and barley products produced from all varieties of barley grown in Idaho.
 - (e) To investigate and participate in studies of the problems peculiar to the producers of barley in Idaho.
- (3) The commission shall have the duty, power and authority:
- (a) To take such action as the commission deems necessary or advisable in order to stabilize and protect the barley industry of the state and the health and welfare of the public.
 - (b) To sue and be sued.
 - (c) To enter into such 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 the products thereof, and to prescribe their duties and fix their compensation.
 - (e) To make use of such advertising means and methods as the com-

mission deems advisable and to enter into contracts 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 national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity and reciprocal enforcement.

(g) To lease, purchase or own the real or personal property deemed necessary in the administration of the provisions of this chapter.

(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 the provisions of this chapter.

(i) To adopt, rescind, modify and amend all necessary and proper orders, and resolutions and rules for the procedure 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 and public at all times.

(l) To audit records of "first purchasers" of Idaho barley and otherwise to determine the time of proper collection amount or payment of the barley tax or any penalties thereto.

SECTION 3. 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 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 every second year, but shall address every year distinctly, 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 4. That Section 22-4015, Idaho Code, be, and the same is hereby amended to read as follows:

22-4015. IMPOSITION OF TAX. (1) From and after the first day of July, 1988~~97~~, there is hereby levied and imposed a tax of two cents (2¢) per ~~hundred-weight~~ hundredweight on all barley grown in the state of Idaho or given to Idaho growers under a crop reduction program, and sold or contracted ~~through-commercial-channels~~ in this state, and each and every crop grown or barley given to growers under a crop reduction program thereafter. The tax shall be due on barley given to growers under a crop reduction program and on barley sold or contracted through commercial channels in this state, regardless of any deduction of the tax on this same barley prior to it being given to the grower. The tax shall be due on or before the time when such barley is first sold or contracted in the commercial channels and shall be paid at such time or times as the commission may, by rule ~~or-regulation~~, prescribe, as hereinafter provided, but not later than the 15th day of the month next succeeding the three (3) month period in which such barley 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 grower seller at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the grower seller at the time of sale or in case of a lienholder who may possess such barley under his lien, the tax shall be deducted by the lienholder from the proceeds of the claim secured by such lien at the time the barley is pledged or mortgaged. The tax shall be deducted as provided in this section whether the barley is stored in this or any other state. 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 such barley except liens which are declared by operation of a statute of this state.

(4) Any person may request from the commission in writing, within thirty (30) days after payment thereof, a refund of all or any portion of an assessment levied hereunder on barley and paid by him. The commission shall make the refund not later than thirty (30) days after the end of the fiscal year in which the request is made. Refunds shall

cease to be available beginning on the first July 1 following completion of a referendum for the continuation or discontinuation of refunds as described in section 22-4019, Idaho Code.

(5) A sale shall be exempt from the tax 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 barley. The commission shall by rule identify what other taxes are substantially similar and used for similar purposes, and shall establish procedures for sellers to prove the payment of the other taxes.

SECTION 5. That Section 22-4016, Idaho Code, be, and the same is hereby amended to read as follows:

22-4016. DELIVERY OF DOCUMENTS TO GROWERS SELLERS. (1) The purchaser, at the time of settlement, shall make and deliver separate documents for each purchase to the grower sellers.

(2) The documents shall, at a minimum, contain the following information:

(a) The name ~~or-names~~ and address ~~or-addresses~~ of the ~~grower-and~~ seller.

(b) The name and address of the purchaser.

(c) The number of hundredweights of barley sold.

(d) The date of the purchase.

(3) The documents shall be legibly written and shall have no corrections or erasures on the face thereof.

(4) Unlawful or willful alteration of any document required under this chapter shall constitute a misdemeanor.

Law Without Signature.

CHAPTER 158
(S.B. No. 1081)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL; AMENDING SECTION 18-8004, IDAHO CODE, TO PROVIDE THAT NO PERSON HAVING A BLOOD ALCOHOL CONCENTRATION OF 0.08 OR MORE SHALL DRIVE A MOTOR VEHICLE, TO PROVIDE THAT NO PERSON HAVING A BLOOD ALCOHOL CONCENTRATION OF 0.04 OR MORE SHALL DRIVE A COMMERCIAL MOTOR VEHICLE AND TO PROVIDE THAT NO PERSON UNDER TWENTY-ONE HAVING A BLOOD ALCOHOL CONCENTRATION BETWEEN 0.02 AND 0.08 SHALL DRIVE A MOTOR VEHICLE; AMENDING SECTION 18-8004A, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE IN THE CATCHLINE; AND AMENDING SECTION 67-7034, IDAHO CODE, TO PROVIDE THAT NO PERSON HAVING A BLOOD ALCOHOL CONCENTRATION OF 0.08 OR MORE SHALL OPERATE A VESSEL ON THE WATERS OF THE STATE.

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

SECTION 1. That Section 18-8004, Idaho Code, be, and the same is hereby amended to read as follows:

18-8004. PERSONS UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY OTHER INTOXICATING SUBSTANCES.

(1) (a) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.108, as defined in subsection (4) of this section, or more, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(b) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.04 through 0.097, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(c) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.108 or higher, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(d) It is unlawful for any person under the age of twenty-one (21) who has an alcohol concentration of at least 0.02 but less than 0.108, as defined in subsection (4) of this section, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public. Any person violating this subsection shall be subject to the penalties provided in section 18-8004A, Idaho Code.

(2) Any person having an alcohol concentration of less than 0.108, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, by a test requested by a police officer shall not be prosecuted for driving under the influence of alcohol, except as provided in subsection (3), subsection (1)(b) or subsection (1)(d) of this section. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for driving or being in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or any other intoxicating substances, on other competent evidence.

(3) If the results of the test requested by a police officer show a person's alcohol concentration of less than 0.108, as defined in subsection (4) of this section, such fact may be considered with other competent evidence of drug use other than alcohol in determining the guilt or innocence of the defendant.

(4) For purposes of this chapter, an evidentiary test for alcohol concentration shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the

alcohol concentration shall be performed by a laboratory operated by the Idaho department of law enforcement or by a laboratory approved by the Idaho department of law enforcement under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho department of law enforcement. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated or approved by the Idaho department of law enforcement or by any other method approved by the Idaho department of law enforcement shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(5) It is unlawful for any person who is an habitual user of, or under the influence of any narcotic drug, or who is under the influence of any other drug or any combination of alcohol and any drug to a degree which renders him incapable of safely driving a motor vehicle, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to public use. The fact that any person charged with a violation of the provisions of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of a violation of the provisions of this subsection.

(6) "Actual physical control" as used in this section, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(7) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

SECTION 2. That Section 18-8004A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8004A. PENALTIES -- PERSONS UNDER 21 WITH LESS THAN 0.108 ALCOHOL CONCENTRATION. (1) Any person found guilty of a violation of subsection (1)(d) of section 18-8004, Idaho Code, shall be guilty of a misdemeanor; and, for a first offense:

(a) Shall be fined an amount not to exceed one thousand dollars (\$1,000);

(b) Shall have his driving privileges suspended by the court for a period of one (1) year, ninety (90) days of which shall not be reduced and during which period absolutely no driving privileges of any kind may be granted. After the period of absolute suspension of driving privileges has passed, the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court.

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for any subsequent

violation of the provisions of this section or any violation of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney.

(d) Shall be required to undergo an alcohol evaluation and otherwise comply with the requirements of sections 18-8005(9) and 18-8005(12), Idaho Code, as ordered by the court.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to a violation of section 18-8004(1)(d), Idaho Code, or any substantially conforming foreign criminal violation, as defined in section 18-8005(8), Idaho Code, notwithstanding the form of the judgment or withheld judgment, is guilty of a misdemeanor; and

(a) Shall be fined an amount of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000);

(b) Shall have his driving privileges suspended by the court for a period not to exceed two (2) years, one hundred eighty (180) days of which shall be absolute and shall not be reduced and during which period absolutely no driving privileges of any kind may be granted;

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of this section or section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall undergo an alcohol evaluation and comply with the other requirements of subsections (9) and (12) of section 18-8005, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(d), Idaho Code, or any substantially conforming foreign criminal violation, within five (5) years, notwithstanding the form of the judgment or withheld judgment, shall be guilty of a misdemeanor; and

(a) May be sentenced to jail for not to exceed six (6) months;

(b) Shall be fined an amount of not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year, during which period absolutely no driving privileges of any kind may be granted, or until such person reaches the age of twenty-one (21), whichever is greater; and

(e) Shall undergo an alcohol evaluation and comply with all other requirements imposed by the court pursuant to sections 18-8005(9) and 18-8005(12), Idaho Code.

(4) All provisions of section 18-8005, Idaho Code, not otherwise in conflict with or provided for in this section shall apply to any

sentencing imposed under the provisions of this section.

(5) A person violating the provisions of section 18-8004(1)(d), Idaho Code, may be prosecuted under title 16, Idaho Code.

SECTION 3. That Section 67-7034, Idaho Code, be, and the same is hereby amended to read as follows:

67-7034. PERSONS UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY OTHER INTOXICATING SUBSTANCES. (1) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.108, as defined in subsection (5) of this section, or more, as shown by analysis of his blood, urine, breath, or other bodily substance, to operate or be in actual physical control of a vessel on the waters of the state of Idaho.

(2) Any person having an alcohol concentration of less than 0.108, as defined in subsection (5) of this section, as shown by analysis of his blood, urine, breath, or other bodily substance, by a test requested by an authorized law enforcement officer shall not be prosecuted for operating under the influence of alcohol, except as provided in subsection (3) of this section. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for operating or being in actual physical control of a vessel while under the influence of alcohol, drugs, or any other intoxicating substances, or other competent evidence.

(3) If the results of the test requested by an authorized law enforcement officer show a person's alcohol concentration of less than 0.108, as defined in subsection (5) of this section, such fact may be considered with other competent evidence of drug use other than alcohol in determining the guilt or innocence of the defendant.

(4) Persons authorized to withdraw blood for the purposes of determining content of alcohol or other intoxicating substances are those persons authorized in section 18-8003, Idaho Code. Immunity from liability in any civil proceeding for specified causes of action shall be extended to personnel as provided in section 18-8002, Idaho Code.

(5) For purposes of this chapter, an evidentiary test for alcohol concentration is a determination of the percent by weight of alcohol in blood and shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the blood alcohol concentration shall be performed by a laboratory operated by the Idaho department of law enforcement or by a laboratory approved by the Idaho department of law enforcement under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho department of law enforcement. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated or approved by the Idaho department of law enforcement or by any other method approved by the Idaho department of law enforcement shall be admissible in any proceeding in this state with-

out the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(6) It is unlawful for any person who is an habitual user of, or under the influence of any narcotic drug, or who is under the influence of any other drug or any combination of alcohol and any drug to a degree which renders him incapable of safely operating a vessel to operate or be in actual physical control of a vessel on the waters of the state of Idaho. The fact that any person charged with a violation of the provisions of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of a violation of the provisions of this subsection.

(7) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

Approved March 17, 1997.

CHAPTER 159
(S.B. No. 1256)

AN ACT

APPROPRIATING MONEYS TO THE CATASTROPHIC HEALTH CARE COST FUND FOR FISCAL YEAR 1998.

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

SECTION 1. There is hereby appropriated \$9,764,600 from the General Fund to be transferred to the Catastrophic Health Care Cost Fund for the period July 1, 1997, through June 30, 1998.

Approved March 17, 1997.

CHAPTER 160
(S.B. No. 1257)

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 1998; 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; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO ACCOUNTING SYSTEM ACCESS; 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. INDIRECT SUPPORT SERVICES:					
FROM:					
General					
Fund	\$ 6,814,600	\$ 6,940,200			\$13,754,800
Cooperative					
Welfare Fund					
(Other)		544,600			544,600
Cooperative					
Welfare Fund					
(Federal)	<u>4,686,500</u>	<u>4,913,100</u>			<u>9,599,600</u>
TOTAL	\$11,501,100	\$12,397,900			\$23,899,000
II. VETERANS SERVICES:					
FROM:					
General					
Fund	\$ 1,717,600	\$ 199,800		\$ 50,700	\$ 1,968,100
Cooperative					
Welfare Fund					
(Other)	4,280,100	1,486,600	\$153,600		5,920,300
Idaho Veterans Home					
Income Fund		703,800		1,000	704,800
Cooperative					
Welfare Fund					
(Federal)	<u>2,978,500</u>	<u>380,500</u>			<u>3,359,000</u>
TOTAL	\$ 8,976,200	\$ 2,770,700	\$153,600	\$ 51,700	\$11,952,200
III. INDEPENDENT COMMISSIONS AND COUNCILS:					
A. DOMESTIC VIOLENCE COUNCIL:					
FROM:					
Domestic					
Violence					
Fund	\$ 92,900	\$ 51,900	\$ 900	\$ 294,300	\$ 440,000
Cooperative					
Welfare Fund					
(Federal)	10,000	20,000		738,900	768,900
Cooperative					
Welfare Fund					
(Other)		<u>10,000</u>			<u>10,000</u>
TOTAL	\$ 102,900	\$ 81,900	\$ 900	\$1,033,200	\$ 1,218,900
B. DEVELOPMENTAL DISABILITIES COUNCIL:					
FROM:					
General					
Fund	\$ 54,700	\$ 15,500		\$ 11,200	\$ 81,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Cooperative Welfare Fund (Federal)	228,400	83,700		136,100	448,200
Cooperative Welfare Fund (Other)		1,000			1,000
TOTAL	\$ 283,100	\$ 100,200		\$ 147,300	\$ 530,600
C. COUNCIL FOR THE DEAF AND HEARING-IMPAIRED:					
FROM:					
General Fund	\$ 62,600	\$ 31,300			\$ 93,900
DIVISION TOTAL	\$ 448,600	\$ 213,400	\$ 900	\$ 1,180,500	\$ 1,843,400
GRAND TOTAL	\$20,925,900	\$15,382,000	\$154,500	\$1,232,200	\$37,694,600

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 Commissions and Councils for fiscal year 1997, to be used for nonrecurring expenditures only for the period July 1, 1997, through June 30, 1998. 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, 1997, through June 30, 1998.

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, 1997, through June 30, 1998. 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 Legislative Branch be given full access to the Department of Health and Welfare's internal accounting system.

SECTION 7. 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 two hundred seventy-six and thirty-three hundredths (3,276.33) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 17, 1997.

CHAPTER 161
(S.B. No. 1258)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR PUBLIC HEALTH SERVICES FOR FISCAL YEAR 1998; 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 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 Public Health Services, 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
PUBLIC HEALTH SERVICES:				
FROM:				
General Fund	\$2,047,600	\$1,591,400	\$ 1,771,700	\$ 5,410,700
Cooperative Welfare Fund (Other)	1,579,900	1,357,000	2,548,200	5,485,100
Cancer Control Fund	20,400	122,400	257,200	400,000
Central Tumor Registry Fund			148,900	148,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Emergency Medical Services Fund I & II	1,047,500	568,600	191,700	1,807,800
Cooperative Welfare Fund (Federal)	<u>3,158,000</u>	<u>3,188,600</u>	<u>20,350,200</u>	<u>26,696,800</u>
TOTAL	\$7,853,400	\$6,828,000	\$25,267,900	\$39,949,300

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 Public Health Services any unexpended and unencumbered balances of the Cooperative Welfare Fund as appropriated for Public Health Services for fiscal year 1997, to be used for nonrecurring expenditures only for the period July 1, 1997, through June 30, 1998. 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 Public Health Services is hereby authorized to expend all receipts collected in Public Health Services as noncognizable funds for the period July 1, 1997, through June 30, 1998.

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, 1997, through June 30, 1998. 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 17, 1997.

CHAPTER 162
(H.B. No. 52, As Amended)

AN ACT
RELATING TO MANAGEMENT OF PERMANENT ENDOWMENT FUNDS; AMENDING SECTION 57-721, IDAHO CODE, TO REMOVE THE RESPONSIBILITY OF THE DEPARTMENT

OF FINANCE FOR INSURING THE INVESTMENT MANAGER'S COMPLIANCE; AMENDING SECTION 57-722, IDAHO CODE, TO AUTHORIZE CERTAIN REPURCHASE AGREEMENTS, "YANKEE BONDS," ASSET-BACKED SECURITIES AND EQUITY-LINKED DEBT SECURITIES; AMENDING SECTION 57-725, IDAHO CODE, TO DELETE THE REQUIREMENT TO REPORT TO THE LEGISLATURE ON THE FOURTH MONDAY OF EACH MONTH OF A REGULAR SESSION AND TO REQUIRE A REPORT TO THE STATE AFFAIRS COMMITTEES; AND AMENDING SECTION 57-727, IDAHO CODE, TO CLARIFY THE AUTHORITY OF THE BOARD TO EMPLOY MORE THAN ONE ASSISTANT STAFF INVESTMENT MANAGER AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 57-721, Idaho Code, be, and the same is hereby amended to read as follows:

57-721. MANAGEMENT OF PERMANENT ENDOWMENT FUNDS BY INVESTMENT MANAGER(S) -- APPOINTMENT OF CUSTODIAN OF PERMANENT ENDOWMENT FUNDS. The board shall select and contract with a minimum of one (1) investment manager(s) to manage the permanent endowment funds. Such investment manager(s) so selected shall, subject to the direction of the board, exert control over the funds as though the investment manager(s) were the owner thereof. ~~The department of finance shall be responsible for insuring that the investment manager(s) comply with this act and the policies formulated by the board.~~

The board may select and contract with a minimum of one (1) bank or trust company to act as custodian of endowment fund assets and provide safekeeping thereof.

SECTION 2. That Section 57-722, Idaho Code, be, and the same is hereby amended to read as follows:

57-722. INVESTMENT POWERS OF INVESTMENT MANAGER(S) -- LIMITATIONS. The board or its investment manager(s) may, and they are hereby authorized to, invest the permanent endowment funds of the state of Idaho in the following manner and in the following investments or securities and none others:

(1) United States, state, county, city, or school district bonds or state warrants.

(2) Bonds, notes, or other obligations of the United States or any agency or instrumentality thereof.

(3) Money market mutual funds whose assets are limited to obligations of the United States or any agency or instrumentality thereof.

(4) Bonds, notes, or other obligations of the state of Idaho and its political subdivisions, or bonds, notes, and other obligations of other states and their political subdivisions, provided such bonds, notes or other obligations or the issuing agency for other than the state of Idaho and its political subdivisions have, at the time of their purchase, an AAA rating or higher by a commonly known rating service.

(5) Bonds, debentures or notes of any corporation organized, controlled and operating within the United States which have, at the time of their purchase, an A rating or higher by a commonly known rating

service. Nothing in this subsection shall apply to the provisions of subsection (6) of this section.

(6) Corporate obligations designated as corporate convertible debt securities which have, at the time of their purchase, a BBB rating or higher by a commonly known rating service, so long as the right of conversion is not exercised.

(7) Obligations secured by mortgages constituting a first lien upon real property in the state of Idaho which are fully insured or guaranteed as to the payment of the principal by the government of the United States or any agency thereof.

(8) Time certificates of deposit and savings accounts.

(9) Commercial paper, which at the time of purchase, is rated Prime 1 by Moody's Investors Service Incorporated or is rated A-1 or higher by Standard and Poor's Corporation.

(10) Loans of securities owned by the fund through any state or federally regulated institution. Such securities lending agreements shall require the borrower to provide and maintain collateral (cash or securities which are authorized investments for the board) at least equal in value to the value of securities loaned. Income derived from the lending of securities shall be distributed as provided by section 57-724, Idaho Code.

(11) Sales (writing) and repurchase of call options provided the fund owns the securities on which the option is written. Net realized capital gains or losses from the sale and repurchase of call options shall be accounted for in accordance with the capital gains provisions of section 57-724, Idaho Code.

(12) Repurchase agreements consisting of bonds, notes, or other obligations of the United States or any agency or instrumentality thereof.

(13) Foreign bonds designated as "yankee bonds" denominated in U.S. dollars and registered with the securities exchange commission for sale in the United States whose rating is A or higher by a commonly known rating service.

(14) Corporate securities designated as asset-backed securities, where certain assets are held in trust to guarantee payment of principal and interest and are rated A or higher by a commonly known rating service.

(15) Corporate securities designated as equity-linked debt rated A or higher by a commonly known rating service.

SECTION 3. That Section 57-725, Idaho Code, be, and the same is hereby amended to read as follows:

57-725. SUMMARY REPORT TO LEGISLATURE. The board shall, ~~on the fourth Monday of each regular session of the legislature~~, make a summary report to the ~~legislature~~ state affairs committees of the senate and the house of representatives within fourteen (14) days after a regular session of the legislature convenes of all securities and investments sold, purchased or acquired by the permanent endowment funds of the state since the previous report. The report shall further include the net profit or loss, if any, as a result of all sales or purchases of such securities and investments.

The summary report shall include a status report of the invest-

ments held at the end of the last fiscal year of the state, and shall further report on the overall performance of the funds under the control of the board, compared to the overall market and/or comparable selected funds or investment portfolios, including a comparison of the performance of the outside investment manager and the performance of the staff investment trustee.

SECTION 4. That Section 57-727, Idaho Code, be, and the same is hereby amended to read as follows:

57-727. STAFF INVESTMENT MANAGER -- STAFF -- LEGAL ADVISORS. (1) With the approval of two-thirds (2/3) of the members of the board, a staff investment manager and an assistant staff investment manager(s) may be employed who shall perform such managerial activities and functions as the board may direct. The staff investment manager and assistant staff investment manager(s) shall serve at the pleasure of the board in nonclassified positions. The staff investment manager and assistant staff investment manager(s) shall be employed by the board. The salary of the staff investment manager and assistant staff investment manager(s) shall be set by the board, subject to approval of the governor, and be paid from appropriations made therefor. The staff investment manager and assistant staff investment manager(s) shall be bonded in an amount established by the board.

(2) The board may authorize the employment of whatever staff it deems necessary for the administration of the board's business. The staff investment manager shall hire such authorized additional staff who shall hold their respective positions subject to the rules and regulations of the Idaho personnel commission. The salaries of all staff members shall be paid from appropriations made therefor.

(3) The director of the department of finance shall have access to any and all books and records maintained by the staff investment manager and his staff as the board may deem necessary.

(4) The board shall be furnished adequate and qualified legal advisors by the attorney general's office.

(5) All current expenses, capital outlay, and travel expenses shall be paid from appropriations made therefor.

(6) The board shall, upon request of the agency involved, furnish advice to the treasurer, the manager of the state insurance fund, and the public employees retirement board, and the board may, upon request of the agency, invest funds of the requesting agency.

Approved March 17, 1997.

CHAPTER 163
(H.B. No. 216)

AN ACT

RELATING TO THE CLASSIFIED PERSONNEL SYSTEM; AMENDING SECTION 67-5309, IDAHO CODE, TO INCREASE TO TEN THE NUMBER OF ELIGIBLE CANDIDATES PER REGISTER FOR PURPOSES OF FILLING VACANCIES, TO PROVIDE THAT A REGISTER WITH AT LEAST FIVE ELIGIBLE CANDIDATES SHALL BE ADEQUATE

AND TO PROVIDE THAT THE STATE SHALL BE CONSIDERED ONE EMPLOYER FOR PURPOSES OF THE EMPLOYMENT HISTORY RECORD.

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

SECTION 1. That Section 67-5309, Idaho Code, be, and the same is hereby amended to read as follows:

67-5309. RULES OF THE PERSONNEL COMMISSION. The commission shall have the power and authority to adopt, amend, or rescind such rules as may be necessary for proper administration of this act. Such rules shall include:

(a) A rule requiring the personnel commission, after consulting with each department to develop, adopt, and make effective, a job classification system for positions covered by this act, based upon an analysis of the duties and responsibilities of the positions. The job classification shall include an appropriate title for each class, and a description of duties and responsibilities of positions in the classes and the requirements of minimum training, experience and other qualifications, suitable for the performance of duties of the position.

(b) A rule describing the relevant labor markets and benchmark job classifications used in the commission's salary surveys.

(c) A rule requiring that all classes of positions which are common to the departments concerned shall have the same titles, minimum requirements and compensation ranges.

(d) A rule providing for review by the commission of the personnel system including classifications and compensation policies and procedures.

(e) A rule that, notwithstanding the procedure for examination and ranking of eligibles on a register provided in subsection (f) of this section, an agency may appoint an individual directly into an entrance or promotional probation if the division of vocational rehabilitation, Idaho commission certifies, with the concurrence of personnel commission staff, that the individual (1) has a disability or handicap as defined under state or federal law; (2) is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and (3) lacks competitiveness in the examination process due to the disability or handicap. The probationary period as provided in subsection (j) of this section shall be the sole examination for such individuals.

(f) A rule requiring fair and impartial selection of appointees to all positions other than those defined as nonclassified in this act, on the basis of open competitive merit examinations. An application for an examination will be accepted after the closing date of the examination from a person who was serving in the armed forces, or undergoing hospitalization of no more than one (1) year following discharge, during any period in which the examination was open; the application must be submitted within one hundred twenty (120) days of separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of the examination. A disabled veteran may file an application at any time for any posi-

tion for which the commission maintains a register or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. Examinations may be assembled or unassembled and may include various examining techniques such as rating of training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations and any other measure of ability to perform the duties of the position. Examinations shall be scored objectively. Five (5) points shall be added to the earned rating of any war veteran and the widow of any war veteran as long as she remains unmarried. Ten (10) points shall be added to the earned rating of any disabled war veteran, the widow of any disabled war veteran as long as she remains unmarried or the spouse of any disabled veteran who is physically unable to perform the work in the position to which the spouse seeks to apply the preference. Employment registers shall be established in order of final score except that the names of all five (5) point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating, and the names of all ten (10) point preference eligibles shall be placed at the top of the register above the names of all nonpreference eligibles. Certification of eligibility for appointment to vacancies shall be in accordance with a formula which limits selection by the hiring department from among the five ten (510) top ranking available eligibles plus the names of all individuals with scores identical to the fifth tenth ranking eligible on the register; however, a register with at least five (5) eligibles shall be adequate. Selective certification shall be permitted when justified by the hiring department, under rules to be made by the commission defining adequate justification based on the duties and requirements of the positions. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one (1) year after departments commence participation in the personnel system.

(g) A rule that, whenever practicable, a vacancy in a classified position shall be filled by the promotion of a qualified permanent employee of the agency in which the vacancy occurs. An inter-agency promotion shall be made through competitive examination and all qualified state employees shall have the opportunity to compete for such promotions. If an employee's name appears within certifiable range on a current register for a higher class of position, he shall be eligible for a transfer and promotion.

(h) A rule for development and maintenance of a system of service ratings and the use of such ratings by all departments in connection with promotions, demotions, retentions, separations and reassignments. The rule shall require that an evaluation of each classified employee shall be made after each two thousand eighty (2,080) hour period of credited state service, and that a copy of the evaluation shall be filed with the commission.

(i) A rule prohibiting disqualification of any person from taking an examination, from appointment to a position, from promotion, or

from holding a position because of race or national origin, color, sex, age, political or religious opinions or affiliations, or other nonmerit factors, and providing for right of appeal.

(j) A rule establishing a probation period not to exceed one thousand forty (1,040) hours of credited state service for all appointments and promotions, except that peace officers as defined in section 19-5101, Idaho Code, shall be subject to a probation period of two thousand eighty (2,080) hours of credited state service, and for the appointing authority to provide the employee and the commission a performance evaluation indicating satisfactory or unsatisfactory performance not later than thirty (30) days after the expiration of the probationary period. The rule shall provide that if the appointing authority fails to provide a performance evaluation within thirty (30) days after the expiration of the probationary period, the employee shall be deemed to have satisfactorily completed the probation unless the appointing authority receives approval from the state personnel director to extend the probationary period for good cause for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. If an employee is performing in an unsatisfactory manner during the entrance probationary period, the appointing authority shall ask the employee to resign, and if no resignation is submitted, shall terminate the employment of such employee without the right of grievance or appeal.

(k) A rule concerning provisional appointments.

(l) A rule concerning temporary appointments.

(m) A rule governing the employment of consultants and persons retained under independent contract.

(n) A rule for the disciplinary dismissal, demotion, suspension or other discipline of employees only for cause with reasons given in writing. Such rule shall provide that any of the following reasons shall be proper cause for the disciplinary dismissal, demotion or suspension of any employee in the state classified service:

1. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes and rules of the employee's department, or rules of the personnel commission.
2. Inefficiency, incompetency, or negligence in the performance of duties.
3. Physical or mental incapability for performing assigned duties.
4. Refusal to accept a reasonable and proper assignment from an authorized supervisor.
5. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the employee's department.
6. Intoxication on duty.
7. Careless, negligent, or improper use or unlawful conversion of state property, equipment or funds.
8. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage.
9. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude.

10. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity.

11. Habitual pattern of failure to report for duty at the assigned place and time.

12. Habitual improper use of sick leave privileges.

13. Unauthorized disclosure of confidential information from official records.

14. Absence without leave.

15. Misstatement or deception in the application for the position.

16. Failure to obtain or maintain a current license or certificate lawfully required as a condition for performing the duties of the job.

17. Prohibited participation in political activities.

(o) A rule to establish procedures for maintenance of a record of the employment history and appropriate information relating to performance of all employees under the personnel system. For the purposes of this rule, the state shall be considered one (1) employer.

(p) Rules to provide for recruitment programs in cooperation with department heads and the employment security agency in keeping with current employment conditions and labor market trends.

(q) Rules to establish procedures for examinations as necessary for the purpose of maintaining current registers from which to fill employment vacancies.

(r) Other rules not inconsistent with the foregoing provisions of this section as may be necessary and proper for the administration and enforcement of this act.

(s) A rule concerning "project exempt" appointments.

(t) Rules relating to leave for state employees from official duties, including, but not limited to, sick leave, military leave, jury duty, leaves of absence without compensation and such other forms of absence from performance of duties in the course of state employment as may be necessary.

(u) A rule providing for five percent (5%) shift differential pay.

Approved March 17, 1997.

CHAPTER 164

(H.B. No. 244, As Amended in the Senate)

AN ACT

RELATING TO FIRE SAFETY STANDARDS IN DAY CARE CENTERS; AMENDING SECTION 39-1109, IDAHO CODE, TO REVISE CHILD-STAFF RATIOS BASED ON THE AGE OF CHILDREN BEING CARED FOR.

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

SECTION 1. That Section 39-1109, Idaho Code, be, and the same is hereby amended to read as follows:

39-1109. FIRE SAFETY STANDARDS. (1) Day care centers shall comply with the following fire safety standards in the area of the day care center in which day care is provided: (a) adequate fire and smoke alarms; (b) a functional telephone; (c) adequate fire extinguishers or other suitable arrangements for extinguishing fires; and (d) adequate exits. Separate standards in these categories shall also be developed for group day care facilities.

(2) No fire standards developed pursuant to this chapter shall be more stringent than the standards contained in the Uniform Fire Code, without supplementation by any other standard or code.

(3) In addition to the fire safety standards identified in subsection (1) of this section, fire safety standards may be established to govern the maximum allowable ratio of children to staff subject to the following restrictions:

(a) In no event shall the child-staff ratio require more than one (1) staff member to six (6) children for all children age eighteen (18) months or less, more than one (1) staff member to twelve (12) children for all children above age eighteen (18) months but less than five (5) years; and more than one (1) staff member to eighteen (18) children for all children whose age is five (5) years or more;

(b) No factors other than fire safety may be considered in establishing child-staff ratios;

(c) All adults on the premises shall be counted as staff for purposes of computing a child-staff ratio; and

(d) Each child shall count as one (1) child for purposes of computing a child-staff ratio.

Approved March 17, 1997.

CHAPTER 165
(S.B. No. 1254)

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 1998; LIMITING THE AMOUNT OF THE GENERAL FUND APPROPRIATION 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; ESTABLISHING AN AMOUNT OF THE GENERAL FUND APPROPRIATION TO BE EXPENDED FOR COMPETITIVE TECHNOLOGY GRANTS AND FOR PARTICIPATION IN THE WESTERN GOVERNOR'S ASSOCIATION VIRTUAL UNIVERSITY; MAKING CERTAIN IDAHO 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; SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO STATE BOARD OF EDUCATION POLICY ON ALLOCATION OF APPROPRIATIONS; AND DIRECTING CERTAIN EXPENDITURES FOR ENGINEERING AND ACADEMIC REINVESTMENT.

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 programs from the listed funds for the period July 1, 1997, through June 30, 1998:

FOR:	
General Education Programs	\$235,682,500
FROM:	
General Fund	\$178,599,700
Agricultural College Endowment Fund	808,100
Charitable Institutions Endowment Fund	752,600
Normal School Endowment Fund	2,726,500
Science School Endowment Fund	2,860,600
University Endowment Fund	2,443,100
Unrestricted Current Fund	21,937,800
Restricted Current Fund	<u>25,554,100</u>
TOTAL	\$235,682,500

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, \$1,750,000 shall be used for a competitive grant program to foster innovative learning approaches using technology, and for Idaho's participation in the Western Governor's Association Virtual University. 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, 1997, through June 30, 1998, 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 126, Laws of 1996, to be used for nonrecurring expenditures, for the period July 1, 1997, through June 30, 1998.

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, 1997, 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, 1997, 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.

SECTION 8. It is legislative intent that the State Board of Education reevaluate board policy on allocation of state appropriations to determine the sufficiency of the enrollment workload adjustment in supporting the cost of enrollment growth at each institution and that the board clarify its policy on allocation of legislative funding of enhancement decision units.

SECTION 9. It is legislative intent that, of the amount appropriated from the General Fund in Section 1 of this act, \$250,000 be allocated for Boise State University engineering programs and \$802,200 be allocated to the University of Idaho for a reinvestment in the basic educational delivery of academic programs.

Approved March 17, 1997.

CHAPTER 166
(S.B. No. 1255)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS FOR FISCAL YEAR 1998; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 1997; AUTHORIZING ADDITIONAL FULL-TIME EQUIVALENT POSITIONS FOR FISCAL YEAR 1997; AND DECLARING AN EMERGENCY.

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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT SERVICES:					
FROM:					
General					
Fund	\$ 722,200	\$ 371,100	\$ 43,300	\$ 114,100	\$ 1,250,700
Water					
Administration					
Fund	30,400	20,300			50,700
Indirect Cost					
Recovery					
Fund	209,900	44,200			254,100
TOTAL	\$ 962,500	\$ 435,600	\$ 43,300	\$ 114,100	\$ 1,555,500
II. PLANNING AND POLICY DIVISION:					
FROM:					
General					
Fund	\$1,563,600	\$ 430,700	\$ 30,000	\$ 834,600	\$ 2,858,900
Federal Grant					
Fund	207,200	139,600	5,000		351,800
Indirect Cost					
Recovery					
Fund	51,100	4,300			55,400
Miscellaneous					
Revenue					
Fund	214,400	878,500	5,000		1,097,900
TOTAL	\$2,036,300	\$1,453,100	\$ 40,000	\$ 834,600	\$ 4,364,000
III. ENERGY DIVISION:					
FROM:					
General					
Fund	\$ 27,700	\$ 2,800			\$ 30,500
Petroleum					
Violation					
Escrow Fund	429,300	1,582,600	\$ 4,400		2,016,300
Federal Grant					
Fund	535,500	585,500	7,300		1,128,300
Indirect Cost					
Recovery					
Fund	38,800	110,000			148,800
Miscellaneous					
Revenue					
Fund	10,200	20,000			30,200
TOTAL	\$1,041,500	\$2,300,900	\$ 11,700		\$ 3,354,100
IV. WATER MANAGEMENT DIVISION:					
A. SNAKE BASIN ADJUDICATION:					
FROM:					
General					
Fund	\$1,507,000	\$ 743,200	\$ 42,000		\$ 2,292,200
Water Claims					
Adjudication					
Fund			35,000	\$ 500,000	535,000
TOTAL	\$1,507,000	\$ 743,200	\$ 77,000	\$ 500,000	\$ 2,827,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
B. WATER MANAGEMENT:					
FROM:					
General					
Fund	\$2,370,400	\$ 478,600	\$115,000		\$ 2,964,000
Water					
Administration					
Fund	455,200	93,500	10,000		558,700
Federal Grant					
Fund	80,500	186,800	10,000		277,300
Indirect Cost					
Recovery					
Fund	38,700	3,100			41,800
Miscellaneous					
Revenue					
Fund	<u>444,200</u>	<u>102,900</u>	<u>10,000</u>		<u>557,100</u>
TOTAL	\$3,389,000	\$ 864,900	\$145,000		\$ 4,398,900
GRAND					
TOTAL	\$8,936,300	\$5,797,700	\$317,000	\$1,448,700	\$16,499,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Water Resources is authorized no more than one hundred eighty (180) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 appropriation made in Section 1, Chapter 180, Laws of 1996, there is hereby appropriated the following amount to be expended for the designated program according to the designated standard classifications from the listed fund for the period July 1, 1996, through June 30, 1997:

WATER MANAGEMENT:

FROM:

Water Administration Fund

\$108,800

FOR:

Personnel Costs

\$ 64,400

Operating Expenditures

23,000

Capital Outlay

21,400

TOTAL

\$108,800

SECTION 4. In addition to the full-time equivalent positions authorized in Section 2, Chapter 180, Laws of 1996, there is hereby authorized five (5) full-time positions for the purposes of Section 3 of this act.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Sections 3 and 4 of this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1997.

CHAPTER 167
(H.B. No. 318)

AN ACT

RELATING TO PAYMENT OF TAXES, FEES AND OTHER AMOUNTS; AMENDING SECTION 67-2026, IDAHO CODE, TO EXTEND THE REQUIREMENT THAT CERTAIN TAXES AND FEES BE PAID BY ELECTRONIC FUNDS TRANSFER TO ALL FEES AND OTHER AMOUNTS, TO SPECIFY THE METHOD FOR MAKING ELECTRONIC FUNDS TRANSFERS, TO DELETE THE AUTHORITY OF THE BOARD OF EXAMINERS TO PROMULGATE ADMINISTRATIVE RULES REGARDING ELECTRONIC FUNDS TRANSFER AND TO GIVE THE STATE TREASURER AUTHORITY TO ADOPT PROCEDURES NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ACT.

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

SECTION 1. That Section 67-2026, Idaho Code, be, and the same is hereby amended to read as follows:

67-2026. TAXES, FEES AND OTHER AMOUNTS TO BE PAID BY ELECTRONIC FUNDS TRANSFER. (1) All taxes and additional amounts of interest, penalty or fees payable together with taxes and all other fees and amounts which are payable to the state must be paid by electronic funds transfer whenever the amount paid or payable is one hundred thousand dollars (\$100,000) or greater. Whenever the payment of taxes is required to be made by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business day thereafter.

(2) ~~The board of examiners, in coordination with the state treasurer and those affected departments, shall adopt rules necessary to implement the provisions of this section including, but not limited to, rules~~ All electronic funds transfers to the state, whether or not required by this section, shall be made through the automated clearing house system (ACH) operated by the federal reserve by the ACH debit or ACH credit method and shall include related addenda or messages necessary for:

(a) Coordinating the filing of tax returns or other reports with the payment of taxes and all other fees and amounts by electronic funds transfer; and

(b) ~~Specifying the form and content of electronic funds transfer messages in order to ensure~~ Ensuring the proper receipt and crediting of the tax payment.

(3) The state treasurer shall adopt procedures necessary to implement the provisions of this section.

Approved March 19, 1997.

CHAPTER 168
(H.B. No. 368)

AN ACT

RELATING TO THE APPROPRIATION FOR PUBLIC SCHOOL SUPPORT FOR FISCAL YEAR 1998; 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 \$1,500,000 IS TO BE DISTRIBUTED FOR ACADEMIC TESTING AND READING IMPROVEMENT; EXPRESSING LEGISLATIVE INTENT THAT \$10,400,000 BE EXPENDED FOR THE PUBLIC SCHOOL TECHNOLOGY GRANT PROGRAM; EXPRESSING LEGISLATIVE INTENT THAT NOT MORE THAN \$140,000 BE EXPENDED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION; EXPRESSING LEGISLATIVE INTENT THAT \$250,000 BE DISTRIBUTED AS GRANTS TO TEACHERS OR GROUPS OF TEACHERS; EXPRESSING LEGISLATIVE INTENT THAT \$2,250,000 BE DISTRIBUTED FOR SUPPORT OF PROGRAMS FOR STUDENTS WITH NON-ENGLISH OR LIMITED ENGLISH PROFICIENCY; EXPRESSING LEGISLATIVE INTENT THAT \$375,000 BE DISTRIBUTED FOR A TEACHER MENTOR PROGRAM; EXPRESSING LEGISLATIVE INTENT THAT \$6,500,000 OF THE MONEYS ACCRUING PURSUANT TO SECTION 63-2506, IDAHO CODE, PLUS \$500,000 GENERAL FUND MONEYS BE EXPENDED FOR THE IDAHO SUBSTANCE ABUSE PROGRAM; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE DISTRIBUTION OF FUNDS FOR THE IDAHO SUBSTANCE ABUSE PROGRAM; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO FEATURES OF THE IDAHO SUBSTANCE ABUSE PROGRAM; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE EXPENDITURE OF \$1,000,000; AND EXPRESSING LEGISLATIVE INTENT THAT MONEYS BE APPROPRIATED FOR CERTIFICATED SCHOOL DISTRICT EMPLOYEES ELIGIBLE FOR AN EARLY RETIREMENT.

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, 1997, through June 30, 1998:

FROM:

General Fund		\$705,000,000
Dedicated Funds:		
Endowment Funds/Lands Receipts	\$37,300,000	
Cigarette Tax	6,500,000	
Liquor Fund	1,200,000	
Mineral Royalties	1,900,000	
Miscellaneous Receipts and Fund Balance	<u>4,100,000</u>	
Total Dedicated Funds		<u>51,000,000</u>
TOTAL		<u>\$756,000,000</u>

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, 1997, through June 30, 1998:

FROM:

General Fund	\$705,000,000
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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 \$756,000,000 for the period July 1, 1997, through June 30, 1998.

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, 1997, through June 30, 1998.

SECTION 5. It is legislative intent that \$1,500,000 of the moneys appropriated in Section 3 of this act shall be distributed as follows: \$500,000 for academic testing and \$1,000,000 for reading improvement. The \$1,000,000 for reading improvement is to be used as follows: \$500,000 for K-6 reading training for teachers which includes phonics, and \$500,000 for reading recovery K-6 or other locally developed programs which address improvements in reading skills for students. The reading improvement shall be distributed pro rata based on each district's prior year K-6 student enrollment compared to the total prior year K-6 student enrollment statewide. It is further legislative intent that all funding for academic testing in fiscal year 1999 be included in the request for the State Department of Education.

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 \$140,000 of the \$10,400,000 referenced in Section 6 of this act shall be expended by the Superintendent of Public Instruction for staff support and 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 \$250,000 of the moneys appropriated in Section 3 of this act be distributed by the Superintendent of Public Instruction as grants to teachers or groups of teachers for the development of creative and innovative instructional methods or curriculum.

SECTION 9. It is legislative intent that \$2,250,000 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 pro rata based upon the population of limited English proficient students under criteria established by the State Department of Education.

SECTION 10. 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 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 11. It is legislative intent that of the amount appropriated in Section 3 of this act, \$6,500,000 of the moneys accruing pursuant to Section 63-2506, Idaho Code, plus \$500,000 General Funds shall be expended by the Superintendent of Public Instruction for the Idaho Substance Abuse Program for the period July 1, 1997, through June 30, 1998.

SECTION 12. It is legislative intent that the funds for the Idaho Substance Abuse Program referenced in Section 11 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. The remaining \$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 13. 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.

SECTION 14. It is legislative intent that \$1,000,000 of the moneys appropriated in Section 3 of this act shall be expended for the following:

- (1) Training of regular classroom teachers in working with children with disabilities.
- (2) Employing and training aides to assist regular classroom teachers in working with students with disabilities.
- (3) Employing substitute teachers whose employment allows regular classroom teachers to be involved in collegial planning, parent contact, Individual Education Plan (IEP) development, curriculum modifi-

cation, or other necessary activities directly related to meeting the needs of students in regular education classrooms.

(4) Moneys in this section shall be distributed pro rata to the districts as follows: fifty percent on the basis of the prior year's December first child count and fifty percent on the basis of the prior year's average daily attendance.

It is legislative intent that these funds be used to supplement rather than supplant existing efforts in the training of regular classroom teachers and the employment and training of aides; and that the State Department of Education shall create a one page report to be provided to the Legislature showing current individual district expenditures in this area, as well as a breakdown of how these appropriated moneys were spent.

It is further legislative intent that these funds shall not be used in any calculation or report to the federal government that obligates a future appropriation of this amount or any other amount.

SECTION 15. It is legislative intent that moneys be appropriated to school districts, consistent with Section 33-1004G, Idaho Code, and Section 2, Chapter 347, Laws of 1996, for certificated employees of Idaho school districts eligible for an early retirement and who were not notified by their school district prior to the deadline date of April 1, 1996, for the 1996-97 school year.

Approved March 19, 1997.

CHAPTER 169
(S.B. No. 1085)

AN ACT

RELATING TO THE STATE TAX COMMISSION; AMENDING SECTION 63-102, IDAHO CODE, TO ALLOW THE GOVERNOR TO APPOINT THE CHAIRMAN OF THE STATE TAX COMMISSION AND TO PROVIDE DUTIES OF THE CHAIRMAN.

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

SECTION 1. That Section 63-102, Idaho Code, be, and the same is hereby amended to read as follows:

63-102. ORGANIZATION -- CHAIRMAN -- COMPENSATION -- QUORUM -- HEARINGS. (1) A member of 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 be appointed by the governor, to serve at his pleasure, as 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~~ such other matters as will facilitate the operations of the commission.

(3) The chairman of the state tax commission shall delegate to each member of ~~commissioner the commission responsibility for administration and control~~ responsibility for policy management and oversight of one (1) or more of the taxes and responsibility for that tax collected and/or activities supervised or administered by the commission. 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~~ by 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 policy management and oversight of that unit the tax in controversy shall not vote upon the appeal but ~~instead shall, during that hearing,~~ may 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 and~~ 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.~~

Approved March 19, 1997.

CHAPTER 170
(S.B. No. 1114, As Amended)

AN ACT

RELATING TO PUBLIC WORKS CONTRACTORS; AMENDING SECTION 54-1903, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM THE REQUIREMENT FOR A PUBLIC WORKS CONTRACTOR'S LICENSE WHEN DOING CERTAIN WORK DURING AN OFFICIALLY DECLARED EMERGENCY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 54-1903, Idaho Code, be, and the same is hereby amended to read as follows:

54-1903. EXEMPTIONS. This act shall not apply to:

(a) An authorized representative of the United States government, the state of Idaho, or any incorporated town, city, county, irrigation

district, reclamation district or other municipal or political corporation or subdivision of this state.

(b) Officers of a court when they are acting within the scope of their office.

(c) Public utilities operating under the jurisdiction of the public utilities commission of the state of Idaho on construction, maintenance and development work incidental to their own business.

(d) The sale or installation of any finished products, materials or articles of merchandise, which are not actually fabricated into and do not become a permanent fixed part of the structure.

(e) Any construction, alteration, improvement or repair of personal property.

(f) Any construction, alteration, improvement or repair carried on within the limits and boundaries of any site or reservation, the title of which rests in the federal government.

(g) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts, except when performed by a person required to be licensed under this act.

(h) Duly licensed architects, civil engineers, and land surveyors when acting solely in their professional capacity.

(i) Any construction, alteration, improvement or repair involving an estimated cost of less than five thousand dollars (\$5,000).

(j) Any construction, operation, alteration or maintenance of a solid waste disposal site including those operated by, for, or at the direction of a city or a county.

(k) Any construction, operation or repair carried on in response to an emergency that has been officially declared by the governor pursuant to the provisions of chapter 10, title 46, Idaho Code, or an emergency that has been declared by a governing body (city or county) in anticipation of a governor's declaration, for a period of time not to exceed seven (7) calendar days.

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 19, 1997.

CHAPTER 171
(S.B. No. 1115, As Amended)

AN ACT

RELATING TO RESEARCH, DISCIPLINE OR MEDICAL STUDY BY HEALTH CARE ORGANIZATIONS; AMENDING SECTION 39-1392, IDAHO CODE, TO EXTEND THE PROVISIONS OF THE SECTION TO HEALTH CARE ORGANIZATIONS; AMENDING SECTION 39-1392a, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTIONS 39-1392b, IDAHO CODE, TO EXTEND THE PROVISIONS TO HEALTH CARE ORGANIZATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-1392c, IDAHO CODE, TO EXTEND THE PROVISIONS TO HEALTH CARE ORGANIZATIONS; AND AMENDING SECTIONS 39-1392d AND 39-1392e, IDAHO

CODE, TO EXTEND THE PROVISIONS TO HEALTH CARE ORGANIZATIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 39-1392, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392. STATEMENT OF POLICY. To encourage research, discipline and medical study by ~~in-hospital-medical-staff-committees-and-recognized-medical-societies~~ certain health care organizations for the purposes of reducing morbidity and mortality, enforcing and improving the standards of medical practice in the state of Idaho, certain records of such ~~committees--and-societies~~ health care organizations shall be confidential and privileged as set forth in this chapter.

SECTION 2. That Section 39-1392a, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392a. DEFINITIONS. The following terms shall have the following meanings when used in this section:

(a) "Group medical practice" means a partnership, corporation, limited liability company, or other association formed for the purpose of offering health care services through physicians and other licensed or otherwise authorized health care providers who are partners, shareholders, members, employees, or contractors of such group medical practice.

(b) "Health care organization" means a hospital, in-hospital medical staff committee, medical society, managed care organization, or group medical practice.

(c) "Hospital" shall mean a facility in Idaho licensed under sections 39-1301 through 39-1314, Idaho Code, and defined in section 39-1301(a)(1), Idaho Code.

(d) "In-hospital medical staff committees" shall mean any individual doctor who is a hospital staff member, or any hospital employee, or any group of such doctors and/or hospital employees, who are duly designated a committee by hospital staff bylaws, by action of an organized hospital staff, or by action of the board of directors of a hospital, and which committee is authorized by said bylaws, staff or board of directors, to conduct research or study of hospital patient cases, or of medical questions or problems using data and information from hospital patient cases.

(e) "Managed care organization" means a public or private person or organization which offers a managed care plan.

(f) "Managed care plan" means a contract of coverage given to an individual, family or group of covered individuals pursuant to which a member is entitled to receive a defined set of health care benefits through an organized system of health care providers in exchange for defined consideration and which requires the member to use, or creates financial incentives for the member to use, health care providers owned, managed, employed by or under contract with the managed care organization.

(g) "Medical society" shall mean any duly constituted, autho-

rized and recognized professional society or entity made up of physicians licensed to practice medicine in Idaho, having as its purpose the maintenance of high quality in the standards of health care provided in Idaho or any region or segment of the state, operating with the approval of the Idaho state board of medicine, or any official committee appointed by the Idaho state board of medicine.

SECTION 3. That Section 39-1392b, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392b. RECORDS CONFIDENTIAL AND PRIVILEGED. Except as provided in section 39-1392e, Idaho Code, all written records of interviews, all reports, statements, minutes, memoranda, charts, and the contents thereof, and all physical materials relating to research, discipline or medical study of any ~~in-hospital-medical-staff-committees-or--medical--society~~ health care organization, for the purposes set forth in section 39-1392, Idaho Code, shall be confidential and privileged, and shall not be directly or indirectly subject to subpoena or discovery proceedings or be admitted as evidence, nor shall testimony relating thereto be admitted in evidence, or in any action of any kind in any court or before any administrative body, agency or person for any purpose whatsoever; provided further no order of censure, suspension or revocation of licensure or hospital privilege of any physician licensed to practice medicine in Idaho shall be admissible in any civil proceeding seeking damages or other civil relief against the physician or hospital which may be a party defendant in said cause; provided, however, this section shall not prohibit or otherwise affect the use of said documents, materials or testimony in ~~medical-society or-hospital~~ health care organization proceedings, nor shall it prohibit or otherwise affect the dissemination, for medical purposes, of information contained in such documents or materials or the conclusions and findings of such ~~in-hospital-medical-staff-committees-or medical-society~~ health care organization, and provided further, that this section shall not affect the admissibility in evidence in any action or proceeding of any original medical records of any patient.

SECTION 4. That Section 39-1392c, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392c. IMMUNITY FROM CIVIL LIABILITY. The furnishing of information or provision of opinions to any ~~medical-society-or--in-hospital medical--staff-committees~~ health care organization, as herein defined, or their authorized representatives or investigators, or the receiving and use of such information and opinions shall not subject any person, hospital, managed care organization, sanitarium, nursing or rest home or other person or agency to any liability or action for money damages or other legal or equitable relief; provided further, custodians of such records and persons becoming aware of such data and opinions shall not disclose the same except as authorized by the Idaho state board of medicine or pursuant to rules or regulations duly promulgated by said board, except that any licensed hospital in the state of Idaho, acting through its governing board or its medical staff, or by its duly authorized administrative staff, may upon request receive

such disclosures, subject to an obligation to preserve the confidential privileged character thereof and subject further to the requirement that such requests shall be made and such use shall be limited to the aid of such hospital in determining hospital privileges which may properly be allowed or refused any physician who is a member of or who is seeking to secure or reinstate membership upon the medical staff of such institution.

SECTION 5. That Section 39-1392d, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392d. ~~PROPERTY OF HOSPITALS OR MEDICAL SOCIETIES~~ HEALTH CARE ORGANIZATION. All such written and other records of interviews, all reports, statements, minutes, memoranda, charts and physical property or materials of any kind used in connection with or relating to any such items or investigation or hearing or research discipline or medical study for any of the purposes set forth in section 39-1392, Idaho Code, shall be the property of the ~~hospital or medical society~~ health care organization concerned which obtains or compiles the same; provided, however, this section shall in no way impair the rights of individuals conducting such research or studies in the exercise of any right or the discharge of any legitimate responsibility which they may have in connection with such research and/or studies and the results thereof; and provided further, nothing in this act shall be construed as restricting or altering the rights of inspection and copying by patients and their duly authorized representatives with respect to the official ~~hospital~~ chart maintained in connection with the course of care provided such patients, which right of copying and inspection and to use such charts and their contents in appropriate judicial proceedings is unaltered by this enactment.

SECTION 6. That Section 39-1392e, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392e. LIMITED EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY.

(a) In the event of a claim or civil action against a physician or a hospital arising out of a particular physician-patient or hospital-patient relationship, or which concerns the sufficiency of the delivery of particular health care to a specific patient, any ~~hospital or medical society~~ health care organization having information of the kind covered by section 39-1392b, Idaho Code, shall, when interrogated as hereinafter provided, advise any such claimant who is or was such a patient or who, in a representative capacity, acts on behalf of such patient or his heirs, as follows:

- (1) Whether it has conducted or has in progress an inquiry, proceeding or disciplinary matter regarding the quality of propriety of the health care involved, which concerns the subject patient while he was under the care or responsibility of a member of such society health care organization or while he was a patient in such hospital; and, if so,
- (2) Whether disposition of any kind resulted or will result therefrom; and, if so,
- (3) What the disposition was, or, if not yet determined, approxi-

mately when it will be determined.

Such disclosure of information shall be limited to the ~~medical-society or-hospital-committee's~~ health care organization's actions in connection with the physician or hospital against whom such claim is asserted.

(b) Such a claimant shall likewise be entitled to inquire of such ~~hospital-or-medical-society~~ health care organization respecting the names and addresses of persons who such ~~hospital-or-society~~ health care organization knows to have direct knowledge of the provision of the health care in question, such inquiry to be limited, however, to the particular patient and the particular times and occasions germane to the specific occurrences on which the claim is based; provided, names shall not be disclosed respecting persons who have gained secondary knowledge or formed opinions respecting the matter solely by participating as witnesses, officials, investigators or otherwise on, for, or in connection with such a health care organization committee, staff, governing board or the state board of medicine.

(c) Such limited, conditional discovery and disclosure of information as provided above shall be allowed only in response to inquiries directed to such a ~~society-or-hospital~~ health care organization, and then only if initially propounded by a claimant of the type above described. If the matter is in litigation, inquiry may be by customary means of discovery under the Idaho Rules of Civil Procedure, or, if pending in a United States court, then under discovery as allowed by its applicable rules; provided, pendency of the claim in the United States court or before any other tribunal shall not operate to broaden the exception to the rules of privilege, confidentiality and immunity set down in this act.

(d) Such disclosures may be voluntarily made without judicial order or formal discovery if all disciplined, accused or investigated physicians consent thereto, and if privileged or confidential information regarding any other patient, physician or person will not be disclosed thereby. When the terms of this paragraph are complied with, such voluntary disclosures may be made without civil liability therefor as if in due response to valid judicial process or order.

(e) If any claimant makes such inquiry of any such ~~hospital-or-society~~ health care organization, he shall be deemed to have consented to like inquiry and disclosure rights for the benefit of all parties against whom he asserts such claim or brings such suit or action, and all other persons who are parties to such action, and thereafter all such persons and parties may invoke the provisions of this section, seeking and securing specific information as herein provided for the benefit of such claimant, to the same extent as the same is allowed to such claimant.

(f) If any physician, patient, person, organization or entity whose conduct, care, chart, behavior, health or standards of ethics or professional practice is the subject of investigation, comment, testimony, dispositive order of any kind or other written or verbal utterance or publication or act of any such ~~hospital-or-society~~ health care organization or any member or committee thereof in the course of research, study, disciplinary proceeding or investigation of the sort contemplated by this act, makes claim or brings suit on account of such ~~hospital-or-society~~ health care organization activity, then, in

the defense thereof, confidentiality and privilege shall be deemed waived by the making of such claim, and such ~~hospital, society~~ health care organization and the members of their staffs and committees shall be allowed to use and resort to such otherwise protected information for the purpose of presenting proof of the facts surrounding such matter, and this provision shall apply whether such claim be for equitable or legal relief or for intentional or unintentional tort of any kind and whether pressed by a patient, physician or any other person, but such waiver shall only be effective in connection with the disposition or litigation of such claim, and the court shall, in its discretion, enter appropriate orders protecting, and as fully as it reasonably can do so, preserving the confidentiality of such materials and information.

Approved March 19, 1997.

CHAPTER 172
(S.B. No. 1121, As Amended)

AN ACT

RELATING TO SPECIAL LICENSE PLATES AND CARDS FOR PERSONS WITH A DISABILITY; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-410A, IDAHO CODE, TO PROVIDE A RECERTIFICATION REQUIRED TO DEMONSTRATE COMPLIANCE WITH CURRENT STATUTES; AND PROVIDING A DATE WHEN THE PROVISIONS OF THIS SECTION SHALL BECOME NULL AND VOID.

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

SECTION 1. That Chapter 4, 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 49-410A, Idaho Code, and to read as follows:

49-410A. RECERTIFICATION REQUIRED. Pursuant to amendments to the definition of "person with a disability" made by the legislature, it is now necessary for current holders of the disabled plate or card to recertify that they now possess the qualifications required by law. The purpose of the recertification will be to demonstrate that the individual meets the current criteria for the plate or card. Individuals who possess a special license plate, at the time of registration, between July 1, 1997 and June 30, 1998, shall be required to present evidence as required in section 49-410, Idaho Code, for the initial issuance of a special license plate. Individuals who possess a special card, shall be notified by the department between July 1, 1997 and October 31, 1997, and shall be required to present evidence as required in section 49-410, Idaho Code, for the initial issuance of a special card. The certification shall be pursuant to the definition of "person with a disability" as provided in section 49-117(7)(b), Idaho Code. Any individual now in possession of a special license plate or special card who does not meet the current requirements of a person

with a disability shall relinquish the plate, card or both. Individuals who have been certified and purchased the accessible plate or accessible card between July 1, 1996, and June 30, 1997, are exempt from the requirements to recertify.

SECTION 2. The provisions of this act shall be null, void and of no force and effect on and after July 1, 1998.

Approved March 19, 1997.

CHAPTER 173
(S.B. No. 1133)

AN ACT

RELATING TO POWERS OF THE STATE TAX COMMISSION; AMENDING SECTION 63-103, IDAHO CODE, TO REQUIRE THAT, WHERE THE AMOUNT IN ISSUE RELATING TO THE TAX LIABILITY OF ANY TAXPAYER EQUALS OR EXCEEDS FIFTY THOUSAND DOLLARS AND THE COMMISSION HAS DELEGATED AUTHORITY TO COMPROMISE SUCH LIABILITY TO AN INDIVIDUAL COMMISSIONER, AT LEAST ONE COMMISSIONER IN ADDITION TO THE DELEGATED COMMISSIONER SHALL EXECUTE A COMPROMISE AGREEMENT, AND TO REQUIRE THE COMMISSION TO ADOPT GUIDELINES TO GOVERN REVIEW OF COMPROMISE AGREEMENTS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 63-103, Idaho Code, be, and the same is hereby amended to read as follows:

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 (1) or more commissioners or deputy commissioners; provided however, where the amount in issue relating to the tax liability of any taxpayer is equal to or exceeds fifty thousand dollars (\$50,000), and the commission has delegated the authority to compromise such liability to an individual commissioner, the compromise agreement shall be executed by at least one (1) commissioner in addition to the delegated commissioner. The commission shall adopt guidelines to govern review of compromise agreements. 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.

Approved March 19, 1997.

CHAPTER 174
(S.B. No. 1165)

AN ACT

RELATING TO CATASTROPHIC CARE; AMENDING SECTION 31-3503, IDAHO CODE, TO PROVIDE FOR PAYMENT BY COUNTY COMMISSIONERS FOR EMERGENCY MEDICAL SERVICES FOR A NONRESIDENT TO A CERTAIN LEVEL UNLESS THE NONRESIDENT IS FROM A STATE WHICH HAS A RECIPROCAL AGREEMENT AND QUALIFIES FOR NECESSARY MEDICAL SERVICES UNDER THAT AGREEMENT; AMENDING SECTION 31-3503A, IDAHO CODE, TO PROVIDE FOR PAYMENT BY THE ADMINISTRATOR OF THE CATASTROPHIC FUND FOR EMERGENCY MEDICAL SERVICES FOR A NONRESIDENT TO A CERTAIN LEVEL UNLESS THE NONRESIDENT IS FROM A STATE WHICH HAS A RECIPROCAL AGREEMENT AND QUALIFIED FOR NECESSARY MEDICAL SERVICES UNDER THAT AGREEMENT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 31-3503, Idaho Code, be, and the same is hereby amended to read as follows:

31-3503. POWERS AND DUTIES OF BOARDS OF COUNTY COMMISSIONERS. The boards of county commissioners in their respective counties shall, under such limitations and restrictions as are prescribed by law:

(1) Care for and maintain the medically indigent residents of their counties as provided in this chapter up to ten thousand dollars (\$10,000) per claim in the aggregate over a twelve (12) month period with the remainder being paid by the state catastrophic health care cost program pursuant to section 31-3519, Idaho Code.

(2) Have the right to contract, transfer patients, negotiate provider agreements, and all other powers incident to the duties created by this chapter.

(3) From July 1, 1996~~7~~, ~~to~~ through June 30, 1997~~8~~, pay for emergency services for a nonresident to the point of stabilization as set forth in section 31-3507, Idaho Code, and when necessary, for costs of transfer to the nonresident's place of residence, up to five thousand dollars (\$5,000) per claim in the aggregate over a twelve (12) month period with the remainder being paid by the state catastrophic health care cost program pursuant to section 31-3519, Idaho Code, unless such nonresident is from a state which has a reciprocal agreement pursuant to section 31-3503B, Idaho Code, and qualifies for necessary medical services under that agreement.

(4) Have the jurisdiction and power to provide county hospitals and public general hospitals for the county and others who are sick,

injured, maimed, aged and infirm and to erect, enlarge, purchase, lease, or otherwise acquire, and to officer, maintain and improve hospitals, hospital grounds, nurses' homes, shelter care facilities and residential care homes as defined in section 39-3301, Idaho Code, superintendent's quarters, medical clinics, as that term is defined in section 39-1319, Idaho Code, medical clinic grounds or any other necessary buildings, and to equip the same, and to replace equipment, and for this purpose said boards may levy an additional tax of not to exceed six hundredths percent (.06%) of the market value for assessment purposes on all taxable property within the county. The term public general hospitals as used in this subsection shall be construed to include nursing homes.

SECTION 2. That Section 31-3503A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3503A. POWERS AND DUTIES OF ADMINISTRATOR. The administrator shall, under such limitations and restrictions as are prescribed by law:

(1) Pay for necessary medical services for a resident medically indigent person where the reimbursement rate for the claim exceeds in aggregate the sum of ten thousand dollars (\$10,000) during a twelve (12) month period;

(2) From July 1, 1996⁷, through June 30, 1997⁸, pay for emergency services of a nonresident to the point of stabilization as set forth in section 31-3507, Idaho Code, and, when necessary, for costs of transfer to the nonresident's place of residence, where the reimbursement rate for the claim exceeds in the aggregate during a twelve (12) month period, the sum of five thousand dollars (\$5,000), unless such nonresident is from a state which has a reciprocal agreement pursuant to section 31-3503B, Idaho Code, and qualifies for necessary medical services under that agreement;

(3) Require, as the administrator deems necessary, annual reports from each county and each hospital and provider including, but not limited to, the following:

(a) From each county and for each applicant:

- (i) case number and the date services began;
- (ii) age;
- (iii) residence;
- (iv) sex;
- (v) diagnosis;
- (vi) income;
- (vii) family size;
- (viii) amount of costs incurred including provider, legal and administrative charges;
- (ix) approval or denial; and
- (x) reasons for denial.

(b) From each hospital:

- (i) 990 tax forms or comparable information;
- (ii) cost of charges where charitable care was provided; and
- (iii) administrative and legal costs incurred in processing claims under this chapter.

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 19, 1997.

CHAPTER 175

(S.B. No. 1169, As Amended in the House)

AN ACT

RELATING TO SCHOOL DISTRICT BUDGET; AMENDING SECTION 33-801, IDAHO CODE, TO REQUIRE THAT THE BUDGET DOCUMENT SHOW THE AMOUNT ACTUALLY EXPENDED FOR THE TWO PREVIOUS YEARS.

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

SECTION 1. That Section 33-801, Idaho Code, be, and the same is hereby amended to read as follows:

33-801. SCHOOL DISTRICT BUDGET. No later than twenty-eight (28) days prior to its annual meeting, the board of trustees of each school district shall have prepared a budget, in form prescribed by the state superintendent of public instruction, and shall have called and caused to be held a public hearing thereon, and at such public hearing, or at a special meeting held no later than fourteen (14) days after the public hearing, shall adopt a budget for the ensuing year. Notice of the hearing shall be posted, and published as prescribed in section 33-402, Idaho Code, and a record of the hearing shall be kept by the clerk of the board of trustees. At the time said notice is given and until the date of the hearing, a copy of the budget shall be available for public inspection at all reasonable times at the administrative offices of the school district, or at the office of the clerk of the district. The board of trustees of each school district shall also prepare and publish, as a part of such notice, a summary statement of the budget for the current and ensuing years. Such statement shall be prepared in a manner consistent with standard accounting practices and in such form as the state superintendent of public instruction shall prescribe, and, among other things, said statement shall show amounts budgeted for all major classifications of income and expenditures, with total amounts budgeted for salary and wage expenditures in each such classification shown separately. Such statement shall show amounts previously-budgeted actually expended for the then-current two (2) previous years for the same classification for purposes of comparison. The budgeted dollar amounts of revenue in those categories included within the provisions of section 33-802, Idaho Code, as approved within the adopted budget shall be the same as presented to the respective county commissioners for tax levy purposes.

Approved March 19, 1997.

CHAPTER 176
(S.B. No. 1170, As Amended in the House)

AN ACT

RELATING TO CONTRACTS FOR SCHOOL BUS TRANSPORTATION; AMENDING SECTION 33-1510, IDAHO CODE, TO REQUIRE THAT A SCHOOL DISTRICT ADVERTISE, BID AND CONTRACT ALL PROPOSED BUS SERVICE ROUTES AT A SINGLE TIME AND TO CORRECT A CROSS REFERENCE.

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

SECTION 1. That Section 33-1510, Idaho Code, be, and the same is hereby amended to read as follows:

33-1510. CONTRACTS FOR TRANSPORTATION SERVICE. All contracts entered into by boards of trustees for the transportation of pupils shall be in writing in a form approved by the state superintendent of public instruction. No contract shall be executed covering a period of time exceeding five (5) years. School districts shall advertise, bid and contract for all bus transportation service routes at a single time, and contract with the lowest responsible bidder or bidders meeting the specifications.

Before entering into such contracts, the board of trustees shall invite bids by once twice giving notice as provided in section 33-402, Idaho Code, and shall award the contract to the lowest responsible bidder.

Approved March 19, 1997.

CHAPTER 177
(S.B. No. 1176)

AN ACT

RELATING TO DESIGNATION OF DONATIONS ON INCOME TAX RETURNS; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3067C, IDAHO CODE, PROVIDING CONDITIONS UNDER WHICH AUTHORIZATIONS TO DESIGNATE DONATIONS ON INCOME TAX RETURNS SHALL EXPIRE.

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

SECTION 1. That Chapter 30, 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 63-3067C, Idaho Code, and to read as follows:

63-3067C. SUNSETTING DESIGNATIONS. (1) The designations referred to in section 63-3067A or 63-3067B, Idaho Code, shall expire and no longer appear on the income tax return form when:

(a) For each of two (2) consecutive calendar years, the amount received by the state tax commission that is designated for a par-

ticular trust fund named in section 63-3067A or 63-3067B, Idaho Code, fails to equal or exceed twenty-five thousand dollars (\$25,000); and

(b) After one (1) year when collections fail to equal or exceed twenty-five thousand dollars (\$25,000), the tax commission has notified the appropriate agency that:

(i) The amount received by the state tax commission that is designated for that particular trust fund failed to equal or exceed twenty-five thousand dollars (\$25,000); and

(ii) If the amount received by the state tax commission that is designated for the particular trust fund in the next subsequent year fails to equal or exceed twenty-five thousand dollars (\$25,000).

(2) As used in this section, "appropriate agency" means the agency of the state of Idaho that is responsible for administering the programs benefiting from the fund to which amounts designated under section 63-3067A or 63-3067B, Idaho Code, are distributed. If no agency of the state of Idaho has such responsibility, the term means such other private or public entity that is the principal beneficiary of the funds.

Approved March 19, 1997.

CHAPTER 178
(S.B. No. 1238)

AN ACT

RELATING TO PAYMENTS BY THE STATE LOTTERY; AMENDING SECTION 67-7432, IDAHO CODE, TO ALLOW PAYMENTS TO AN INDIAN TRIBE PURSUANT TO A STATE-TRIBAL GAMING COMPACT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-7432, Idaho Code, be, and the same is hereby amended to read as follows:

67-7432. CASH DISBURSEMENTS. The director is authorized to make the following disbursements from the state lottery account:

(1) Payment of prizes directly to the holder of valid winning tickets or shares;

(2) Purchase of annuities or investments to be utilized to pay future installments of winning tickets or shares;

(3) Refunds, if any, due to lottery retailers or players;

(4) Expenses of the lottery;

(5) Payments to an Indian tribe pursuant to a state-tribal gaming compact negotiated pursuant to section 67-429A, Idaho Code;

(6) The payment of the lottery's obligations, including the funds advanced under the temporary line of credit, as provided for under section 67-7430, Idaho Code, and the purchase of property, buildings

and equipment; and

(67) The payment of dividends, as provided for under section 67-7434, 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 19, 1997.

CHAPTER 179
(S.B. No. 1239)

AN ACT

RELATING TO SNOW REMOVAL RESPONSIBILITIES; AMENDING CHAPTER 23, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2350, IDAHO CODE, TO PROVIDE THAT NO COUNTY, CITY OR HIGHWAY DISTRICT SHALL BE RESPONSIBLE FOR THE REMOVAL OF SNOW ON ROADS IN THE COUNTY, CITY OR HIGHWAY DISTRICT OVER WHICH THEY HAVE NO JURISDICTION, TO PROVIDE LISTS OF PRIVATE PERSONS OR ENTITIES INTERESTED IN SNOW REMOVAL AND TO ALLOW THE PROVISION OF SNOW REMOVAL SERVICE BY THE COUNTY, CITY OR HIGHWAY DISTRICT ON PRIVATE PROPERTY ON A REIMBURSEMENT BASIS IF CERTAIN CIRCUMSTANCES OCCUR.

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

SECTION 1. 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 67-2350, Idaho Code, and to read as follows:

67-2350. SNOW REMOVAL RESPONSIBILITIES. (1) No county, city or highway district shall be responsible for the removal of snow on roads in the county, city or highway district over which they have no jurisdiction.

(2) The county, city or highway district may keep a list of any persons or entities that are interested in providing snow removal on private roads as a source of information for the public and shall provide to interested citizens the names of those individuals on a rotating basis.

(3) Notwithstanding the limitations imposed by this section, if no private persons are available or if they refuse to provide snowplowing to interested citizens, a county, city or highway district may provide the service for which the county, city or highway district may require reimbursement.

Approved March 19, 1997.

CHAPTER 180
(S.B. No. 1241)

AN ACT

RELATING TO SOIL CONSERVATION DISTRICTS AND THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-2716, IDAHO CODE, TO PROVIDE THAT IT IS DECLARED TO BE THE POLICY OF THE LEGISLATURE THAT THE SOIL CONSERVATION COMMISSION PROVIDE SUPPORT AND SERVICE TO SOIL CONSERVATION DISTRICTS IN THE USE AND ENHANCEMENT OF SOIL, WATER AND RELATED RESOURCES; AMENDING SECTION 22-2717, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 22-2718, IDAHO CODE, TO TRANSFER THE SOIL CONSERVATION COMMISSION TO THE DEPARTMENT OF AGRICULTURE FROM THE DEPARTMENT OF LANDS, TO PROVIDE THE SOIL CONSERVATION COMMISSION SHALL BE A NONREGULATORY AGENCY, TO PROVIDE FOR THE APPOINTMENT OF AN ADMINISTRATOR BY THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE FROM PERSONS RECOMMENDED BY THE SOIL CONSERVATION COMMISSION AND TO DELETE LANGUAGE AUTHORIZING THE APPOINTMENT OF LEGAL COUNSEL; AND AMENDING SECTION 22-2721, IDAHO CODE, TO DELETE LANGUAGE AUTHORIZING THE APPOINTMENT OF LEGAL COUNSEL AND TO CORRECT A CODIFIER ERROR.

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

SECTION 1. That Section 22-2716, Idaho Code, be, and the same is hereby amended to read as follows:

22-2716. LEGISLATIVE DETERMINATIONS AND DECLARATION OF POLICY. It is hereby declared, as a matter of legislative determination:

A. The Condition. That the farm, ranch, range and forest lands of the state of Idaho are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm, ranch, range and forest lands of the state by wind and water; that the breaking of natural grass, plant, and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. The Consequences. That the consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams and ditches; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in

productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve which causes water shortages, intensifies periods of drought, and causes crop failures; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads; highways, railways, farm buildings, and other property from floods and from dust storms; and losses in hydro-electric power, municipal water supply, irrigation developments, farming and grazing.

C. The Appropriate Corrective Methods. That to conserve soil resources and control and prevent soil erosion, and prevent floodwater and sediment damages, and further the conservation, development, utilization, and disposal of water it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and appropriate soil-conserving land-use practices including works of improvement for flood prevention and furthering the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodwaters, dikes, ponds, ditches and the like; the utilization of strip croppings, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of Policy. It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and promote the health, safety, and general welfare of the people of this state.

It is hereby further declared to be the policy of the legislature that the soil conservation commission provide support and service to soil conservation districts in the wise use and enhancement of soil, water and related resources.

SECTION 2. That Section 22-2717, Idaho Code, be, and the same is hereby amended to read as follows:

22-2717. DEFINITIONS. Whenever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision(s) of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one (1) of the members of the governing body of a district elected or appointed in accordance with the provisions of this act.

(3) "Commission" or "state soil conservation commission" means the agency created in section 22-2718, Idaho Code.

(4) "Agriculture" or "department of agriculture" means an executive department of state government created in section 22-101, Idaho Code.

(5) "Petition" means a petition filed under the provisions of subsection A of section 22-2719, Idaho Code, for the creation of a district.

(56) "Nominating petition" means a petition filed under the provisions of section 22-2721, Idaho Code, to nominate candidates for the office of supervisor of a soil conservation district.

(67) "State" means the state of Idaho.

(78) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(89) "United States" or "agencies of the United States" includes the United States of America, the ~~soil~~ natural resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(910) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivisions, agency, or instrumentality, corporate or otherwise, of either of them.

(101) "Landowner" includes any person, firm, or corporation who shall hold title to any lands lying within a district organized under the provisions of this act. A buyer on contract, who is the occupier of land, shall be construed as landowner.

(112) "Due notice" means notice published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice adjournment may be made from time to time without the necessity of renewing such notice for such adjournment dates.

(123) "Qualified elector" means any person who is qualified to vote pursuant to the requirements of section 34-104, Idaho Code.

(14) "Idaho association of soil conservation districts (IASCD)" means an incorporated, nongovernmental entity representing all soil conservation districts in Idaho.

SECTION 3. That Section 22-2718, Idaho Code, be, and the same is hereby amended to read as follows:

22-2718. STATE SOIL CONSERVATION COMMISSION. A. There is hereby established and created in the department of lands agriculture of the state of Idaho the state soil conservation commission which shall in cooperation with the director of the department of lands agriculture perform all functions conferred upon it by this chapter. The soil conservation commission shall be a nonregulatory agency. The commission shall consist of five (5) members appointed by the governor, but no more than three (3) members shall be a member of the same political party. The term of office of each commission member shall be five (5) years; except that upon July 1, 1967, the governor shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years and one (1) member for a term of five (5) years. From and after the initial appointment the governor shall appoint a member of the commission to serve in office for a term of five (5) years commencing upon July 1 of that year. A vacancy which occurs in an unexpired term shall be filled for its remainder by the governor's appointment. Any commissioner may be removed during his term of office by the governor. Any commissioner so removed shall have notice of the same in writing, specifying the reasons for the removal. Each vacancy on the commission shall be filled by appointment by the governor. Such appointments shall be confirmed by the senate. The commission may invite the state conservationist of the United States department of agriculture ~~soit~~ natural resources conservation service, the president of the Idaho association of soil conservation districts and the dean of the College of Agriculture of the University of Idaho or his designated representative to serve as nonvoting advisory members of the commission. The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules as may be necessary for the execution of its functions under this act.

B. The director of the department of agriculture shall appoint the administrator of the soil conservation commission from persons recommended by the soil conservation commission. The state soil conservation commission may employ ~~an administrative officer and~~ such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The commission may call upon the attorney general of the state for such legal services as it may require, ~~or may employ its own counsel.~~ It shall have authority to delegate to its chairman, to one (1) or more of its members, or to one (1) or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations, and shall be furnished with the necessary supplies and equipment. Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall insofar as may be possible under available appropriation, and having due regard to the needs of the agency to which the request is directed, assign or detail to the com-

mission members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the commission may request.

C. The commission shall designate its chairman, and may from time to time, change such designation. A majority of the commission shall constitute a quorum, and the concurrency of a majority in any matter within their duties shall be required for its determination. The chairman and members of the commission shall be compensated as provided by section 59-509(h), Idaho Code. The commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation commission, it shall have the following responsibilities:

- (1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.
- (2) To keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.
- (3) To coordinate the progress of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.
- (4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.
- (5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts in areas where their organization is desirable.

SECTION 4. That Section 22-2721, Idaho Code, be, and the same is hereby amended to read as follows:

22-2721. ELECTION, APPOINTMENT, QUALIFICATIONS AND TENURE OF SUPERVISORS. The governing body of the district shall consist of five (5) supervisors, elected or appointed as provided in this chapter. Elections shall be conducted pursuant to the provisions of this section and the uniform district election law, chapter 14, title 34, Idaho Code. If at any time the supervisors of a district deem it necessary, they may request permission from the state soil conservation commission to increase the number of supervisors to seven (7). Upon receipt of such a request in writing, signed by all five (5) supervisors, stating a valid reason for such need, the commission shall grant permission. The additional supervisors shall then be appointed as outlined in subparagraph C of this section until such time as regular district elections for two (2) supervisors in each district. At that time those districts having seven (7) supervisors shall then elect four (4) supervisors for four (4) year terms. The two (2) supervisors

appointed by the commission shall be persons who are by training and experience qualified to perform the specialized services which will be required of them in the performance of their duties. All supervisors shall be landowners or farmers of the district where they are elected or appointed.

A. Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation commission to nominate candidates for supervisors of each district. The soil conservation commission, unless it has contracted with the county clerk to conduct the election, shall designate an individual to act as the election official. If contracted to do so, the county clerk shall act as the election official. The election official shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the election official unless it shall be subscribed by not less than five (5) persons who are qualified electors owning land or residing within the boundaries of the district. The election official shall give due notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall appear arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and directions to insert a mark in the square before any three (3) names to indicate the voter's preference. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The commission shall pay all the expenses of such election, which shall be supervised and conducted by the election official.

B. All elections in districts, excluding the first election as provided in subparagraph A of this section, shall be conducted by the district supervisors of the districts involved who shall designate an individual to be the election official, or the county clerk if contracted for that purpose. Such election shall be held on the first Tuesday succeeding the first Monday of November in each even-numbered year. Such elections shall be in compliance with the provisions of chapter 14, title 34, Idaho Code, and shall be supervised and conducted ~~additional~~ by the election official. The cost of conducting such elections shall be borne by the district involved. The election official shall certify to the state soil conservation commission the names of the elected supervisors. The state soil conservation commission shall issue certificates of election to each elected supervisor so certified. The state soil conservation commission may authorize each district to contract with the county clerk or county clerks of the county or counties in which the district is located to conduct the election for the soil conservation district. If a district election is conducted by a county clerk, the county clerk must provide a ballot for the district election, and must provide a process that allows only qualified electors of the district to vote in that district's election.

In any election for supervisor, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the

number of qualified candidates who have been nominated is equal to the number of supervisors to be elected, it shall not be necessary for the candidates to stand for election, and the board of supervisors shall declare such candidates elected as supervisors, and the state soil conservation commission shall immediately make and deliver to such persons certificates of election.

C. In any election for supervisors of a soil conservation district, if after the expiration of the date for filing written nominations it appears that only one (1) qualified candidate has been nominated for each position to be filled and no declaration of intent has been filed by a write-in candidate as provided in subparagraph D. of this section, it shall not be necessary to hold an election, and the election official shall, no later than seven (7) days before the scheduled date of the election, declare such candidate elected as supervisor, and the state soil conservation commission shall immediately make and deliver to such person a certificate of election.

D. No write-in vote for supervisor shall be counted unless a declaration of intent has been filed with the election official indicating that the person making the declaration desires the office and is legally qualified to assume the duties of supervisor if elected as a write-in candidate. The declaration of intent shall be filed not later than eleven (11) days before the day of election.

E. The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be four (4) years commencing on the first day of January next following election, except that the two (2) supervisors who are first appointed shall be designated to serve for terms of two (2) years. A supervisor shall hold office until a qualified successor has been elected or appointed. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term shall be made by a vote of the majority of the supervisors duly qualified and acting at the time the vacancy shall arise and the supervisors shall certify the name of the appointed supervisor to the state soil conservation commission who shall issue a certificate of such appointment.

F. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall be entitled to expenses, including travel expense, necessarily incurred in the discharge of duties. A supervisor shall receive no compensation for services from regular district funds, county funds authorized in section 22-2726, Idaho Code, or state funds authorized in section 22-2727, Idaho Code.

In the event the district has a special project, approved by the state soil conservation commission, making project funds available from federal or other sources, a supervisor may receive compensation not to exceed thirty-five dollars (\$35.00) per day plus actual and necessary expenses from project funds for services directly related to the project.

The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of

the state for such legal services as they may require; ~~or may employ their own counsel and legal staff.~~ The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents, or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation commission, upon request, copies of such ordinances, rules, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; they shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of a municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

Approved March 19, 1997.

CHAPTER 181
(S.B. No. 1259)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE SELF-RELIANCE PROGRAMS FOR FISCAL YEAR 1998; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE GENERAL FUND; RE-APPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; AND EXEMPTING THE DEPARTMENT FROM APPROPRIATION TRANSFER LIMITATIONS.

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 Self-Reliance Programs, the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
SELF-RELIANCE PROGRAMS:					
FROM:					
General					
Fund	\$11,592,200	\$ 6,153,600	\$1,306,900	\$23,596,100	\$ 42,648,800
Cooperative					
Welfare Fund					
(Other)	647,300	136,800		9,900,000	10,684,100
Cooperative					
Welfare Fund					
(Federal)	<u>15,578,700</u>	<u>12,064,600</u>	<u>729,900</u>	<u>28,867,900</u>	<u>57,241,100</u>
TOTAL	\$27,818,200	\$18,355,000	\$2,036,800	\$62,364,000	\$110,574,000

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 Self-Reliance Programs any unexpended and unencumbered balances of the Cooperative Welfare Fund, as appropriated for the Self-Reliance Programs for fiscal year 1997, to be used for nonrecurring expenditures only for the period July 1, 1997, through June 30, 1998. 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 Self-Reliance Programs is hereby authorized to expend all receipts collected in the Self-Reliance Programs as noncognizable funds for the period July 1, 1997, through June 30, 1998.

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, 1997, through June 30, 1998. 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.

Approved March 19, 1997.

CHAPTER 182
(S.B. No. 1261)

AN ACT

APPROPRIATING MONEYS FOR THE COMMISSION ON AGING FOR FISCAL YEAR 1998;
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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General Fund	\$353,100	\$ 61,100	\$3,197,400	\$3,611,600
Federal Grant Fund	339,300	109,100	5,120,900	5,569,300
Miscellaneous Revenue Fund		18,700		18,700
TOTAL	<u>\$692,400</u>	<u>\$188,900</u>	<u>\$8,318,300</u>	<u>\$9,199,600</u>

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on Aging is authorized no more than thirteen and seventy-four hundredths (13.74) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 19, 1997.

CHAPTER 183
(S.B. No. 1262)

AN ACT

APPROPRIATING MONEYS FOR THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 1998; 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 Endowment Fund Investment Board the following amounts, to be expended according to designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	\$205,400	\$113,000	\$1,500	\$319,900
Miscellaneous Revenue Fund	<u>122,100</u>	<u>55,800</u>	<u>2,700</u>	<u>180,600</u>
TOTAL	\$327,500	\$168,800	\$4,200	\$500,500

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, 1997, through June 30, 1998, 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 19, 1997.

CHAPTER 184
(S.B. No. 1263)

AN ACT

APPROPRIATING MONEYS FOR THE STATE LIQUOR DISPENSARY FOR FISCAL YEAR 1998; 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 State Liquor Dispensary the following amounts, to be expended according to designated standard classifications from the listed fund for the period July 1, 1997, through June 30, 1998:

FOR:	
Personnel Costs	\$5,366,600
Operating Expenditures	2,624,300
Capital Outlay	<u>125,000</u>
TOTAL	\$8,115,900
FROM:	
Liquor Control Fund	\$8,115,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Liquor Dispensary is authorized no more than one hundred thirty-eight (138) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 19, 1997.

CHAPTER 185
(S.B. No. 1264)

AN ACT

APPROPRIATING MONEYS TO THE EXECUTIVE OFFICE OF THE GOVERNOR FOR FISCAL YEAR 1998; 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 Executive Office of the Governor 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. GOVERNOR'S OFFICE ADMINISTRATION:					
FROM:					
General					
Fund	\$ 945,000	\$266,900	\$3,200		\$1,215,100
II. GOVERNOR'S EXPENSE ALLOWANCE:					
TO BE EXPENDED PURSUANT TO SECTION 67-808d, IDAHO CODE:					
FROM:					
General Fund		\$ 7,800			\$ 7,800
III. SOCIAL SERVICES:					
FROM:					
Federal Grant					
Fund	\$ 93,400	\$ 5,100		\$115,300	\$ 213,800
IV. ACTING GOVERNOR PAY:					
FROM:					
General					
Fund	\$ 9,600				\$ 9,600
GRAND					
TOTAL	\$1,048,000	\$279,800	\$3,200	\$115,300	\$1,446,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Executive Office of the Governor is authorized no more than twenty-two (22) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 19, 1997.

CHAPTER 186
(S.B. No. 1265)

AN ACT

APPROPRIATING MONEYS FOR THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; 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 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 funds for the period July 1, 1997, through June 30, 1998:

FROM:

General Fund	\$5,740,500
Idaho School for the Deaf and the Blind Income Fund	108,500
Federal Grants Fund	171,000
Miscellaneous Revenue Fund	<u>70,000</u>
TOTAL	\$6,090,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho School for the Deaf and the Blind is authorized no more than one hundred twenty and two hundredths (120.02) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. There is hereby reappropriated to the State Board of Education for the Idaho School for the Deaf and the Blind, subject to the provisions of Section 4 of this act, the unexpended and unencumbered balance of any appropriation made for the Idaho School for the Deaf and the Blind for the period July 1, 1996 through June 30, 1997, to be used for nonrecurring expenditures only for the period July 1, 1997, through June 30, 1998.

SECTION 4. The General Fund reappropriation granted in Section 3 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is zero, the reappropriation in Section 3 of this act is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount reappropriated in Section 3 of this act shall be in the proportion that the reappropriation for the Idaho School for the Deaf and the Blind bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 19, 1997.

CHAPTER 187
(S.B. No. 1244)

AN ACT

RELATING TO PROPRIETARY SCHOOLS; AMENDING SECTION 33-2402, IDAHO CODE, TO PROVIDE AN EXEMPTION FOR SCHOOLS OR COURSES OFFERED BY A CONSORTIUM OF PUBLIC OR PRIVATE COLLEGES AND UNIVERSITIES UNDER THE AUSPICES OF THE WESTERN GOVERNORS.

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

SECTION 1. That Section 33-2402, Idaho Code, be, and the same is hereby amended to read as follows:

33-2402. SCHOOLS AND COURSES EXEMPTED. The following schools or courses are specifically exempt from the provisions of this chapter and are not within the definition of "proprietary school":

(1) A school, educational institution or agency supported primarily by taxation from either a state or local source.

(2) Courses offering instruction or training solely avocational or recreational in nature, as determined by the board.

(3) Courses recognized by the board which comply in whole or in part with the compulsory education law.

(4) Courses offered by an educational institution accredited by a national or regional accrediting agency recognized by the board or the United States department of education.

(5) A course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student.

(6) A school or course which is otherwise regulated, licensed or registered with another state agency pursuant to title 54, Idaho Code.

(7) Aviation school or instructors approved by and under the supervision of the federal aviation administration.

(8) Intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests.

(9) Entities not otherwise exempt offering only workshops or seminars lasting no longer than three (3) calendar days.

(10) Courses offered by a parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted.

(11) A school or course for postsecondary credit offered by a consortium of public and private colleges and universities under the auspices of the western governors.

Approved March 19, 1997.

CHAPTER 188
(H.B. No. 331)

AN ACT

RELATING TO THE IDAHO STATE BOARD OF EDUCATION; AMENDING SECTION 33-107, IDAHO CODE, TO REVISE THE PROCEDURE BY WHICH ACADEMIC CREDITS TRANSFERRED INTO IDAHO PUBLIC POSTSECONDARY INSTITUTIONS FROM NONACCREDITED POSTSECONDARY INSTITUTIONS MAY BE APPROVED; REPEALING SECTION 33-107, IDAHO CODE; AMENDING CHAPTER 1, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-107, IDAHO CODE, TO PROVIDE FOR THE GENERAL POWERS AND DUTIES OF THE STATE BOARD; PROVIDING AN EFFECTIVE DATE FOR SECTION 1 OF THIS ACT; AND PROVIDING AN EFFECTIVE DATE FOR SECTIONS 2 AND 3 OF THIS ACT.

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

SECTION 1. That Section 33-107, Idaho Code, be, and the same is hereby amended to read as follows:

33-107. GENERAL POWERS AND DUTIES OF THE STATE BOARD. The state board shall have power to:

(1) perform all duties prescribed for it by the school laws of the state;

(2) acquire, hold and dispose of title, rights and interests in real and personal property;

(3) have general supervision, through its executive departments and offices, of all entities of public education supported in whole or in part by state funds;

(4) delegate to its executive secretary, to its executive officer, or to such other administrators as the board may appoint, such powers as said officers require to carry out the policies, orders and directives of the board;

(5) through its executive departments and offices;

(a) enforce the school laws of the state,

(b) study the educational conditions and needs of the state and recommend to the legislature needed changes in existing laws or additional legislation;

(6) in addition to the powers conferred by chapter 24, title 33, Idaho Code;

(a) maintain a register of courses and programs offered anywhere in the state of Idaho by postsecondary institutions which are: (1) located outside the state of Idaho and are offering courses or programs for academic credit or otherwise; or (2) located within the state of Idaho but not accredited by a regional or national accrediting agency recognized by the board and are offering courses or programs for academic credit. The acceptance of academic or nonacademic credit, at public postsecondary institutions in Idaho, is the prerogative of the state board of education; provided however, academic credit for courses and programs of institutions not accredited by a regional or national accrediting agency recognized by the board shall not be awarded by transferred into Idaho public postsecondary institutions under the direction

and control of the state board from nonaccredited postsecondary institutions can be accepted only upon review and recommendation by the individual postsecondary institutions and with the approval of the state board of education. A nonaccredited postsecondary institution is one which is not accredited by a regional accrediting agency recognized by the state board or the United States department of education.

(b) require compliance by institutions which desire to offer courses or programs in Idaho with the standards and procedures established in chapter 24, title 33, Idaho Code,

(c) violation of the provisions of this act will be referred to the attorney general for appropriate action, including, but not limited to, injunctive relief.

(7) prescribe the courses and programs of study to be offered at the public institutions of higher education, after consultation with the presidents of the affected institutions;

(8) approve new courses and programs of study to be offered at community colleges organized pursuant to chapter 21, title 33, Idaho Code, when the courses or programs of study are academic in nature and the credits derived therefrom are intended to be transferable to other state institutions of higher education for credit toward a baccalaureate degree, and when the courses or programs of study have been authorized by the board of trustees of the community college.

SECTION 2. That Section 33-107, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 1, 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 33-107, Idaho Code, and to read as follows:

33-107. GENERAL POWERS AND DUTIES OF THE STATE BOARD. The state board shall have power to:

(1) Perform all duties prescribed for it by the school laws of the state;

(2) Acquire, hold and dispose of title, rights and interests in real and personal property;

(3) Have general supervision, through its executive departments and offices, of all entities of public education supported in whole or in part by state funds;

(4) Delegate to its executive secretary, to its executive officer, or to such other administrators as the board may appoint, such powers as said officers require to carry out the policies, orders and directives of the board;

(5) Through its executive departments and offices;

(a) Enforce the school laws of the state,

(b) Study the educational conditions and needs of the state and recommend to the legislature needed changes in existing laws or additional legislation;

(6) In addition to the powers conferred by chapter 24, title 33, Idaho Code;

(a) Maintain a register of courses and programs offered anywhere

- in the state of Idaho by postsecondary institutions which are: (i) located outside the state of Idaho and are offering courses or programs for academic credit or otherwise; or (ii) located within the state of Idaho but not accredited by a regional or national accrediting agency recognized by the board and are offering courses or programs for academic credit. The acceptance of academic credit is the prerogative of the state board of education; however, academic credit for courses and programs of institutions not accredited by a regional or national accrediting agency recognized by the board shall not be awarded by Idaho postsecondary institutions under the direction and control of the state board,
- (b) Require compliance by institutions which desire to offer courses or programs in Idaho with the standards and procedures established in chapter 24, title 33, Idaho Code,
- (c) Violation of the provisions of this act will be referred to the attorney general for appropriate action, including, but not limited to, injunctive relief;
- (7) Prescribe the courses and programs of study to be offered at the public institutions of higher education, after consultation with the presidents of the affected institutions;
- (8) Approve new courses and programs of study to be offered at community colleges organized pursuant to chapter 21, title 33, Idaho Code, when the courses or programs of study are academic in nature and the credits derived therefrom are intended to be transferable to other state institutions of higher education for credit toward a baccalaureate degree, and when the courses or programs of study have been authorized by the board of trustees of the community college.

SECTION 4. Section 1 of this act shall be in full force and effect on and after July 1, 1997.

SECTION 5. Sections 2 and 3 of this act shall be in full force and effect on and after July 1, 1999.

Approved March 19, 1997.

CHAPTER 189
(H.B. No. 55)

AN ACT

RELATING TO LICENSURE OF ENGINEERS AND LAND SURVEYORS; AMENDING SECTION 54-1212, IDAHO CODE, TO REVISE AN EXPERIENCE REQUIREMENT FOR APPLICANTS AS PROFESSIONAL LAND SURVEYORS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-1212, Idaho Code, be, and the same is hereby amended to read as follows:

54-1212. GENERAL REQUIREMENTS FOR EXAMINATION AND LICENSE. Except

as herein otherwise expressly provided, no license as a professional engineer or professional land surveyor, or certification as an engineer-in-training or land surveyor-in-training, shall be issued until an applicant has successfully passed an examination given by or under the supervision of the board, nor shall a license as a professional engineer or professional land surveyor, or certification as an engineer-in-training or land surveyor-in-training, be issued to an applicant having habits or character that would justify revocation or suspension of certificate, as provided in section 54-1220, Idaho Code. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for assignment to an examination:

(1) As a professional engineer:

(a) Graduation from an approved engineering curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing, passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record of an additional four (4) years or more of progressive experience in engineering work of a grade and character satisfactory to the board, and indicating that the applicant is competent to practice professional engineering; or

(b) Evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, graduation with a bachelor degree in a related science from a school or college approved by the board, passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record of eight (8) years or more of progressive experience in engineering work of a grade and character satisfactory to the board and indicating that the applicant is competent to practice professional engineering.

(2) As a professional land surveyor:

(a) Graduation from an approved surveying curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing, passage of an examination on the fundamentals of land surveying acceptable to the board, and a specific record of an additional four (4) years or more of combined office and field experience in land surveying work, with a minimum of two (2) years of progressive experience in land surveying work of a grade and character satisfactory to the board and indicating that the applicant is competent to practice professional land surveying; or

(b) At least sixty (60) semester hours of education beyond high school, with a minimum of fifteen (15) credits in land surveying, engineering, mathematics or related science, passage of an examination on the fundamentals of land surveying acceptable to the board, and a specific record of an additional ~~eight~~ six (86) years of combined office and field experience in land surveying work, with a minimum of two (2) years of progressive experience in land surveying work of a grade and character satisfactory to the board and indicating that the applicant is competent to practice land surveying; or

(c) Evidence that the applicant possesses knowledge and skill,

satisfactory to the board, similar to that attained upon completion of an approved college curriculum, passage of an examination on the fundamentals of land surveying acceptable to the board, and evidence of a specific record of at least eight (8) years of combined office and field experience in land surveying work with a minimum of three (3) years of progressive experience in responsible charge of surveying work of a grade and character satisfactory to the board and indicating that the applicant is competent to practice land surveying.

(3) As an engineer-in-training:

(a) Graduation from or in the last two (2) semesters of an approved engineering curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing and indicating that the applicant is competent to enroll as an engineer-in-training; or

(b) Evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, graduation with a bachelor degree in a related science from a school or college approved by the board, and a specific record of one (1) year or more of progressive experience in engineering work of a character satisfactory to the board and indicating that the applicant is competent to be enrolled as an engineer-in-training.

(c) In the event the applicant qualifies for assignment to the examination during the last two (2) semesters of college under the provisions of section 54-1212(3)(a), Idaho Code, and a passing grade is attained, a certificate will be issued only after the applicant graduates.

(4) As a land surveyor-in-training:

(a) Graduation from, or in the last two (2) semesters of, an approved surveying curriculum or of four (4) years or more in a school or college approved by the board as being of satisfactory standing and indicating that the applicant is competent to be enrolled as a land surveyor-in-training; or

(b) At least sixty (60) semester hours of education beyond high school, with a minimum of fifteen (15) credits in land surveying, engineering, mathematics or related science, and in addition, a specific record of three (3) years or more of combined office and field experience in land surveying work of a character satisfactory to the board that the applicant is competent to be enrolled as a land surveyor-in-training; or

(c) Possesses knowledge and skill, satisfactory to the board, similar to that attained upon completion of an approved college curriculum and evidence of a specific record of at least four (4) years experience of combined office and field experience of a character satisfactory to the board that the applicant is competent to be enrolled as a land surveyor-in-training.

In counting years of experience for assignment to the professional engineer or professional land surveyor examination, the board may, at its discretion, give credit, not in excess of one (1) year, for satisfactory graduate study.

In considering the combined education and experience qualifications of applicants, the board shall consider engineering teaching,

land surveying teaching, each year of satisfactory completion of undergraduate college education, advanced degrees in engineering and advanced degrees in land surveying in establishing the applicants' minimum composite knowledge and skill.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent, shall not be deemed to be the practice of engineering, but if such experience, in the opinion of the board, has involved responsible supervision of a character that will tend to expand the engineering knowledge and skill of the applicant the board may in its discretion give such credit therefor as it may deem proper.

Any person having the necessary qualifications prescribed in this chapter to entitle him to registration shall be eligible for such registration although he may not be practicing his profession at the time of making his application.

Approved March 19, 1997.

CHAPTER 190
(H.B. No. 57)

AN ACT

RELATING TO LAND SURVEYS AND SUBDIVISIONS; AMENDING SECTION 50-1301, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1302, IDAHO CODE, TO CLARIFY THE DUTY TO FILE; AMENDING SECTION 50-1303, IDAHO CODE, TO FURTHER SPECIFY THE REQUIREMENTS OF A SURVEY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1304, IDAHO CODE, TO FURTHER SPECIFY THE REQUIREMENTS OF THE PLATS; AMENDING SECTION 50-1305, IDAHO CODE, TO REQUIRE VERIFICATION AND TO PROVIDE THAT VERIFICATION DOES NOT RELIEVE THE RESPONSIBILITY OF THE PREPARER; AMENDING SECTION 50-1306A, IDAHO CODE, TO SPECIFY PROCEDURE FOR VACATION OF PLATS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1308, IDAHO CODE, TO SPECIFY PROCEDURE FOR APPROVAL OF A SUBDIVISION; AMENDING SECTION 50-1309, IDAHO CODE, TO SPECIFY REQUIREMENTS FOR CERTIFICATION OF PLATS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 50-1310, IDAHO CODE, TO GOVERN COSTS FOR COPIES AVAILABLE TO THE PUBLIC; AMENDING SECTION 50-1317, IDAHO CODE, TO FURTHER SPECIFY APPLICATION OF VACATION PROCEDURES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1332, IDAHO CODE, TO PROVIDE CURRENT TERMINOLOGY AND TO SPECIFY REQUIREMENTS FOR PROFESSIONAL LAND SURVEYORS; AMENDING SECTION 50-1333, IDAHO CODE, TO SPECIFY PROCEDURE GOVERNING RECORDING OF PLATS WITH ONLY EXTERIOR MONUMENTS REFERENCED; AMENDING SECTION 55-1603, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO ALPHABETIZE TERMS; AMENDING SECTION 55-1607, IDAHO CODE, TO GOVERN MAINTENANCE OF RECORDS BY THE COUNTY CLERK; AMENDING SECTION 55-1612, IDAHO CODE, TO SPECIFY WHEN PENALTIES SHALL APPLY; AMENDING SECTION 55-1613, IDAHO CODE, TO SPECIFY PROCEDURE WHEN MONUMENTS ARE DISTURBED; AMENDING SECTION 55-1902, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO ALPHABETIZE TERMS; AMENDING SECTION 55-1905, IDAHO CODE, TO FURTHER SPECIFY CONTENTS OF

RECORDS OF SURVEYS TO BE FILED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 55-1906, IDAHO CODE, TO FURTHER CLARIFY CONTENT OF RECORDS OF SURVEYS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 55-1907, IDAHO CODE, TO CLARIFY DATA WHICH MUST BE SHOWN AS THE BASIS OF COORDINATES.

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

SECTION 1. That Section 50-1301, Idaho Code, be, and the same is hereby amended to read as follows:

50-1301. DEFINITIONS. The following definitions shall apply to terms used in sections 50-1301 through 50-1334, Idaho Code.

1. Easement: A right of use, falling short of ownership, and usually for a certain stated purpose;

2. Functioning street department: A city department responsible for the maintenance, construction, repair, snow removal, sanding and traffic control of a public highway or public street system and which receives funds from the highway distribution account to local units of government pursuant to section 40-709, Idaho Code;

3. Idaho coordinate system: That system of coordinates established and designated by chapter 17, title 55, Idaho Code;

4. Monument: A physical structure or object that occupies the position of a corner;

5. Owner: The proprietor of the land, (having legal title);

46. Plat: The drawing, map or plan of a subdivision, cemetery, townsite or other tract of land, or a replatting of such, including certifications, descriptions and approvals;

57. Private road: A road within a subdivision plat that is not dedicated to the public and not a part of a public highway system;

8. Public easement: An easement dedicated to the public;

69. Public highway agency: The state transportation department, any city, county, highway district or other public agency with jurisdiction over public highway systems and public rights-of-way;

710. Public land survey corner: Any land-survey-corner point actually established and monumented in an original survey or resurvey used as-a-basis-of-legal-description-for-issuing-a-patent-for-the-land-to-a-private-person-from-the-United-States-government that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management;

811. Public right-of-way: A--right-of-way Any land dedicated and open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic;

912. Public street: A ~~street~~; road, thoroughfare, alley, highway or bridge under the jurisdiction of a public highway agency;

13. Reference monument: A special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is known and recorded, and which serves to witness the corner;

104. Sanitary restriction: The requirement that no building or shelter which will require a water supply facility or a sewage disposal facility for people using the premises where such building or shelter is located shall be erected until written approval is first obtained from the state board of health by its administrator or his delegate approving plans and specifications either for public water and/or sewage facilities, or individual parcel water and/or sewage facilities;

115. Street: A ~~street~~; road, thoroughfare, alley, highway or a right-of-way which may be open for public use but is not part of a public highway system nor under the jurisdiction of a public highway agency;

126. Subdivision: A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger, and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of the above definition;

17. Witness corner: A monumented point usually on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner.

SECTION 2. That Section 50-1302, Idaho Code, be, and the same is hereby amended to read as follows:

50-1302. DUTY TO FILE. Every owner proposing creating a subdivision, as defined above, shall cause the same to be surveyed and a plat made thereof which shall particularly and accurately describe and set forth all the streets, easements, public grounds, blocks, or lots, and other essential information, and shall record said plat. This section is not intended to prevent the filing of other survey maps or plats. Description of lots or parcels of land, according to the number and designation on such recorded plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes.

SECTION 3. That Section 50-1303, Idaho Code, be, and the same is hereby amended to read as follows:

50-1303. SURVEY -- STAKES AND MONUMENTS -- ACCURACY. ~~The initial point of all town plats, subdivisions and cemetery plats, shall be marked with a monument, either of concrete or galvanized iron pipe; if concrete be used, it shall not be less than six (6) inches by six (6) inches by twenty-four (24) inches; and if galvanized iron pipe be used it shall not be less than two (2) inches in diameter and three (3) feet long; which said monuments shall be set or driven six (6) inches below the surface of the ground. The centerline intersections and right-of-way lines of all streets, avenues, and public highways and all points, witness corners and reference monuments on the exterior boundary where the boundary line changes direction shall be marked~~

with monuments either of concrete, or galvanized iron pipe, aluminum pipe, or iron or steel rods or other suitable monument approved by the county surveyor; if concrete be used they shall not be less than six (6) inches by six (6) inches by twenty-four (24) inches, or in the case of public highways the size of a state standard right-of-way monument, and be magnetically detectable; if galvanized iron pipe be used they shall not be less than one (1) inch in diameter and thirty (30) inches long; if aluminum pipe be used they shall not be less than one (1) inch in diameter and thirty (30) inches long, and be magnetically detectable; and if iron or steel rods be used they shall not be less than five-eighths (5/8) of an inch in least dimension and thirty (30) inches long. Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth (1/10) of a foot. All lot corners, witness corners, and reference monuments for lot corners shall be marked with monuments of either galvanized iron pipe, not less than one-half (1/2) inch in diameter, or iron or steel rods, not less than one-half (1/2) inch in least dimension and two (2) feet long or other suitable monument approved by the county surveyor. All monuments set shall be magnetically detectable and shall be permanently marked with the registration number of the professional land surveyor in responsible charge. All lot corners of a burial lot within a platted cemetery need not be marked with a monument, but one or more monuments the block corners shall be placed within the cemetery in accordance with sound surveying principles and practice, and at a location or locations that will permit the accurate identification of each burial lot within the cemetery. The monuments shall be of either galvanized iron pipe or iron or steel rods or bars not less than one-half (1/2) inch in least dimension and two (2) feet long with marked cap; or caps not less than one (1) inch in diameter made of bronze or brass, or any other metal of equal or greater durability set in concrete columns. The locations and descriptions of all monuments within a platted cemetery shall be carefully recorded upon the plat, and the proper courses and distances of all boundary lines shall be shown, but may be shown by appropriate legend. The survey for the final map any plat shall be not lower than third order accuracy, in accordance with recognized surveying practice conducted in such a manner to produce an unadjusted mathematical error of closure of not less than one (1) part in five thousand (5,000).

SECTION 4. That Section 50-1304, Idaho Code, be, and the same is hereby amended to read as follows:

50-1304. ESSENTIALS OF PLATS. All plats offered for record in any county shall be prepared in black opaque image upon stable base drafting film with a minimum base thickness of 0.003 inches, by either a photographic process using a silver image emulsion or by use of a black opaque drafting film ink, by mechanical or handwritten means. The drafting film and image thereon shall be waterproof, tear resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. If ink is used on drafting film, the ink surface shall be coated with a suitable substance to assure permanent legibility. The drafting film must be of a type which can be reproduced by either a photographic or diazo process. Plats shall be

eighteen (18) inches by twenty-seven (27) inches in size, with a three and one-half (3 $1/2$) inch margin at the left end for binding and a one-half ($1/2$) inch margin on all other edges. No part of the drawing or certificates shall encroach upon the margins. Signatures ~~may~~ shall be in reproducible black ink. The sheet or sheets which contain the drawing or diagram representing the survey of the subdivision shall be drawn at a scale suitable to insure the clarity of all lines, bearings and dimensions. In the event that any subdivision is of such magnitude that the drawing or diagram cannot be placed on a single sheet, serially numbered sheets shall be prepared and match lines shall be indicated on the drawing or diagram with appropriate references to other sheets. The required dedications, acknowledgements and certifications shall appear on ~~one~~ any of the serially numbered sheets.

The plat shall show: (a) the streets and alleys, with widths and courses clearly shown; (b) each street named; (c) all lots numbered consecutively in each block, and each block lettered or numbered, provided, however, in a platted cemetery, that each block, section, district or division and each burial lot shall be designated by number or letter or name; (d) each and all lengths of the boundaries of each lot shall be shown, provided, however, in a platted cemetery, that lengths of the boundaries of each burial lot may be shown by appropriate legend; (e) the exterior boundaries shown by distance and bearing; (f) descriptions of survey monuments; (g) ~~initial point and of beginning with ties~~ to at least two (2) public land survey corners monuments in one (1) or more of the sections containing the subdivision, or in lieu of public land survey corners monuments, to two (2) monuments recognized by the city-engineer-or county engineer-or surveyor; and also, if required by the city or county governing bodies, give coordinates based on the Idaho coordinate system; (h) the easements; and (i) basis of bearings; and (j) subdivision name.

SECTION 5. That Section 50-1305, Idaho Code, be, and the same is hereby amended to read as follows:

50-1305. VERIFICATION. The county shall choose and require an ~~legally-qualified Idaho~~ professional land surveyor ~~to--perform--land surveying--in--Idaho~~ to sufficiently check the plat and computations thereon to determine that the requirements herein are met, and said professional land surveyor shall certify such compliance on the plat. Such certification shall not relieve the professional land surveyor who prepared the plat from responsibility for the plat. For performing such service the county shall collect from the subdivider a fee as provided by local ordinance reasonably related to the cost of providing such service.

SECTION 6. That Section 50-1306A, Idaho Code, be, and the same is hereby amended to read as follows:

50-1306A. VACATION OF PLATS -- PROCEDURE. (1) ~~When-a~~Any person, persons, firm, association, or corporation ~~may-desire~~ or other legally recognized form of business desiring to vacate a plat or any part thereof which is inside or within one (1) mile of the boundaries of any city, ~~it-shall-be-lawful-for-such-person;-persons;-firm;-associa-~~

~~tion--or-corporation-to~~ must petition the city council to vacate. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.

(2) Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

(3) When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

(4) When the platted area lies more than one (1) mile beyond the city limits, the procedures set forth herein shall be followed with the county commissioners of the county wherein the property lies. The county commissioners shall have authority, comparable to the city council, to grant the vacation, provided, however, when the platted area lies beyond one (1) mile of the city limits, but adjacent to a platted area within one (1) mile of the city, consent of the city council of the affected city shall be necessary in granting any vacation by the county commissioners.

(5) In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur upon the recording of the new or amended plat, provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.

(6) When public streets or public rights-of-way or public easements are located within the boundary of a highway district, the highway district commissioners shall assume the authority to vacate said public streets and public rights-of-way, and public easements as provided in subsection (4) of this section.

(7) All publication costs shall be at the expense of the petitioner.

(68) Public highway agencies acquiring real property within a platted subdivision for highway right-of-way purposes shall be exempt from the provisions of this section.

(9) Platting land which has previously been platted shall serve to vacate any previous plats.

SECTION 7. That Section 50-1308, Idaho Code, be, and the same is hereby amended to read as follows:

50-1308. APPROVALS. (1) If a subdivision is not within the corporate limits of a city, the plat thereof shall be submitted, accepted and approved by the board of commissioners of the county in which the tract is located in the same manner and as herein provided. If the city or county has established a planning commission, then all plats must be submitted to said commission in accordance with provisions of ~~section--50-1106~~ chapter 65, title 67, Idaho Code. No plat of a subdivision requiring city approval shall be accepted for record by the county recorder unless said plat shall have first been submitted to the city and has been accepted and approved and shall have written thereon the acceptance and approval of the said city council and bear the signature of the city engineer and city clerk. No plat of a subdivision shall be accepted for record by the county recorder unless said plat has been certified, within thirty (30) days prior to recording, by the county treasurer of the county in which the tract is located. The county treasurer shall not withhold certification for any reason except for county property taxes due, but not paid, upon the property included in the proposed subdivision.

(2) Plats resulting from the exercise of any right granted under the provisions of sections 50-1314 and 63-210(2), Idaho Code, may be accepted for record and recorded by the county recorder without being certified by the county treasurer and the record of any such plat which has previously been recorded without being certified by the county treasurer shall not be invalid or defective because of not having been so certified by the county treasurer.

SECTION 8. That Section 50-1309, Idaho Code, be, and the same is hereby amended to read as follows:

50-1309. CERTIFICATION OF PLAT -- DEDICATION OF STREETS AND ALLEYS -- DEDICATION OF PRIVATE ROADS TO PUBLIC -- JURISDICTION OVER PRIVATE ROADS. 1. The owner or owners of the land included in said plat shall make a certificate containing the correct legal description of the land, with the statement as to their intentions to include the same in the plat, and make a dedication of all public streets and rights-of-way shown on said plat, which certificate shall be acknowledged before an officer duly authorized to take acknowledgments and shall be indorsed on the plat. The professional land surveyor making the survey shall certify the correctness of said plat and he shall place his seal, signature and date on the plat.

2. No dedication or transfer of a private road to the public can be made without the specific approval of the appropriate public highway agency accepting such private road.

3. Highway districts shall not have jurisdiction over private roads designated as such on subdivision plats and shall assume no responsibility for the design, inspection, construction, maintenance and/or repair of private roads.

SECTION 9. That Section 50-1310, Idaho Code, be, and the same is hereby amended to read as follows:

50-1310. FILING AND RECORDING -- RECORD OF PLATS -- FILING OF COPY. All approved plats of subdivisions shall, upon the payment of

the required fees, be filed by the county clerk or county recorder, and such filing with the date thereof shall be indorsed thereon. The plat or opaque copy thereof shall then be bound or filed with other plats of like character in a proper book or file designated as "Records of Plats."

At the time of filing such plat, the owner or his representative shall also file with the county clerk or county recorder one (1) copy thereof. The copy shall be upon stable base drafting film with a minimum base thickness of 0.003 inches. The image thereon shall be by a photographic process using a silver image emulsion. The copy and image thereon shall be waterproof, tear-resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. The original plat shall be stored for safe keeping in a reproducible condition by the county. It shall be proper for the recorder to maintain for public reference a set of counter maps that are prints of the original maps. The original maps shall be produced for comparison upon demand. Full scale copies thereof shall be made available to the public, at the direct cost for reproduction allowed in section 31-3205, Idaho Code, by the county recorder.

SECTION 10. That Section 50-1317, Idaho Code, be, and the same is hereby amended to read as follows:

50-1317. VACATION PROCEDURE IN UNINCORPORATED AREAS AND IN CITIES NOT EXERCISING THEIR CORPORATE FUNCTIONS -- FILING OF PETITION -- NOTICE OF HEARING. Whenever any person, persons, firm, association or corporation interested in any city which if unincorporated, or which, if incorporated, is not exercising its corporate functions, or interested in any platted and subdivided tract or acreage outside the limits of any incorporated city, may desire to vacate any lot, tract, public street, public right-of-way, public easements, private road, common, plot or any part thereof in any such city, it shall be lawful to petition the board of county commissioners of the county where such property is located, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated and the names of the persons to be particularly affected thereby; which petition shall be filed with the appropriate county or highway district clerk and notice of the pendency of said petition shall be given for a period of thirty (30) days by written notice thereof, containing a description of the property to be vacated, posted in three (3) public or conspicuous places in said city, and also within the limits of said platted acreage, or in the event such property is located within a county in which there is published a newspaper, as defined by law, such notice shall also be published in such newspaper, once a week for two (2) successive weeks. Provided, however, when a public street or public right-of-way or public easement is located within the boundary of a highway district, the commissioners of the highway district shall assume the authority to vacate said public street or public right-of-way or public easement. Platting land which has previously been platted shall serve to vacate any previous plats.

SECTION 11. That Section 50-1332, Idaho Code, be, and the same is hereby amended to read as follows:

50-1332. MARKING SETTING INTERIOR MONUMENTS AFTER RECORDING OF PLAT -- BOND OR CASH DEPOSIT REQUIRED -- RELEASE OF BOND -- RETURN OF CASH DEPOSIT -- PAYMENT FOR SURVEY WORK -- COUNTY SURVEYOR PERFORMING SURVEY WORK. (1) If the interior monuments for a subdivision are to be marked set on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish, prior to recording the plat, to the governing body of the city or county which approved the plat, either a bond or cash deposit, at the option of the governing body, in an amount equal to one hundred twenty percent (120%) of the estimated cost of performing the work for the interior monumentation. The estimated cost of performing such work will be determined by the surveyor signing the plat.

(2) If the person subdividing the land described in subsection (1) of this section pays the surveyor for performing the interior monumentation work and notifies the governing body of such payment, the governing body, within two (2) months after such notice, shall release the bond or return the cash deposit upon a finding that such a payment has been made. Upon written request from the person subdividing the land, the governing body may pay the surveyor from moneys within a cash deposit or bond held by it for such purpose and return the excess amount of the cash deposit, if any, to such person.

(3) In the event of the death, disability, or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure of such professional land surveyor to set such monuments, the governing body may direct the county surveyor in his official capacity or contract with a professional land surveyor in private practice to set such monuments and reference such monuments for recording as provided in section 50-1333, Idaho Code. Payment of the fees of a county surveyor or private professional land surveyor in private practice performing such work shall be made as otherwise provided in this section.

SECTION 12. That Section 50-1333, Idaho Code, be, and the same is hereby amended to read as follows:

50-1333. RECORDING OF PLATS WITH ONLY EXTERIOR MONUMENTS REFERENCED. (1) If the person subdividing any land has complied with subsection (1) of section 50-1332, Idaho Code, the professional land surveyor may prepare the plat of the subdivision for recording with only the exterior monuments referenced set thereon as when submitted for recording. There shall be attached to any such a certification on the plat ~~the affidavit of~~ by the professional land surveyor that the interior monuments for the subdivision will be marked on or before a specified date set in accordance with section 50-1303, Idaho Code, on or before a specified date and the said interior monuments will be referenced on the plat for the subdivision as approved by the city or county with a unique symbol. The time for setting the interior monuments shall not exceed one (1) calendar year from the date the first plat is recorded or as determined by the governing body of such city or county.

(2) After the interior monuments for a subdivision have been marked set as provided in ~~an affidavit submitted under the certifica-~~

tion required on the plat in subsection (1) of this section, the professional land surveyor performing such work shall,†

~~(a) Within five (5) days after completion of such work, give written notice to the person subdividing the land involved, the surveyor or engineer of the city or county by which the subdivision was approved and the governing body of such city or county; and~~

~~(b) Reference such monuments on an exact copy of the subdivision plat as previously recorded; and~~

~~(c) Upon approval of such plat copy in accordance with section 50-1304, Idaho Code, file such plat copy with the county recorder with whom the plat of the subdivision was previously recorded;~~

~~(3) The county recorder, upon receipt of a plat copy filed pursuant to subsection (2) of this section, shall record such plat copy and endorse the recording reference for such plat copy upon the plat of the subdivision previously recorded. The recording reference for such plat copy shall operate as reference to the interior monuments referenced on such plat copy and shall constitute constructive notice of such monument references for all purposes as though such monuments had been referenced on the plat of the subdivision as previously recorded.~~

(43) In the event that the developer person subdividing the land involved fails or refuses to authorize the payment for interior monumentation, the professional land surveyor may request payment from the governing body, and upon inspection by the governing body of the interior monumentation, the governing body shall pay the professional land surveyor from moneys held.

SECTION 13. That Section 55-1603, Idaho Code, be, and the same is hereby amended to read as follows:

55-1603. DEFINITIONS. Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

(a1) A "property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property line. An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(2) "Adequate evidence of the existence of a land survey monument" means the visual presence of the monument or existence of a federal general land office or bureau of land management plat on which the monument appears, or a recorded corner perpetuation and filing form as provided in this chapter, or a record of survey filed in accordance with chapter 19, title 55, Idaho Code, on which the monument appears, or a subdivision plat filed in accordance with chapter 13, title 50, Idaho Code, on which the monument appears.

(b3) A "property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question. The "board" is the board of registration of professional

engineers and professional land surveyors.

(c4) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government. A "corner," unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(5) "Establish" means to determine the position of a corner either physically or mathematically.

(d6) A "corner," unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these. A "monument" is a physical structure that occupies the exact position of a corner.

(e7) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects. A "professional land surveyor" means any person who is authorized by the laws of this state to practice land surveying.

(f8) A "monument" is a physical structure that occupies the exact position of a corner. A "property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.

(g9) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner. A "property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

(h10) A "professional land surveyor" means any person who is authorized by the laws of this state to practice land surveying. A "public land survey corner" is any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management.

(i11) The "board" is the board of registration of professional engineers and professional land surveyors. A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner.

SECTION 14. That Section 55-1607, Idaho Code, be, and the same is hereby amended to read as follows:

55-1607. COUNTY CLERK TO KEEP RECORD -- FEES. (a) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it ~~in a hardbound book.~~ The

~~books shall be numbered in numerical order; provided, however, corner records may also be preserved in the same manner as any other recorded instruments in those counties where corner records are recorded in lieu of filing. Proper indexes shall be kept of such corner records by section, township and range.~~

(b) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(c) For purposes of determining the filing fee hereunder, the corner record shall be considered as a similar service to the filing or recording of instruments as provided in section 31-3205, Idaho Code. However, all corners, monuments and their accessories established prior to the effective date of this chapter, for which a written record is completed as required herein, and which are offered for filing or recording within six (6) months of the effective date of this chapter, shall be accepted and filed by the county clerk without requiring the payment of fees therefor.

SECTION 15. That Section 55-1612, Idaho Code, be, and the same is hereby amended to read as follows:

55-1612. PENALTY. Professional land surveyors failing to comply with the provisions hereof and professional engineers who prepare plans which do not indicate the presence of corners for which ~~a form has been filed~~ adequate evidence exists shall be deemed to be within the purview of section 54-1220, Idaho Code, and shall be subject to disciplinary action as in said section provided. Any person shall be subject to the penalties prescribed in section 54-1234, Idaho Code, if they prepare plans for the construction of any facility and construction of that facility results in the defacing, injury or removal of a monument, if the plans they prepare do not indicate the presence of a corner or corners for which ~~a form has been filed~~ adequate evidence exists.

SECTION 16. That Section 55-1613, Idaho Code, be, and the same is hereby amended to read as follows:

55-1613. MONUMENTS DISTURBED BY CONSTRUCTION ACTIVITIES -- PROCEDURE -- REQUIREMENTS. When adequate evidence exists as to the location of a public land survey corner, subdivision, tract, property, or other land corners, such monuments shall be referenced by or under the direction of a professional land surveyor prior to the time when construction or other activities may disturb them. Such corners shall be reestablished and remonumented ~~under the supervision of~~ by a professional land surveyor at the expense of the agency or person causing the loss or disturbance of monuments. Adequate evidence of the location of a land survey monument shall include the visual presence of the monument, existence of a federal general land office or bureau of land management plat on which the monument appears, a recorded corner perpetuation and filing form as provided in this chapter, a record of survey filed in accordance with chapter 19, title 55, Idaho Code, on which the monument appears, or a subdivision plat filed in accordance with chapter 13, title 50, Idaho Code, on which the monument appears. Professional eEngineers who prepare plans which do not indicate the

presence of corners for which adequate evidence exists shall be deemed to be within the purview of section 54-1220, Idaho Code, and shall be subject to disciplinary action as provided in said section. Any person shall be subject to the penalties prescribed in section 54-1234, Idaho Code, if they prepare plans for the construction of any facility and construction of that facility results in the defacing, injury or removal of a monument, if the plans they prepare do not indicate the presence of a corner or corners for which ~~a form has been filed~~ adequate evidence exists.

SECTION 17. That Section 55-1902, Idaho Code, be, and the same is hereby amended to read as follows:

55-1902. DEFINITIONS. As used in this chapter:

(1) ~~"Surveyor" shall mean every person authorized by the state of Idaho to practice the profession of land surveying~~ "Corner" unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(2) "GPS" is the abbreviation for global positioning system which is satellite surveying based on observations of the electromagnetic signals broadcast from the U.S. department of defense's NAVSTAR GPS system.

(3) "Idaho coordinate system" shall mean that system of plane coordinates as established and designated by chapter 17, title 55, Idaho Code.

(4) "Monument" is a physical structure or object that occupies the exact position of a corner.

(5) "Property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one (1) or more of the property corners of the property in question.

(6) "Property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property.

(7) "Public land survey corner" is any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management.

(38) "Survey" shall mean the locating and monumenting of points of lines which define the exterior boundary or boundaries common to two (2) or more ownerships, except those boundaries defining ownership in established and ongoing mineral extraction operations; or which reestablish or restore public land survey corners in accordance with established principles of land surveying by or under the supervision of a surveyor.

(9) "Surveyor" shall mean every person authorized by the state of Idaho to practice the profession of land surveying.

SECTION 18. That Section 55-1905, Idaho Code, be, and the same is hereby amended to read as follows:

55-1905. RECORDS OF SURVEY -- FILING. The records of survey to be filed under authority of this chapter shall be processed as follows:

(1) The record of survey shall be a map, prepared in black opaque image upon stable base drafting film with a minimum base thickness of .003 inches by either a photographic process using a silver image emulsion or by use of black opaque drafting film ink, by mechanical or handwritten means. The drafting film and image thereon shall be water-proof, tear resistant, flexible and capable of withstanding repeated handling, as well as providing archival permanence. If ink is used on drafting film, the ink surface shall be coated with a suitable substance to assure permanent legibility. The drafting film must be of a type which can be reproduced by either a photographic or diazo process. Plats The map shall be eighteen (18) inches by twenty-seven (27) inches in size, with a three and one-half (3 1/2) inch margin at the left end for binding, and a one-half (1/2) inch margin on all other edges. No part of the drawing or certificates shall encroach upon the margins. Signatures may shall be in reproducible reproducible black ink. The sheet or sheets which contain the drawing or diagram representing the survey shall be drawn at a scale suitable to insure the clarity of all lines, bearings and dimensions. In the event that any survey is of such magnitude that the drawing or diagram cannot be placed on a single sheet, serially numbered sheets shall be prepared and match lines shall be indicated on the drawing or diagram with appropriate references to other sheets.

(2) The original transparency and one (1) legible print of each record of survey shall be furnished to the county recorder in the county or counties in which the survey is to be recorded.

SECTION 19. That Section 55-1906, Idaho Code, be, and the same is hereby amended to read as follows:

55-1906. RECORDS OF SURVEY -- CONTENTS. The records of survey shall show:

(1) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location and giving other data relating thereto;

(2) Evidence of compliance with chapter 16, title 55, Idaho Code, including instrument numbers of any corner records which have been recorded previously or corner records of any corners which are set in conjunction with the survey being submitted; basis of bearings, bearing and length of lines, scale of map, and north arrow;

(3) Section, or part of section, township and range in which the survey is located and reference to adjoining surveys of record;

(4) Certificate of survey;

(5) Ties to at least two (2) public land survey corner monuments of record in one (1) or more of the sections containing the record of survey, or in lieu of public land survey corners, to two (2) corners of records recognized by the county surveyor. Records of survey which are within previously platted subdivisions of record need not be tied to public land survey corner monuments.

SECTION 20. That Section 55-1907, Idaho Code, be, and the same is hereby amended to read as follows:

55-1907. COORDINATES -- ORIGIN BASIS. When coordinates in the Idaho coordinate system are shown on a record of survey map, the map must show: the point-of-origin

(1) The monument used as the basis of the coordinates, the datum, the combined adjustment factor and the zone;

(2) If GPS is used, a statement that current national geodetic survey procedures were used to establish the coordinates, along with the classification order.

Approved March 19, 1997.

CHAPTER 191
(H.B. No. 131)

AN ACT

RELATING TO THE IDAHO HOUSING AND FINANCE ASSOCIATION; AMENDING SECTION 67-6201, IDAHO CODE, TO INCLUDE NONPROFIT ACTIVITIES AS PUBLIC PURPOSES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-6205, IDAHO CODE, TO PROVIDE FOR ADDITIONAL DEFINITIONS; AMENDING SECTION 67-6206, IDAHO CODE, TO PROVIDE POWERS RELATING TO THE FINANCING OF NONPROFIT FACILITIES; AMENDING SECTION 67-6207A, IDAHO CODE, TO PROVIDE FOR AUTHORITY TO RECEIVE STATE OR FEDERAL ASSISTANCE FOR NONPROFIT FACILITIES; AMENDING SECTION 67-6223, IDAHO CODE, TO PROVIDE FOR ASSISTANCE TO NONPROFIT FACILITIES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-6201, Idaho Code, be, and the same is hereby amended to read as follows:

67-6201. PURPOSE. It is hereby declared:

(a) That within the state there is a shortage of safe or sanitary dwelling accommodations available which persons of low incomes can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime, and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities.

(b) That private enterprise has not been able to provide, without assistance, an adequate supply of safe and sanitary dwellings at prices or rents which persons and families of low income can afford, or to achieve rehabilitation of much of the present low-income housing. It is imperative that the supply of housing for persons and families of low income be increased and that coordination and cooperation among private enterprise, state and local government be encouraged to sponsor, build and rehabilitate residential housing for such persons and families.

(c) That the clearance, replanning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist, and the providing of safe and sanitary dwelling accommodations for persons of low incomes (which dwelling-accommodations need not be solely for persons of low incomes in order to avoid concentrations of such persons in specific localities), are public uses, and uses and purposes for which public money may be spent and private property acquired, and are governmental functions.

(d) It is also declared and the legislature hereby finds that charitable, educational, human service, cultural and other purposes pursued by nonprofit corporations are important public functions and public purposes that should be encouraged and that financing of nonprofit facilities for these purposes should be encouraged, without using state funds or lending the credit of the state, through the issuance of nonrecourse revenue bonds and the lending of the proceeds thereof to nonprofit corporations to promote their purposes.

(e) It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended or granted and that such activities are governmental functions and serve a public purpose in improving or otherwise benefiting the people of this state; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

SECTION 2. 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) "Association" or "housing association" shall mean the Idaho housing 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 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 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 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 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 association as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing project, subject to the regulatory powers of the 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 association, 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 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 income housing 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.

(t) "Facilities" means land, rights in land, buildings, structures, equipment, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and portions of any of the foregoing and similar ancillary facilities.

(u) "Nonprofit corporation" means a nonprofit corporation organized and operating in accordance with Idaho law or a nonprofit corporation organized and operating in accordance with comparable laws within another state or territory of the United States.

(v) "Nonprofit facilities" means facilities owned or used by a nonprofit corporation for a nonprofit purpose of the corporation; provided that facilities for health facilities which may be funded pursuant to chapter 14, title 39, Idaho Code, shall not be included in this definition, except for such health facilities as may be specifically approved by the Idaho health facilities authority.

(w) "Project costs of a nonprofit facility" means costs of:

(1) acquisition, construction and improvement of any facilities included in a nonprofit facility;

(2) architectural, engineering, consulting, accounting and legal costs related directly to the development, financing and construction of a nonprofit facility, including costs of studies assessing the feasibility of a nonprofit facility;

(3) finance costs, including discounts, if any, the costs of issuing bonds, and costs incurred in carrying out any provisions thereof;

(4) interest during construction and during the six (6) months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves;
(5) the refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and
(6) other costs incidental to any of the costs listed in this section.

SECTION 3. That Section 67-6206, Idaho Code, be, and the same is hereby amended to read as follows:

67-6206. POWERS OF ASSOCIATION. The housing 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 association; and to make and from time to time amend and repeal bylaws, rules, not inconsistent with this act, to carry into effect the powers and purposes of the 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 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 association, with respect to originating or servicing and processing mortgage loans of the association, and to pay the reasonable value of service rendered to the 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, nonprofit facilities or any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project or nonprofit facilities 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 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 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 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 in order to undertake the provision of housing for persons of low-income or to undertake the provision of nonprofit facilities.

(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 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 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 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 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 association, provided that the association has determined that such financing is not otherwise available from mortgage lenders upon reasonably equivalent terms and conditions.

(q) To prescribe rules 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 association, the exemption from federal income taxation of interest on any of the 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 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 provided by the association pursuant to this act, and to make and publish rules respecting the making and purchase of mortgage loans.

(x) To organize a nonprofit corporation to assist the 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.

(aa) To make secured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project costs of any nonprofit facility, including the refunding of any outstanding obligations, mortgages or advances issued, made or given by any person for the project costs of a nonprofit facility; and to charge and collect interest on the loans for the loan payments upon such terms and conditions, including without limitation bond rating and issuance conditions, as the board of commissioners considers advisable which are not in conflict with this chapter.

(bb) As security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, to mortgage, pledge, or otherwise encumber any or all of nonprofit facilities or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the association, to secure any loan made by the association and to pledge the revenues and receipts therefrom.

(cc) To issue bonds for the purpose of financing all or part of the project cost on any nonprofit facility and to secure the payment of the bonds as provided in this chapter.

(dd) To purchase or sell by installment contract or otherwise, and convey all or any part of any nonprofit facility for such purchase price and upon such terms and conditions as this board of commissioners considers advisable which are not in conflict with this chapter.

(ee) To lease all or any part of any nonprofit facility for such rentals and upon such terms and conditions, including options to purchase, as the board of commissioners considers advisable and not in conflict with this chapter.

(ff) To construct and maintain one (1) or more nonprofit facilities that the association shall not operate any nonprofit facility as a business other than as lessor, seller or lender. The purchase, holding and enforcing of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof is not considered the operation of a nonprofit facility as a business.

SECTION 4. 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 association also shall have the following specific powers:

(a) To make and publish rules 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 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 or loans for nonprofit facilities, 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 association therein.

SECTION 5. 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 association by other provisions of this act, the 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 or nonprofit facility within its area of operation, to take over or lease or manage any housing project or nonprofit facility 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 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 or nonprofit facility by the association.

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 its passage and approval.

Approved March 19, 1997.

CHAPTER 192

(H.B. No. 313, As Amended in the Senate)

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING SECTION 61-622A, IDAHO CODE, TO PROVIDE AUTHORITY TO THE PUBLIC UTILITIES COMMISSION TO EXERCISE DISCRETION TO ESTABLISH COST ALLOCATION PROCEDURES; AMENDING SECTION 62-602, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT AND FINDINGS; AMENDING SECTION 62-603, IDAHO CODE, TO PROVIDE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 62-613,

IDAHO CODE, TO PROHIBIT SUBSIDIZATION OF CERTAIN SERVICES BY A TELEPHONE CORPORATION; REPEALING SECTION 62-615, IDAHO CODE; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-615, IDAHO CODE, TO PROVIDE AUTHORITY TO THE COMMISSION TO IMPLEMENT THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, TO SUSPEND OBLIGATIONS OF RURAL CARRIERS AND TO PROMULGATE RULES AND PROCEDURES; REPEALING SECTION 62-622, IDAHO CODE; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-622, IDAHO CODE, TO PROVIDE FOR REGULATION OF BASIC LOCAL EXCHANGE RATES, SERVICES AND PRICE LISTS; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-623, IDAHO CODE, TO PROVIDE THAT THE COMMISSION SHALL COMMENCE INVESTIGATION OF IMPLICIT SUBSIDIES, DETERMINE STATUTORY REVISIONS, AND TO REQUIRE SUBMISSION OF A REPORT TO THE GOVERNOR AND LEGISLATURE; AND AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-624, IDAHO CODE, TO PROVIDE FOR RATIFICATION OF CERTAIN COMMISSION ORDERS ISSUED PRIOR TO APPROVAL OF THIS ACT.

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

SECTION 1. That Section 61-622A, Idaho Code, be, and the same is hereby amended to read as follows:

61-622A. COMMISSION AUTHORITY -- COST ALLOCATION. For any telephone corporation which provides telecommunication services pursuant to both title 61, Idaho Code, and title 62, Idaho Code, the commission may, or at the request of a telephone corporation shall, establish procedures for allocation of costs between telecommunication services provided pursuant to title 61, Idaho Code, and telecommunication services provided pursuant to title 62, Idaho Code. Such allocations shall reasonably reflect how joint-use facilities are utilized, provide reasonable stability for telephone corporations to do business planning and pricing and minimize the cost of accounting and record keeping to the extent possible. In developing such allocation methods, the commission may adopt procedures which are based on gross allocation factors derived from relative changes in total intrastate telecommunication service revenues or expenses or other measures of relative change between the provision of telecommunication services subject to title 61, Idaho Code, and telecommunication services subject to title 62, Idaho Code. The commission shall have authority to establish just and reasonable rates for all telecommunication services which remain subject to title 61, Idaho Code, and for basic local service in accordance with the provisions of chapter 6, title 62, Idaho Code.

SECTION 2. That Section 62-602, Idaho Code, be, and the same is hereby amended to read as follows:

62-602. LEGISLATIVE INTENT. (1) The legislature of the state of Idaho hereby finds that universally available telecommunications services are essential to the health, welfare and economic well-being of the citizens of the state of Idaho and there is a need for establishing legislation to protect and maintain high-quality universal tele-

communications at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition.

(2) It is the intent of this legislature that effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the mere presence of a competitor. Instead, for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation's local exchange calling area.

(3) It is the further intent of the legislature that the commission, in its deliberation of deregulation of the incumbent telephone corporations, will examine the impact such deregulation will have on the public interest in accordance with the general grant of authority given to the commission by the legislature and that all parties be allowed to comment thereon in such proceeding.

(4) The legislature further finds that the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry. The legislature encourages the development of open competition in the telecommunications industry in accordance with provisions of Idaho law and consistent with the federal telecommunications act of 1996.

(5) The commission shall administer these statutes with respect to telecommunication rates and services in accordance with this policy these policies and applicable federal law.

(6) The legislature further finds that it is consistent with the public interest, convenience and necessity that the obligation of certain rural telephone companies to comply with the requirements of section 251(c) of the telecommunications act of 1996 should be suspended upon petition of the affected telephone company, based upon the following legislative findings that the suspension is necessary:

(a) To avoid a significant economic impact on users of telecommunications services generally in areas served by the rural telephone companies;

(b) To avoid imposing requirements that are unduly economically burdensome; or

(c) To avoid imposing requirements which are technically infeasible.

SECTION 3. That Section 62-603, Idaho Code, be, and the same is hereby amended to read as follows:

62-603. DEFINITIONS. As used in this chapter:

(1) "Basic local exchange service" means the provision of access lines to residential and small business customers with the associated transmission of two-way interactive switched voice communication within a local exchange calling area.

(2) "Basic local exchange rate" shall mean the monthly charge imposed by a telephone corporation for basic local exchange service, but shall not include any charges resulting from action by a federal agency or taxes or surcharges imposed by a governmental body which are separately itemized and billed by a telephone corporation to its cus-

tomers.

(3) "Chapter" as used herein shall mean chapter 6, title 62, Idaho Code.

(4) "Commission" means the Idaho public utilities commission.

(5) "Facilities based competitor" means a local exchange carrier that offers basic local exchange service either: (a) exclusively over its own telecommunications service facilities; or (b) predominantly over its own facilities in combination with the resale of telecommunications services of another carrier.

(6) "Incumbent telephone corporation" means a telephone corporation or its successor which was providing basic local exchange service on or before February 8, 1996.

(7) "Local exchange calling area" means a geographic area encompassing one (1) or more local communities as described in maps, tariffs, or rate schedules, price lists, or other descriptive material filed with and approved by the commission, where by a telephone corporation, within which area basic local exchange rates rather than message telecommunication service rates apply.

(68) "Message telecommunication service (MTS)" means the transmission of two-way interactive switched voice communication between local exchange calling areas for which charges are made on a per-unit basis, not including wide area telecommunications service (WATS), or its equivalent, or individually negotiated contracts for telecommunication services.

(79) "Residential customers" shall mean persons to whom telecommunication services are furnished at a dwelling and which are used for personal or domestic purposes and not for business, professional or institutional purposes.

(10) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) Provides common carrier service to any local exchange carrier study that does not include either:

(i) any incorporated place of ten thousand (10,000) inhabitants or more, or any part thereof, based on the most recently available population statistics of the bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the bureau of the census as of August 10, 1993;

(b) Provides telephone exchange service including exchange access, to fewer than fifty thousand (50,000) access lines;

(c) Provides telephone exchange service to any local exchange carrier study area with fewer than one hundred thousand (100,000) access lines; or

(d) Has less than fifteen percent (15%) of its access lines in communities of more than fifty thousand (50,000) on the date of enactment of the federal telecommunications act of 1996.

(811) "Small business customers" shall mean a business entity, whether an individual, partnership, corporation or any other business form, to whom telecommunication services are furnished for occupational, professional or institutional purposes, and which business entity does not subscribe to more than five (5) access lines within a building which are billed to a single billing location.

(12) "Telecommunications act of 1996" means the federal telecommunications act of 1996, public law no. 104-104 as enacted effective February 8, 1996.

(913) "Telecommunication service" means the transmission of two-way interactive switched signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means (which includes message telecommunication service and access service), which originate and terminate in this state, and are offered to or for the public, or some portion thereof, for compensation. "Telecommunication service" does not include the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service, surveying, or the provision of radio paging, mobile radio telecommunication services, answering services (including computerized or otherwise automated answering or voice message services), and such services shall not be subject to the provisions of title 61, Idaho Code, or title 62, Idaho Code.

(104) "Telephone corporation" means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, providing telecommunication services for compensation within this state, provided that municipal, cooperative, or mutual nonprofit telephone companies shall be included in this definition only for the purposes of sections 62-610 and 62-617 through 62-620, Idaho Code. Telephone corporations providing radio paging, mobile radio telecommunications services, answering services (including computerized or otherwise automated answering or voice message services), or one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service or surveying are exempt from any requirement of this chapter or title 61, Idaho Code, in the provision of such services; provided, that the providers of these exempted services shall have the benefits given them under section 62-608, Idaho Code.

SECTION 4. That Section 62-613, Idaho Code, be, and the same is hereby amended to read as follows:

62-613. SUBSIDIZATION OF CERTAIN SERVICES NOT ALLOWED. A telephone corporation may not subsidize nonprice-regulated telecommunication services which are subject to this chapter by with those telecommunication services which are subject to regulation price-regulated by the commission pursuant to this chapter or to title 61, Idaho Code. The commission shall not require revenues earned from nonprice-regulated services or affiliates to be attributed to basic local exchange services, nor permit expenses incurred in producing the revenues to be attributed to the cost of providing basic local exchange services. Provided, payments to the universal service fund established by section 62-610, Idaho Code, state or federal law shall not be considered to be a violation of this section.

SECTION 5. That Section 62-615, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-615, Idaho Code, and to read as follows:

62-615. AUTHORITY TO IMPLEMENT THE TELECOMMUNICATIONS ACT -- SUSPENSION OF OBLIGATIONS OF RURAL CARRIERS -- PROMULGATION OF RULES OR PROCEDURES. (1) The commission shall have full power and authority to implement the federal telecommunications act of 1996, including, but not limited to, the power to establish unbundled network element charges in accordance with the act.

(2) Upon petition of a rural telephone company with fewer than two percent (2%) of the nation's subscriber lines installed in the aggregate nationwide, the commission shall suspend the petitioner's obligations pursuant to section 251(c) of the telecommunications act of 1996. The period of suspension shall be determined by the commission, consistent with the public interest, convenience, and necessity, provided that such suspension shall be for a period of not less than three (3) years nor more than five (5) years. All other suspensions, modifications or exemptions pursuant to the telecommunications act of 1996 shall be committed to the commission's discretion.

(3) The commission may promulgate rules and/or procedures necessary to carry out the duties authorized or required by the federal telecommunications act of 1996.

SECTION 7. That Section 62-622, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-622, Idaho Code, and to read as follows:

62-622. REGULATION OF BASIC LOCAL EXCHANGE RATES, SERVICES AND PRICE LISTS. (1) The commission shall regulate the prices for basic local exchange services for incumbent telephone corporations in accordance with the following provisions:

(a) At the request of the incumbent telephone corporation, the commission shall establish maximum just and reasonable rates for basic local exchange service. Maximum basic local exchange rates shall be sufficient to recover the costs incurred to provide the services. Costs shall include authorized depreciation, a reasonable portion of shared and common costs, and a reasonable profit. Authorized depreciation lives shall use forward-looking competitive market lives. Authorized depreciation lives shall be applied prospectively and to undepreciated balances.

(b) At the request of the telephone corporation, the commission may find that existing rates for local services constitute the maximum rates.

(c) The commission shall issue its order establishing maximum rates no later than one hundred eighty (180) days after the filing of the request unless the telephone corporation consents to a longer period.

(d) An incumbent telephone corporation may charge prices lower than the maximum basic local exchange rates established by the commission. Provided however, upon the petition of a nonincumbent telephone corporation, the commission shall establish a minimum price for the incumbent telephone corporation's basic local exchange service if the commission finds, by a preponderance of the evidence, that the incumbent telephone corporation's prices for basic local exchange services in the local exchange area are below the incumbent telephone corporation's average variable cost of providing such services.

(e) After the commission has established maximum basic local exchange rates, an incumbent telephone corporation may change its tariffs or price lists reflecting the availability, price, terms and conditions for local exchange service effective not less than ten (10) days after filing with the commission and giving notice to affected customers. Changes to tariffs or price lists that are for nonrecurring services and that are quoted directly to the customer when an order for service is placed, or changes that result in price reductions or new service offerings, shall be effective immediately upon filing with the commission and no other notice shall be required.

(2) The commission shall not regulate the prices for basic local exchange services for telephone corporations that were not providing such local service on or before February 8, 1996. Provided however, such telephone corporation providing basic local exchange services shall file price lists with the commission that reflect the availability, price, terms and conditions for such services. Changes to such price lists shall be effective not less than ten (10) days after filing with the commission and giving notice to affected customers. Changes to price lists that are for nonrecurring services and that are quoted directly to the customer when an order for service is placed, or changes that result in price reductions or new service offerings, shall be effective immediately upon filing with the commission and no other notice shall be required.

(3) The commission shall cease regulating basic local exchange rates in a local exchange calling area upon a showing by an incumbent telephone corporation that effective competition exists for basic local exchange service throughout the local exchange calling area. Effective competition exists throughout a local exchange calling area when either:

(a) Actual competition from a facilities-based competitor is present for both residential and small business basic local exchange customers; or

(b) There are functionally equivalent, competitively priced local services reasonably available to both residential and small business customers from a telephone corporation unaffiliated with the incumbent telephone corporation.

(4) Telephone corporations shall not resell:

(a) A telecommunications service that is available at retail only to a category of subscribers to a different category of subscribers;

(b) A means-tested service to ineligible customers; or

(c) A category of service to circumvent switched or special

access charges.

(5) The commission shall determine the noneconomic regulatory requirements for all telephone corporations providing basic local exchange service including, but not limited to, such matters as service quality standards, provision of access to carriers providing message telecommunications service, filing of price lists, customer notice and customer relation rules.

SECTION 9. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-623, Idaho Code, and to read as follows:

62-623. SUBSIDY REFORM -- UNIVERSAL SERVICE -- REPORT TO LEGISLATURE. The commission shall commence a proceeding to:

(1) Identify and quantify implicit subsidies within the rates of incumbent telephone corporations including, but not limited to:

(a) Access charges paid by intrastate interexchange carriers to incumbent telephone corporations including all of the carrier common line charge;

(b) Above cost rates paid by one (1) class of customers to reduce the price paid by another class of customers; and

(c) Imputation of revenue from nonregulated telecommunications services.

(2) Determine a mechanism for removal of the subsidies from the rates of incumbent telephone corporations and the creation of explicit subsidy mechanisms.

(3) Determine revisions that may be necessary to section 62-610, Idaho Code, regarding universal service in order to comply with the telecommunications act of 1996 and regulations promulgated thereunder.

(4) On or before the first day of December 1997, the commission shall issue a report to the governor and the legislature recommending any necessary or desirable legislation concerning state and federal universal support mechanisms, the removal of implicit subsidies from rates and other telecommunication matters.

SECTION 10. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-624, Idaho Code, and to read as follows:

62-624. PROCEEDINGS PRIOR TO ENACTMENT RATIFIED. Commission orders issued prior to approval of this act which relate to duties or authority granted to the commission by the telecommunications act of 1996 are hereby ratified and approved to the extent that such actions conform with the provisions of this chapter and the telecommunications act of 1996.

Approved March 19, 1997.

CHAPTER 193
(H.B. No. 364)

AN ACT

APPROPRIATING MONEYS FOR COMMUNITY COLLEGE SUPPORT FOR FISCAL YEAR 1998; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO PROPERTY TAX RELIEF.

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

SECTION 1. There is hereby appropriated to the State Board of Education for Community College Support the following amount, from the listed fund to be expended for the period July 1, 1997, through June 30, 1998:

FROM:
General Fund \$12,257,300

SECTION 2. It is legislative intent that \$1,000,000 of the amount appropriated in Section 1 of this act be divided equally, with \$500,000 provided to each community college, and applied directly to dollar-for-dollar property tax relief through a corresponding reduction of the FY 1998 property tax levies for the College of Southern Idaho and North Idaho College.

Approved March 19, 1997.

CHAPTER 194
(S.B. No. 1003, As Amended)

AN ACT

RELATING TO FOOD ESTABLISHMENTS; AMENDING SECTION 39-1601, IDAHO CODE, TO STATE THAT A PURPOSE OF THE CHAPTER IS TO ALLOW FOR COLLECTION OF A FEE TO FUND THE FOOD SAFETY INSPECTION PROGRAM; AMENDING SECTION 39-1602, IDAHO CODE, TO PROVIDE A FIVE DAY LIMIT WITHIN WHICH FOOD IS NOT CONSIDERED TO BE SERVED ON A REGULAR BASIS, TO EXPAND THE DEFINITION OF "FOOD ESTABLISHMENT" TO INCLUDE DIVISIONS AND DEPARTMENTS AND TO DEFINE "POTENTIALLY HAZARDOUS FOOD"; AMENDING SECTION 39-1603, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-1604, IDAHO CODE, TO CLARIFY LICENSE REQUIREMENTS FOR FOOD ESTABLISHMENTS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-1605, IDAHO CODE, TO CLARIFY THE INSPECTION OBLIGATIONS OF THE REGULATORY AUTHORITY AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-1606, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO CORRECT A CODIFIER'S ERROR; AMENDING CHAPTER 16, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1607, IDAHO CODE, TO AUTHORIZE A FEE FOR LICENSING FOOD ESTABLISHMENTS; AMENDING CHAPTER 16, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1608, IDAHO CODE, TO ESTABLISH THE FOOD SAFETY FUND; REPEALING SECTION 39-1601, IDAHO CODE; AMENDING CHAPTER 16, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION

39-1601, IDAHO CODE, TO PROVIDE A LEGISLATIVE STATEMENT OF PURPOSE; PROVIDING A SUNSET CLAUSE FOR SECTION 7 OF THIS ACT; AND PROVIDING AN EFFECTIVE DATE FOR SECTIONS 9 AND 10 OF THIS ACT.

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

SECTION 1. That Section 39-1601, Idaho Code, be, and the same is hereby amended to read as follows:

39-1601. STATEMENT OF PURPOSE. The legislative intent of this chapter is to protect the public health by establishing standards and provisions for the regulation of food establishments; by delegating authority to the board of health and welfare to adopt regulations rules covering the health and sanitation aspects of food establishments, to collect a fee to cover a portion of the cost of the food safety inspection program and by delegating the authority to the director of the department of health and welfare to enforce the provisions of this chapter. This chapter is enacted to ensure that consumers are not exposed to adverse health conditions arising out of the operation of food establishments.

SECTION 2. That Section 39-1602, Idaho Code, be, and the same is hereby amended to read as follows:

39-1602. DEFINITIONS. As used in this chapter:

(1) "Food establishment" means those operations in the food business such as, but not limited to, food processing establishments, canning factories, salvage processing facilities, food service establishments, cold storage plants, commissaries, warehouses, food vending machine operations and location, caterers, mobile food units and retail food stores. Such operations include all activities under the control of the license holder including preparation, processing, storage, service, transportation vehicles, satellite locations, divisions and departments, and remote feeding sites. The term includes operations which are conducted in permanent, temporary or mobile facilities or locations. It includes any food operation regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. Individual divisions and departments on one (1) premise and under common ownership shall as a whole be considered a single food establishment. The term "food establishment" does not include:

- (a) Private homes where food is prepared or served for individual family consumption;
- (b) Fraternal, benevolent or nonprofit charitable organizations which do not prepare or serve food on a regular basis. Food shall not be considered to be served on a regular basis if the food is served for a period not to exceed ~~three-(3)~~ five (5) consecutive days on no more than three (3) occasions per year for foods which are not potentially hazardous, or if the food is served no more than one (1) meal a week for all other foods;
- (c) Bed and breakfast establishments with ten (10) or fewer beds;
- (d) Establishments which offer only factory-sealed nonpotentially hazardous foods; and

(e) Agricultural markets.

(2) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms or the slower growth of clostridium botulinum. Included is any food of animal origin, either raw or heat treated and any food of plant origin which has been heat treated or which is raw seed sprouts; cut melons; and garlic and oil mixtures. The term "potentially hazardous food" does not include;

(a) Air-dried hard-boiled eggs with shells intact;

(b) Foods with a water activity (aw) value of eighty-five hundredths (0.85) or less;

(c) Foods with a pH (hydrogen ion concentration) level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit;

(d) Foods in unopened hermetically-sealed containers which have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

(e) Foods for which laboratory evidence, acceptable to the regulatory authority, demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of clostridium botulinum cannot occur;

(f) Milk, half-and-half cream, butter products, frozen dairy deserts and other fluid milk products, in the original unopened container; and

(g) Any other food items determined by the department of health and welfare not to be potentially hazardous.

(3) "Regulatory authority" means the director of the Idaho department of health and welfare or the director's designee.

SECTION 3. That Section 39-1603, Idaho Code, be, and the same is hereby amended to read as follows:

39-1603. POWERS AND DUTIES OF BOARD. The board of health and welfare shall promulgate rules ~~and regulations~~ governing:

(1) The establishment and control of sanitation standards for food establishments;

(2) The issuance, suspension and revocation of licenses;

(3) The review of plans and specifications prior to construction or alteration of food establishments;

(4) The procedure and scope of inspections to determine compliance with the standards and ~~regulations~~ rules adopted under this chapter;

(5) The criteria for the examination, embargo and destruction of food in compliance with section 37-118, Idaho Code; and

(6) The establishment of a grading system for food establishments to be used at local option.

SECTION 4. That Section 39-1604, Idaho Code, be, and the same is hereby amended to read as follows:

39-1604. LICENSE REQUIREMENTS FOR FOOD ESTABLISHMENTS. No person,

firm or corporation shall operate a food establishment, for which no other state or federal food safety inspection or license is required, without a license approved by the director of the department of health and welfare or his designee. Food establishment licenses shall not be transferable and the type of license and any restrictions will be specified on the license.

Terms and conditions of licensure are to be established by regulation rules in accordance with the intent of this chapter. Any applicant or license holder aggrieved by an action of the regulatory authority which results in denial, suspension, or revocation of a license has the right to a hearing conducted pursuant to chapter 52, title 67, Idaho Code, and appeal shall be provided therein.

SECTION 5. That Section 39-1605, Idaho Code, be, and the same is hereby amended to read as follows:

39-1605. INSPECTIONS. (1) The regulatory authority shall conduct unannounced inspections of every food establishment not subject to other state or federal food safety inspections to determine compliance or lack of compliance with the provisions of this chapter and the rules ~~and regulations~~ established by the board of health and welfare ~~at least once every twelve (12) months unless otherwise designated, or more as~~ often as deemed necessary by the authority.

(2) The application for, or the possession of a license is a consent to inspection. The regulatory authority representative upon presentation of proper credentials is to be permitted access to the premises of any food establishment during hours of operation in order to determine compliance with the rules ~~and regulations~~ adopted under this chapter. Failure to grant access shall be cause for nonissuance of a license or license revocation.

(3) The regulatory authority representative is to determine the degree of compliance by examining the food, including sampling as necessary, and by inspection in accordance with the regulations rules adopted under this chapter.

(4) For inspection and enforcement purposes, an applicant for, or holder of, a license may specify that the license reflect separate departments or divisions within a single food establishment. In such cases, an enforcement action, when necessary, shall be taken against an individual department or division within a single food establishment in lieu of an enforcement action against the food establishment as a whole, except when the department or division fails to comply with the rules established by the board of health and welfare.

(5) An inspection report, the form and manner to be determined by the board, will be generated by each inspection and be given to the person in charge of the food establishment.

SECTION 6. That Section 39-1606, Idaho Code, be, and the same is hereby amended to read as follows:

39-1606. CRIMINAL AND CIVIL PROCEEDINGS. The regulatory authority may seek to enforce the provisions of this chapter and any rule, ~~regulation~~, or standard adopted by the board pursuant to this chapter through a court of competent jurisdiction.

(1) Misdemeanor proceedings may be brought in accordance with sections 39-109, 39-117, 37-117 and 37-119, Idaho Code.

(2) Civil proceedings may be brought in accordance with sections 39-108 and 39-109, Idaho Code.

(3) Injunctive relief may be sought in accordance with sections 39-108, 39-109 and 37-116, Idaho Code.

SECTION 7. That Chapter 16, 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 39-1607, Idaho Code, and to read as follows:

39-1607. LICENSE FEE. A fee may be charged by the department of health and welfare for licensing a food establishment. The fee shall not exceed fifty-five dollars (\$55.00) per establishment per year. Fees collected for licensing a food establishment shall be deposited in the food safety fund and shall be used for funding a portion of the food safety inspection program.

SECTION 8. That Chapter 16, 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 39-1608, Idaho Code, and to read as follows:

39-1608. FOOD SAFETY FUND. (1) There is hereby created a fund in the state treasury to be designated the food safety fund. The fund shall consist of:

- (a) All fees collected from licensing food establishments; and
- (b) Any other donations, grants, gifts or appropriations.

(2) The money in the fund shall be appropriated to the department of health and welfare to cover a portion of the cost of conducting food safety inspections in food establishments, or to reimburse the department's designee for conducting such inspections.

SECTION 9. That Section 39-1601, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Chapter 16, 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 39-1601, Idaho Code, and to read as follows:

39-1601. STATEMENT OF PURPOSE. The legislative intent of this chapter is to protect the public health by establishing standards and provisions for the regulation of food establishments; by delegating authority to the board of health and welfare to adopt rules covering the health and sanitation aspects of food establishments, and by delegating the authority to the director of the department of health and welfare to enforce the provisions of this chapter. This chapter is enacted to ensure that consumers are not exposed to adverse health conditions arising out of the operation of food establishments.

SECTION 11. Section 7 of this act shall be null, void and of no

force and effect on and after July 1, 2000.

SECTION 12. Sections 9 and 10 of this act shall be in full force and effect on and after July 1, 2000.

Approved March 19, 1997.

CHAPTER 195
(S.B. No. 1054)

AN ACT

RELATING TO ESTABLISHMENT OF PATERNITY; AMENDING SECTION 7-1116, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF HEALTH AND WELFARE TO ORDER GENETIC TESTS, TO SPECIFY PROCEDURE TO OBJECT TO AN ORDER AND TO CORRECT A TYPOGRAPHICAL ERROR; AND AMENDING SECTION 56-203C, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF HEALTH AND WELFARE TO ORDER GENETIC TESTS.

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

SECTION 1. 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 department of health and welfare may order or the individuals may voluntarily agree to such 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'~~ expert's report prepared by a laboratory approved by the American association of blood banks or other accreditation body, ~~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.

(7) Any individual may object to such an order of the department of health and welfare by filing an objection with the court.

SECTION 2. 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:

(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 and order genetic testing of any individual involved in the paternity action;

(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 19, 1997.

CHAPTER 196
(S.B. No. 1058, As Amended in the House)

AN ACT

RELATING TO THE SOLEMNIZATION OF MARRIAGE; AMENDING SECTION 32-303, IDAHO CODE, TO AUTHORIZE RETIRED JUSTICES OF THE SUPREME COURT, COURT OF APPEALS JUDGES, DISTRICT JUDGES, MAGISTRATES AND THE LIEUTENANT GOVERNOR TO SOLEMNIZE MARRIAGE AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 32-303, Idaho Code, be, and the same is hereby amended to read as follows:

32-303. BY WHOM SOLEMNIZED. Marriage may be solemnized by either a current or retired justice of the supreme court, a current or retired court of appeals judge, a current or retired district judge, any federal judge, the governor, lieutenant governor, a current or retired magistrate of the district court, mayor, priest or minister of the gospel of any denomination. To be a retired justice of the supreme court, court of appeals judge, district judge or magistrate judge of the district court, for the purpose of solemnizing marriages, a person shall have served in one (1) of those offices and shall be receiving a retirement benefit from either the judges retirement system or the public employee retirement system for service in the judiciary.

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 19, 1997.

CHAPTER 197
(S.B. No. 1061)

AN ACT

RELATING TO CHILD SUPPORT; AMENDING SECTION 7-1121, IDAHO CODE, TO GIVE THE COURT AUTHORITY TO DETERMINE WHETHER TO ORDER CHILD SUP-

PORT IN ADDITION TO MEDICAL SUPPORT AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. 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~~ may 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: (1a) the funeral expenses if the child has died; (2b) the necessary expenses incurred by or for the mother in connection with her confinement and recovery; and (3c) 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 require that the social security number of the obligor be included in the order or decree.

Approved March 19, 1997.

CHAPTER 198
(S.B. No. 1062)

AN ACT

RELATING TO THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; AMENDING SECTION 7-1001, IDAHO CODE, TO CLARIFY DEFINITIONS; AMENDING SECTION 7-1004, IDAHO CODE, TO CLARIFY THE CATCHLINE; AMENDING SECTION 7-1005, IDAHO CODE, TO CORRECT CITATIONS; AMENDING SECTION 7-1008, IDAHO CODE, TO INCLUDE REFERENCES TO THIS CHAPTER; AMENDING SECTION 7-1010, IDAHO CODE, TO CLARIFY PROCEDURE GOVERNING DETERMINATION OF THE CONTROLLING CHILD SUPPORT ORDER; AMENDING SECTION 7-1013, IDAHO CODE, TO CORRECT CITATIONS; AMENDING SECTION 7-1016, IDAHO CODE, TO ALLOW FOR PROCEEDINGS IN STATES THAT HAVE NOT ADOPTED THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; AMENDING SECTIONS 7-1017, 7-1018 AND 7-1019, IDAHO CODE, TO REVISE REQUIREMENTS FOR NOTIFICATION; AMENDING SECTION 7-1025, IDAHO CODE, TO CORRECT CITATIONS; AMENDING SECTION 7-1033, IDAHO CODE, TO REVISE REQUIREMENTS FOR NOTIFICATION AND DELETE OBSOLETE LANGUAGE; AMENDING CHAPTER 10, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-1034, IDAHO CODE, TO CLARIFY REQUIREMENTS UPON AN EMPLOYER'S COMPLIANCE WITH INCOME-WITHHOLDING ORDER OF ANOTHER STATE; AMENDING CHAPTER 10, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-1035, IDAHO CODE, TO ESTABLISH PRIORITIES AMONG MULTIPLE ORDERS; AMENDING CHAPTER 10, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-1036, IDAHO CODE, TO PROVIDE EMPLOYERS IMMUNITY FROM CIVIL LIABILITY FOR COMPLIANCE; AMENDING CHAPTER 10, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-1037, IDAHO CODE, TO PROVIDE PENALTIES FOR NONCOMPLIANCE WITH A WITHHOLDING ORDER; AMENDING CHAPTER 10, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-1038, IDAHO CODE, TO PROVIDE A PROCEDURE TO CONTEST AN ORDER OF ANOTHER STATE; AMENDING SECTIONS 7-1034, 7-1035 AND 7-1036, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 7-1037, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO CORRECT CITATIONS; AMENDING SECTION 7-1038, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTIONS 7-1039 AND 7-1040, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO CLARIFY NOTICE REQUIREMENTS AND TO CORRECT A CITATION; AMENDING SECTION 7-1041, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO CORRECT CITATIONS; AMENDING SECTION 7-1042, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTIONS 7-1043 AND 7-1044, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO CORRECT CITATIONS; AMENDING SECTION 7-1045, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO CLARIFY PROCEDURE GOVERNING MODIFICATION OF A CHILD SUPPORT ORDER OF ANOTHER STATE; AMENDING SECTION 7-1046, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO CLARIFY APPLICATION; AMENDING CHAPTER 10, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-1052, IDAHO CODE, TO GOVERN JURISDICTION TO MODIFY A SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE; AMENDING CHAPTER 10, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-1053, IDAHO CODE, TO PROVIDE NOTICE TO THE ISSUING TRIBUNAL OF A MODIFICATION; AMENDING SECTION 7-1047, IDAHO CODE, TO REDESIGNATE THE SECTION TO PROVIDE REFERENCES TO OTHER STATUTES; AMENDING SEC-

TION 7-1048, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO CORRECT CITATIONS; AND AMENDING SECTIONS 7-1049, 7-1050, 7-1051 AND 7-1052, IDAHO CODE, TO REDESIGNATE THE SECTIONS.

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

SECTION 1. That Section 7-1001, Idaho Code, be, and the same is hereby amended to read as follows:

7-1001. DEFINITIONS. In this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six (6) consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six (6) months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six (6) month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by chapter 12, title 7, Idaho Code, to withhold support from the income of the obligor.

(7) "Initiating state" means a state in from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, or under a law or procedure substantially similar to the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act ~~is filed for forwarding to a responding state.~~

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Initiating tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

(a) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

- (b) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
- (c) An individual seeking a judgment determining parentage of the individual's child.
- (13) "Obligor" means an individual, or the estate of a decedent:
- (a) Who owes or is alleged to owe a duty of support;
- (b) Who is alleged but has not been adjudicated to be a parent of a child; or
- (c) Who is liable under a support order.
- (14) "Register" means to record a support order or judgment determining parentage in the district court.
- (15) "Registering tribunal" means a tribunal in which a support order is registered.
- (16) "Responding state" means a state ~~to~~ in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law substantially similar to this chapter, or under a law or procedure substantially similar to the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.
- (17) "Responding tribunal" means the authorized tribunal in a responding state.
- (18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.
- (19) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes:
- (a) Aan Indian tribe; and includes-a
- (b) A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter or the procedures under the uniform reciprocal enforcement of support act or the revised uniform enforcement of support act.
- (20) "Support enforcement agency" means a public official or agency authorized to seek:
- (a) Enforcement of support orders or laws relating to the duty of support;
- (b) Establishment or modification of child support;
- (c) Determination of parentage; or
- (d) To locate obligors or their assets.
- (21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.
- (22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

SECTION 2. That Section 7-1004, Idaho Code, be, and the same is

hereby amended to read as follows:

7-1004. PROCEEDINGS BASIS FOR JURISDICTION OVER NONRESIDENT. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) The individual is personally served with notice within this state;

(2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in this state;

(4) The individual resided in this state and provided prenatal expenses or support for the child;

(5) The child resides in this state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) The individual asserted parentage in the registry maintained in this state by the vital statistics unit of the department of health and welfare provided in section 16-1513, Idaho Code; or

(8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

SECTION 3. That Section 7-1005, Idaho Code, be, and the same is hereby amended to read as follows:

7-1005. PROCEDURE WHEN EXERCISING JURISDICTION OVER NONRESIDENT. A tribunal of this state exercising personal jurisdiction over a nonresident under section 7-1004, Idaho Code, may apply section 7-1028, Idaho Code, to receive evidence from another state, section 7-1030, Idaho Code, to obtain discovery through a tribunal of another state. In all other respects, sections 7-1013 through 7-10547, Idaho Code, do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

SECTION 4. That Section 7-1008, Idaho Code, be, and the same is hereby amended to read as follows:

7-1008. CONTINUING, EXCLUSIVE JURISDICTION. (1) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(a) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) Until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter.

(3) If a child support order of this state is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

- (a) Enforce the order that was modified as to amounts accruing before the modification;
- (b) Enforce nonmodified aspects of that order; and
- (c) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to this chapter or a law substantially similar to this chapter.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

SECTION 5. That Section 7-1010, Idaho Code, be, and the same is hereby amended to read as follows:

7-1010. RECOGNITION OF CONTROLLING CHILD SUPPORT ORDERS. (1) If a proceeding is brought under this chapter and only one (1) tribunal has issued a child support order, the order of that tribunal is controlling and must be recognized.

(2) If a proceeding is brought under this chapter, and ~~one--(1)~~ two (2) or more child support orders have been issued ~~in by tribunals of this state~~ or another state with regard to ~~an the same~~ obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(a) ~~If only--one--(1)--tribunal--has--issued--a--child--support--order, the order of that tribunal must be recognized;~~

(b) ~~If two--(2)--or--more--tribunals--have--issued--child--support--orders for the same obligor and child, and only one (1) of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal is controlling and must be recognized;~~

(c) ~~If two--(2)--or--more--tribunals--have--issued--child--support orders for the same obligor and child, and more than one (1) of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home~~

state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order more recently issued is controlling and must be recognized;

~~(dc) If two-(2)-or-more-tribunals-have-issued-child-support orders-for-the-same-obligor-and-child,-and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state may having jurisdiction over the parties must issue a child support order, which is controlling and must be recognized.~~

(3) If two (2) or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be recognized under subsection (2) of this section. The request must be accompanied by a certified copy of every support order in effect. Every party whose rights may be affected by a determination of the controlling order must be given notice of the request for that determination.

(24) The tribunal that has issued an the order that must be recognized as controlling under subsection (1), (2) or (3) of this section is the tribunal having that has continuing, exclusive jurisdiction in accordance with section 7-1008, Idaho Code.

(5) A tribunal of this state which determines by order the identity of the controlling child support order under subsections (2)(a) or (2)(b) of this section or which issues a new controlling child support order under subsection (2)(c) of this section shall include in that order the basis upon which the tribunal made its determination.

(6) Within thirty (30) days after issuance of the order determining the identity of the controlling order, the party obtaining that order shall file a certified copy of it with each tribunal that had issued or registered an earlier order of child support. Failure of the party obtaining the order to file a certified copy as required subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the controlling order.

SECTION 6. That Section 7-1013, Idaho Code, be, and the same is hereby amended to read as follows:

7-1013. PROCEEDINGS UNDER THIS CHAPTER. (1) Except as otherwise provided in this chapter, sections 7-1013 through 7-1031, Idaho Code, apply to all proceedings under the provisions of this chapter.

(2) This chapter provides for the following proceedings:

(a) Establishment of an order for spousal support or child support pursuant to section 7-1032, Idaho Code;

(b) Enforcement of a support order and income-withholding order of another state without registration pursuant to sections 7-1033 and through 7-10349, Idaho Code;

(c) Registration of an order for spousal support or child support of another state for enforcement pursuant to sections 7-103540 through 7-104653, Idaho Code;

(d) Modification of an order for child support or spousal support issued by a tribunal of this state pursuant to sections 7-1006 through 7-1009, Idaho Code;

(e) Registration of an order for child support of another state for modification pursuant to sections 7-103540 through 7-104653, Idaho Code;

(f) Determination of parentage pursuant to section 7-104754, Idaho Code; and

(g) Assertion of jurisdiction over nonresidents pursuant to sections 7-1004 and 7-1005, Idaho Code.

(3) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

SECTION 7. That Section 7-1016, Idaho Code, be, and the same is hereby amended to read as follows:

7-1016. DUTIES OF INITIATING TRIBUNAL. (1) Upon the filing of a petition authorized in this chapter, an initiating tribunal of this state shall forward three (3) copies of the petition and its accompanying documents:

(1a) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2b) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) If a responding state has not enacted this chapter or a law or procedure substantially similar to this chapter, a tribunal of this state may issue a certificate or other documents and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

SECTION 8. That Section 7-1017, Idaho Code, be, and the same is hereby amended to read as follows:

7-1017. DUTIES AND POWERS OF RESPONDING TRIBUNAL. (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 7-1013(3), Idaho Code, it shall cause the petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one (1) or more of the following:

(a) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) Order income withholding;

(d) Determine the amount of any arrearages, and specify a method of payment;

- (e) Enforce orders by civil or criminal contempt, or both;
 - (f) Set aside property for satisfaction of the support order;
 - (g) Place liens and order execution on the obligor's property;
 - (h) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
 - (i) Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;
 - (j) Order the obligor to seek appropriate employment by specified methods;
 - (k) Award reasonable attorney's fees and other fees and costs; and
 - (l) Grant any other available remedy.
- (3) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.
- (4) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.
- (5) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order by ~~first class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any.

SECTION 9. That Section 7-1018, Idaho Code, be, and the same is hereby amended to read as follows:

7-1018. INAPPROPRIATE TRIBUNAL. If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by ~~first class mail~~ where and when the pleading was sent.

SECTION 10. That Section 7-1019, Idaho Code, be, and the same is hereby amended to read as follows:

7-1019. DUTIES OF SUPPORT ENFORCEMENT AGENCY. (1) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under the provisions of this chapter.

(2) A support enforcement agency that is providing services to the petitioner as appropriate shall:

- (a) Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;
- (b) Request an appropriate tribunal to set a date, time and place for a hearing;
- (c) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
- (d) Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiat-

ing, responding, or registering tribunal, send a copy of the notice ~~by first-class mail~~ to the petitioner;

(e) Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication ~~by first-class mail~~ to the petitioner; and

(f) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

SECTION 11. That Section 7-1025, Idaho Code, be, and the same is hereby amended to read as follows:

7-1025. COSTS AND FEES. (1) The petitioner may not be required to pay a filing fee or other costs.

(2) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under sections 7-103540 through 7-104653, Idaho Code, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

SECTION 12. That Section 7-1033, Idaho Code, be, and the same is hereby amended to read as follows:

7-1033. ~~RECOGNITION~~ EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING ORDER OF ANOTHER STATE. ~~(1)~~ An income-withholding order issued in another state may be sent ~~by first-class mail~~ to the person or entity defined as the obligor's employer under the provisions of chapter 12, title 7, Idaho Code, without first filing a petition or comparable pleading or registering the order with a tribunal of this state. ~~Upon receipt of the order, the employer shall:~~

~~(a) Treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state;~~

~~(b) Immediately provide a copy of the order to the obligor; and~~

~~(c) Distribute the funds as directed in the withholding order.~~

~~(2) An obligor may contest the validity or enforcement of an income withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this state. Section~~

~~7-1038, Idaho Code, applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:~~

~~(a) The person or agency designated to receive payments in the income withholding order; or~~

~~(b) If no person or agency is designated, the obligee.~~

SECTION 13. That Chapter 10, 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 7-1034, Idaho Code, and to read as follows:

7-1034. EMPLOYER'S COMPLIANCE WITH INCOME-WITHHOLDING ORDER OF ANOTHER STATE. (1) Upon the receipt of the order the obligor's employer shall immediately provide a copy of the order to the obligor.

(2) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it has been issued by a tribunal of this state.

(3) Except as provided by subsection (4) of this section and section 7-1035, Idaho Code, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order, as applicable, that specify:

(a) The duration and the amount of periodic payments of current child support, stated as a sum certain;

(b) The person or agency designated to receive payments and the address to which the payments are to be forwarded;

(c) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(d) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) The amount of periodic payments of arrears and interest on arrears, stated as sums certain.

(4) The employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) The employer's fee for processing an income-withholding order;

(b) The maximum amount permitted to be withheld from the obligor's income; and

(c) The time periods within which the employer must implement the withholding order and forward the child support payment.

SECTION 14. That Chapter 10, 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 7-1035, Idaho Code, and to read as follows:

7-1035. COMPLIANCE WITH MULTIPLE INCOME-WITHHOLDING ORDERS. If the obligor's employer receives multiple orders to withhold support from the earnings of the same obligor, the employer shall be deemed to

have satisfied the terms of the multiple orders if the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees is complied with.

SECTION 15. That Chapter 10, 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 7-1036, Idaho Code, and to read as follows:

7-1036. IMMUNITY FROM CIVIL LIABILITY. An employer who complies with an income-withholding order issued by another state in accordance with this article is not subject to civil liability to any individual or agency with regard to the employer's withholding child support from the obligor's income.

SECTION 16. That Chapter 10, 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 7-1037, Idaho Code, and to read as follows:

7-1037. PENALTIES FOR NONCOMPLIANCE. An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

SECTION 17. That Chapter 10, 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 7-1038, Idaho Code, and to read as follows:

7-1038. CONTEST BY OBLIGOR. (1) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 7-1043, Idaho Code, applies to the contest.

(2) The obligor shall give notice of the contest to:

- (a) A support enforcement agency providing services to the obligee;
- (b) Each employer which has directly received an income-withholding order; and
- (c) The person or agency designated to receive payments in the income-withholding order, or, if no person is designated, to the obligee.

SECTION 18. That Section 7-1034, Idaho Code, be, and the same is hereby amended to read as follows:

7-1034. ADMINISTRATIVE ENFORCEMENT OF ORDERS. (1) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of

this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

SECTION 19. That Section 7-1035, Idaho Code, be, and the same is hereby amended to read as follows:

7-103540. REGISTRATION OF ORDER FOR ENFORCEMENT. A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

SECTION 20. That Section 7-1036, Idaho Code, be, and the same is hereby amended to read as follows:

7-103641. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT. (1) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the district court in this state:

- (a) A letter of transmittal to the tribunal requesting registration and enforcement;
 - (b) Two (2) copies, including one (1) certified copy, of all orders to be registered, including any modification of an order;
 - (c) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
 - (d) The name of the obligor and, if known:
 - (i) The obligor's address and social security number;
 - (ii) The name and address of the obligor's employer and any other source of income of the obligor; and
 - (iii) A description and the location of property of the obligor in this state not exempt from execution; and
 - (e) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.
- (2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one (1) copy of the documents and information, regardless of their form.
- (3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

SECTION 21. That Section 7-1037, Idaho Code, be, and the same is hereby amended to read as follows:

7-103742. EFFECT OF REGISTRATION FOR ENFORCEMENT. (1) A support

order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(2) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in section 7-103540 through 7-104653, Idaho Code, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

SECTION 22. That Section 7-1038, Idaho Code, be, and the same is hereby amended to read as follows:

7-103843. CHOICE OF LAW. (1) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(2) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

SECTION 23. That Section 7-1039, Idaho Code, be, and the same is hereby amended to read as follows:

7-103944. NOTICE OF REGISTRATION OF ORDER. (1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice must be given by first class, certified, or registered mail or by any means of personal service authorized by the law of this state.~~ The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty (20) days after the date of mailing or personal service of the notice;

(c) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(d) Of the amount of any alleged arrearages.

(3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the provisions of chapter 12, title 7, Idaho Code.

SECTION 24. That Section 7-1040, Idaho Code, be, and the same is hereby amended to read as follows:

7-10405. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGIS-

TERED ORDER. (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty (20) days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 7-104~~1~~6, Idaho Code.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of a registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~by first-class mail~~ of the date, time, and place of the hearing.

SECTION 25. That Section 7-1041, Idaho Code, be, and the same is hereby amended to read as follows:

7-104~~1~~6. CONTEST OF REGISTRATION OR ENFORCEMENT. (1) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one (1) or more of the following defenses:

- (a) The issuing tribunal lacked personal jurisdiction over the contesting party;
- (b) The order was obtained by fraud;
- (c) The order has been vacated, suspended, or modified by a later order;
- (d) The issuing tribunal has stayed the order pending appeal;
- (e) There is a defense under the law of this state to the remedy sought;
- (f) Full or partial payment has been made; or
- (g) The statute of limitation under section 7-103~~8~~43, Idaho Code, precludes enforcement of some or all of the arrearages.

(2) If a party presents evidence establishing a full or partial defense under subsection (1) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under subsection (1) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

SECTION 26. That Section 7-1042, Idaho Code, be, and the same is hereby amended to read as follows:

7-104~~2~~7. CONFIRMED ORDER. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

SECTION 27. That Section 7-1043, Idaho Code, be, and the same is hereby amended to read as follows:

7-10438. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION. A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register the order in this state in the same manner provided in sections 7-103540 through 7-103853, Idaho Code, if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

SECTION 28. That Section 7-1044, Idaho Code, be, and the same is hereby amended to read as follows:

7-10449. EFFECT OF REGISTRATION FOR MODIFICATION. A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 7-10450, Idaho Code, have been met.

SECTION 29. That Section 7-1045, Idaho Code, be, and the same is hereby amended to read as follows:

7-10450. MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE. (1) After a child support order issued in another state has been registered in this state, unless the provisions of section 7-1052, Idaho Code, apply, the responding tribunal of this state may modify that order only if, after notice and hearing, it finds that:

(a) The following requirements are met:

(i) The child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) A petitioner who is a nonresident of the state seeks modification; and

(iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) An individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this state may modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction which has not enacted this chapter, the written consent of the individual party residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two (2) or more tribunals have issued child support orders

for the same obligor and child, the order that is controlling and must be recognized under the provisions of section 7-1010, Idaho Code, establishes the nonmodifiable aspects of the support order.

(4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

~~(5) Within thirty (30) days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered.~~

SECTION 30. That Section 7-1046, Idaho Code, be, and the same is hereby amended to read as follows:

7-1046~~51~~. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to this chapter or a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

- (1) Enforce the order that was modified only as to amounts accruing before the modification;
- (2) Enforce only nonmodifiable aspects of that order;
- (3) Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
- (4) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

SECTION 31. That Chapter 10, 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 7-1052, Idaho Code, and to read as follows:

7-1052. JURISDICTION TO MODIFY SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE. (1) If all of the individual parties reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(2) A tribunal of this state exercising jurisdiction as provided in this section shall apply the provisions of sections 7-1001 through 7-1012, Idaho Code, and this section to the enforcement or modification proceeding. Sections 7-1013 through 7-1039, Idaho Code, and sections 7-1054 through 7-1056, Idaho Code, do not apply and the tribunal shall apply the procedural and substantive law of this state.

SECTION 32. That Chapter 10, 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 7-1053, Idaho Code, and to read as follows:

7-1053. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION. Within thirty (30) days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows that earlier order has been registered. Failure of the party obtaining the order to file a certified copy as required subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction.

SECTION 33. That Section 7-1047, Idaho Code, be, and the same is hereby amended to read as follows:

7-10547. PROCEEDING TO DETERMINE PARENTAGE. (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law or procedure substantially similar to this chapter, or under a law or procedure substantially similar to the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the provisions of chapter 11, title 7, Idaho Code, and the rules of this state on choice of law.

SECTION 34. That Section 7-1048, Idaho Code, be, and the same is hereby amended to read as follows:

7-104855. GROUNDS FOR RENDITION. (1) For purposes of sections 7-104855 and 7-104956, Idaho Code, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(2) The governor of this state may:

(a) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(b) On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(3) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

SECTION 35. That Section 7-1049, Idaho Code, be, and the same is hereby amended to read as follows:

7-104956. CONDITIONS OF RENDITION. (1) Before making demand that the governor of another state surrender an individual charged crimi-

nally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty (60) days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(2) If, under this chapter or a law substantially similar to this chapter, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

SECTION 36. That Section 7-1050, Idaho Code, be, and the same is hereby amended to read as follows:

7-10507. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.

SECTION 37. That Section 7-1051, Idaho Code, be, and the same is hereby amended to read as follows:

7-10518. SHORT TITLE. This chapter may be cited as the uniform interstate family support act.

SECTION 38. That Section 7-1052, Idaho Code, be, and the same is hereby amended to read as follows:

7-10529. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Approved March 19, 1997.

CHAPTER 199
(S.B. No. 1079)

AN ACT

RELATING TO SALES TAX EXEMPTIONS; AMENDING SECTION 63-36220, IDAHO CODE, TO PROVIDE A SALES AND USE TAX EXEMPTION FOR SALES TO OR PURCHASES BY CENTERS FOR INDEPENDENT LIVING, DEFINING A TERM AND TO PROVIDE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 63-36220, Idaho Code, be, and the same is hereby amended to read as follows:

63-36220. NONPROFIT ORGANIZATIONS. (a) There are exempted from the taxes imposed by this chapter:

- (1) Sales to or purchases by hospitals, health-related entities, educational institutions, forest-protective associations and canal companies which are nonprofit organizations; and
- (2) Donations to, sales to, and purchases by the Idaho Foodbank Warehouse, Inc.; and
- (3) Donations to, sales to, and purchases by food banks or soup kitchens of food or other tangible personal property used by food banks or soup kitchens in the storage, preparation or service of food, but not including licensed motor vehicles or trailers; and
- (4) Sales of clothes to, donations of clothes to, and purchases of clothes by nonsale clothiers; and
- (5) Sales to or purchases by centers for independent living.

(b) As used in this subsection, these words shall have the following meanings:

- (1) "Educational institution" shall mean nonprofit colleges, universities, primary and secondary schools, the income of which is devoted solely to education and in which systematic instruction in the usual branches of learning is given. This definition does not include schools primarily teaching business, dancing, dramatics, music, cosmetology, writing, gymnastics, exercise and other special accomplishments nor parent-teacher associations, parent groups, alumni or other auxiliary organizations with purposes related to the educational function of an institution or collective group of institutions.
- (2) "Hospital" shall include nonprofit institutions licensed by the state for the care of ill persons. It shall not extend to nursing homes or similar institutions.
- (3) "Health-related entities" shall mean the Idaho Cystic Fibrosis Foundation, Idaho Epilepsy League, Idaho Lung Association, March of Dimes, American Cancer Society, Mental Health Association, The Arc, Idaho Heart Association, Idaho Ronald McDonald House, United Cerebral Palsy, Arthritis Foundation, Muscular Dystrophy Foundation, National Multiple Sclerosis Society, Rocky Mountain Kidney Association, American Diabetes Association, Easter Seals, and Idaho Special Olympics, together with said entities' local or regional chapters or divisions.

(4) "Canal companies" shall include nonprofit corporations which are incorporated solely for the purpose of operating and maintaining and are engaged solely in operation and maintenance of dams, reservoirs, canals, lateral and drainage ditches, pumps or pumping plants.

(5) "Forest protective associations" shall mean associations whose purpose is the furnishing, operating and maintaining of a protective system for the detection, prevention and suppression of forest or range fires. Forest protective associations shall include only those associations with which the state of Idaho has contracted or become a member of pursuant to chapter 1, title 38, Idaho Code.

(6) "Food banks or soup kitchens" shall mean any nonprofit corporation or association, other than the Idaho Foodbank Warehouse, Inc., one of whose regular activities is the furnishing or providing of food or food products to others without charge.

(7) "Nonsale clothier" shall mean any nonprofit corporation or association one of whose primary purposes is the furnishing or providing of clothes to others without charge.

(8) "Clothes" shall mean garments in general, designed or intended to be worn by humans and shall include footwear in addition to wearing apparel.

(9) "Center for independent living" shall mean a private, non-profit, non-residential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

(i) Is designed and operated within a local community by individuals with disabilities;

(ii) Provides an array of independent living services and programs; and

(iii) Is cross-disability.

(2c) There is exempted from the taxes imposed in this chapter, the renting of a place to sleep to an individual by the Idaho Ronald McDonald House.

Approved March 19, 1997.

CHAPTER 200
(S.B. No. 1104, As Amended)

AN ACT

RELATING TO ACTIONS FOR CONTEMPT; AMENDING SECTION 7-610, IDAHO CODE, TO INCREASE THE MAXIMUM FINE AND TO AUTHORIZE THE AWARD OF ATTORNEY'S FEES AND COSTS BY THE COURT TO THE PREVAILING PARTY IN CONTEMPT ACTIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 7-610, Idaho Code, be, and the same is hereby amended to read as follows:

7-610. JUDGMENT -- PENALTY. Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of a the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five thousand dollars (\$5,000-00), or he may be imprisoned not exceeding five (5) days, or both; except that if the contempt of which the defendant be adjudged guilty be a disobedience of a judgment or order for the support of minor children, he may be imprisoned not exceeding thirty (30) days in addition to such fine, under this section, as the court may impose. Additionally, the court in its discretion, may award attorney's fees and costs to the prevailing party.

Approved March 19, 1997.

CHAPTER 201
(S.B. No. 1108)

AN ACT

RELATING TO VISITORS IN GUARDIANSHIP PROCEEDINGS; AMENDING SECTION 15-5-308, IDAHO CODE, TO PROVIDE THAT PERSONS APPOINTED AS VISITORS SHALL BE PERSONALLY IMMUNE FROM ANY LIABILITY FOR ACTS, OMISSIONS OR ERRORS IN THE SAME MANNER AS IF THE PERSON WERE A VOLUNTEER OR DIRECTOR.

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

SECTION 1. That Section 15-5-308, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-308. VISITOR IN GUARDIANSHIP PROCEEDING. (1) A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing or social work or has other qualifications that make him suitable to perform the function and is an officer, employee or special appointee of the court with no personal interest in the proceedings.

(2) Any person appointed as a visitor shall be personally immune from any liability for acts, omissions or errors in the same manner as if such person were a volunteer or director under the provisions of section 6-1605, Idaho Code.

Approved March 19, 1997.

CHAPTER 202
(S.B. No. 1112)

AN ACT

RELATING TO HOLDERS OF PARTISAN ELECTIVE OFFICE CHANGING POLITICAL PARTIES; AMENDING CHAPTER 6, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-627, IDAHO CODE, TO PROVIDE THE PROCEDURE WHEN

THE HOLDER OF A PARTISAN ELECTIVE OFFICE DESIRES TO CHANGE POLITICAL PARTIES.

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

SECTION 1. 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 34-627, Idaho Code, and to read as follows:

34-627. HOLDERS OF PARTISAN ELECTIVE OFFICE CHANGING POLITICAL PARTIES. Whenever any holder of a partisan elective office desires to change political parties, the change shall only be effective if the holder files a declaration of intent to change political parties with the election official with whom the holder of the partisan elective office has filed his declaration of candidacy for the office that the holder of the partisan elective office currently holds. The party change shall be official five (5) calendar days after receipt of the declaration of intent provided in this section by the election official. After receiving the declaration of intent, the election official shall send a copy of the declaration to the affected political party central committees of both the political party, if any, that the holder of the partisan elective office desires to leave and the political party, if any, that the holder of the partisan elective office desires to join. A holder of a partisan elective office cannot change political parties between the date the holder of partisan elective office files for the primary election through three (3) months after the general election in which the partisan elective office was on the ballot. A holder of a partisan elective office only may change political parties pursuant to this section once per term. The election official shall be authorized to charge a holder of a partisan elective office desiring to change his political party a twenty-five dollar (\$25.00) fee to defray the election official's expenses in administering the provisions of this section.

Approved March 19, 1997.

CHAPTER 203
(S.B. No. 1132)

AN ACT

RELATING TO A WILDLIFE MANAGEMENT AREA PHEASANT PERMIT; AMENDING SECTION 36-409, IDAHO CODE, TO PROVIDE THAT THE FISH AND GAME COMMISSION MAY ISSUE A WILDLIFE MANAGEMENT AREA PHEASANT PERMIT THAT MUST BE PURCHASED BY ALL PERSONS OVER SIXTEEN YEARS OF AGE PRIOR TO HUNTING PHEASANTS ON STATE WILDLIFE MANAGEMENT AREAS DESIGNATED BY THE FISH AND GAME COMMISSION AND TO PRESCRIBE A FEE FOR THE PERMIT.

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

SECTION 1. That Section 36-409, Idaho Code, be, and the same is hereby amended to read as follows:

36-409. GAME TAGS -- ARCHERY PERMITS -- FEES -- PENALTY. (a) Resident Game Tags. A resident who has obtained a permit to hunt, as provided in section 36-401, Idaho Code, or has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein shall be eligible to receive a resident game tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further, that the holder of a senior resident permit may be issued a bear, deer or elk tag without charge; provided further, that resident game tags may be issued only to those persons who meet residency requirements of subsection (r) of section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a hunting license, as provided in section 36-407(a), Idaho Code, or has obtained a license to hunt, as provided in section 36-406(e), Idaho Code, upon payment of the fees provided herein, shall be eligible to receive a nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear or turkey in accordance with the laws of this state and rules promulgated by the commission.

(c) Schedule of Game Tag Fees.

Game	Resident	Nonresident
Moose	\$60.00	\$900.00
Bighorn Sheep	60.00	900.00
Mountain Goat	60.00	900.00
Elk	15.00	325.00
Deer	9.00	225.00
Antelope	26.50	225.00
Mountain Lion	25.00	225.00
Bear	6.00	225.00
Turkey	6.00	35.00
Deer, Elk and Bear "Pak"	29.00	not applicable

(d) Game Tags Required -- To Be Endorsed on License. The appropriate tag must be had for the hunting or taking of each and every one (1) of the aforementioned wildlife. Provided, however, that the requirements for a mountain lion tag or a bear tag, as to different periods of time and areas of the state, shall be determined and specified by the commission. All of said tags are to bear and have serial numbers to be endorsed on the purchaser's license by the vendor at the time of sale.

(e) Game Tag to Be Validated and Attached to Carcass. As soon as any person kills any wildlife for which a tag is required, said tag, belonging to him, must be validated and attached to said wildlife in a manner provided by commission regulation.

(f) Archery Permits. In addition to meeting the license and tag requirements provided in this chapter, any persons participating in any controlled or general game season which has been specifically designated as an archery hunt must have in his possession an archery hunt permit which may be purchased at a fee of seven dollars and fifty cents (\$7.50).

(g) Muzzleloader Permit. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as a muzzleloader hunt must have in his possession a muzzleloader permit which may be purchased at a fee of seven dollars and fifty cents (\$7.50).

(h) Upland Game Bird Stamp. The commission may, under rules as it may prescribe, issue an upland game bird stamp that must be purchased by all persons over sixteen (16) years of age prior to hunting upland game birds, provided that a stamp shall not be required to hunt forest grouse (blue, ruffed or spruce), sharp-tailed grouse, sage grouse, or turkey. The fee for such a stamp shall be five dollars (\$5.00) and the proceeds from the sale of such stamps shall be utilized for the acquisition of state and federal lands or interests of less than fee simple in private lands and the development, management, improvement, sale or exchange of upland game bird habitat in accordance with Idaho fish and game commission order number 95-07. This subsection shall be null and void and of no force and effect on and after July 1, 2000.

(i) Hound Hunter Permit. Any person using a dog for the purpose of hunting or for taking, as defined in section 36-202, Idaho Code, big game or furbearing animals must have in his possession a valid hound hunter permit which may be purchased for a fee of ten dollars (\$10.00).

(j) Nonresident Bird of Prey Capture Permit. The commission may, under rules as it may prescribe, issue a nonresident bird of prey capture permit. This capture permit may be purchased by any licensed, nonresident falconer for capturing birds of prey in Idaho. The fee for the permit shall be one hundred dollars (\$100) and the permit shall be issued under the condition that the nonresident's home state allows reciprocal raptor capturing privileges for Idaho falconers. Any funds in excess of those required to issue and administer nonresident capture permits shall be used to issue and administer any resident falconry program established by the commission.

(k) Wildlife Management Area (WMA) Pheasant Permit. The commission may, under rules as it may prescribe, issue a wildlife management area pheasant permit that must be purchased by all persons over sixteen (16) years of age prior to hunting pheasants on state wildlife management areas designated by the commission. The fee for the permit shall be ten dollars (\$10.00).

Approved March 19, 1997.

CHAPTER 204
(S.B. No. 1150)

AN ACT

RELATING TO THE MANAGED CARE REFORM ACT; AMENDING THE HEADING FOR CHAPTER 39, TITLE 41, IDAHO CODE; AMENDING SECTION 41-3901, IDAHO CODE, TO PROVIDE A SHORT TITLE; AMENDING SECTION 41-3902, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; REPEALING SECTION 41-3903, IDAHO CODE; AMENDING CHAPTER 39, TITLE 41, IDAHO CODE, BY THE

ADDITION OF A NEW SECTION 41-3903, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING SECTION 41-3904, IDAHO CODE, TO REQUIRE A CERTIFICATE OF AUTHORITY TO OFFER A MANAGED CARE PLAN ON A PREDETERMINED AND PREPAID BASIS, TO PROVIDE SECTIONS OF THE CHAPTER APPLICABLE TO ENTITIES NOT REQUIRED TO OBTAIN A CERTIFICATE OF AUTHORITY, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-3905, IDAHO CODE, TO PROVIDE QUALIFICATIONS FOR A CERTIFICATE OF AUTHORITY TO TRANSACT MANAGED CARE PLANS ON A PREDETERMINED AND PREPAID BASIS, TO PROVIDE SURPLUS REQUIREMENTS TO OFFER A GENERAL MANAGED CARE PLAN AND A LIMITED CARE PLAN, TO PROVIDE A POINT OF SERVICE BENEFIT, TO PROVIDE TIME PERIODS FOR COMPLIANCE WITH FINANCIAL REQUIREMENTS, TO CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-3906, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE THAT NEW REQUIREMENTS, OTHER THAN FINANCIAL, MUST BE SATISFIED BY ORGANIZATIONS AUTHORIZED TO OFFER MANAGED CARE PLANS UNDER A CERTIFICATE OF AUTHORITY ISSUED PRIOR TO JULY 1, 1997, BY JANUARY 1, 1998; REPEALING SECTIONS 41-3907 AND 41-3908, IDAHO CODE; AMENDING SECTION 41-3909, IDAHO CODE, TO PROVIDE RECORD REQUIREMENTS FOR ALL MANAGED CARE ORGANIZATIONS; AMENDING SECTION 41-3910, IDAHO CODE, TO PROVIDE FOR REPORTS TO THE DIRECTOR BY AN ORGANIZATION OFFERING A MANAGED CARE PLAN FOR WHICH A CERTIFICATE OF AUTHORITY IS REQUIRED; AMENDING SECTION 41-3911, IDAHO CODE, TO PROVIDE FOR EXAMINATIONS BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE OF THE AFFAIRS AND OPERATIONS OF AN ORGANIZATION OFFERING A MANAGED CARE PLAN FOR WHICH A CERTIFICATE OF AUTHORITY IS REQUIRED AND TO PROVIDE CORRECT TERMINOLOGY; REPEALING SECTION 41-3912, IDAHO CODE; AMENDING CHAPTER 39, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3912, IDAHO CODE, TO PROVIDE FOR SUSPENSION OR REVOCATION OF A CERTIFICATE OF AUTHORITY AND TO PROVIDE A PENALTY; REPEALING SECTION 41-3913, IDAHO CODE; AMENDING SECTION 41-3914, IDAHO CODE, TO PROVIDE FOR ANNUAL DISCLOSURES TO ENROLLEES AND THE GENERAL PUBLIC, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE FOR SUBMISSION OF A COPY OF THE INFORMATION TO BE DISCLOSED TO THE DEPARTMENT OF INSURANCE; AMENDING SECTION 41-3915, IDAHO CODE, TO PROVIDE THE REQUIREMENTS FOR HEALTH CARE CONTRACTS DESCRIBING HEALTH CARE SERVICES OFFERED BY ANY MANAGED CARE ORGANIZATION, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE CORRECT REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-3916, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-3917, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE AND TO PROHIBIT CERTAIN WORDS IN THE NAME OF AN ORGANIZATION OFFERING A HEALTH CARE PLAN NOT QUALIFIED AS A MANAGED CARE PLAN; AMENDING SECTION 41-3918, IDAHO CODE, TO REQUIRE THAT EVERY MANAGED CARE ORGANIZATION ESTABLISH A GRIEVANCE SYSTEM FOR MEMBERS WHICH INCLUDES AN APPEALS PROCESS, TO PROVIDE FOR APPROVAL AND REVIEW OF SYSTEMS OF CERTAIN MANAGED CARE ORGANIZATIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-3919, IDAHO CODE, TO REQUIRE ANY MANAGED CARE ORGANIZATION TO PROVIDE AN OPEN ENROLLMENT PERIOD AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-3920, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-3921, IDAHO CODE, TO PROVIDE THAT THE PROVISIONS OF TITLE 41, IDAHO CODE, RELATING TO DISABILITY INSURERS SHALL APPLY TO AN ORGANIZATION OFFERING A MANAGED CARE

PLAN FOR WHICH A CERTIFICATE OF AUTHORITY IS REQUIRED, TO PROVIDE CORRECT TERMINOLOGY AND TO DELETE OBSOLETE LANGUAGE; REPEALING SECTIONS 41-3922, 41-3923, 41-3924, 41-3925, 41-3926, 41-3927, 41-3929, 41-3930, 41-3931 AND 41-3933, IDAHO CODE; AMENDING SECTION 41-3928, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE THAT AN ORGANIZATION OFFERING A MANAGED CARE PLAN REQUIRING A CERTIFICATE OF AUTHORITY SHALL BE SUBJECT TO PAYMENT OF THE PREMIUM TAX AS PROVIDED IN CHAPTER 4, TITLE 41, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE AND TO PROVIDE A PENALTY FOR A FAILURE TO FILE ANY DOCUMENTS REQUIRED TO BE FILED WITH THE DEPARTMENT UNDER THE CHAPTER; AMENDING SECTION 41-3932, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-3934, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, AND TO PROVIDE APPLICABILITY OF THE SECTION; AMENDING SECTION 41-3935, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE FOR APPLICABILITY OF THE SECTION AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-3936, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-3937, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO PROHIBIT CERTAIN PROVISIONS IN A PROVIDER CONTRACT WITH A MANAGED CARE ORGANIZATION, AND TO PROHIBIT A MANAGED CARE ORGANIZATION FROM REFUSING TO CONTRACT WITH OR COMPENSATE A PROVIDER FOR COMMUNICATING CERTAIN INFORMATION TO A PATIENT OR IN ANY WAY PENALIZING A PROVIDER FOR ADVOCATING ON BEHALF OF THE PATIENT; AMENDING CHAPTER 39, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3928, IDAHO CODE, TO PROHIBIT INCENTIVES TO WITHHOLD CARE; AMENDING SECTION 41-3937, IDAHO CODE, AS ADDED BY SECTION 9, CHAPTER 365, LAWS OF 1994, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 39, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3930, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR UTILIZATION MANAGEMENT PROGRAMS, TO SPECIFY PROCEDURES TO BE ADOPTED, TO PROHIBIT PRIOR AUTHORIZATION FOR EMERGENCY SERVICES AND TO PROVIDE TIME REQUIREMENTS FOR AUTHORIZATION OF NONEMERGENCY SERVICES, TO PROVIDE THAT APPROVAL OF A COVERED SERVICE WHICH HAS BEEN PROVIDED MAY NOT BE RESCINDED AND TO PROVIDE EXCEPTIONS; AMENDING CHAPTER 39, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3931, IDAHO CODE, TO REQUIRE EACH ORGANIZATION OFFERING A MANAGED CARE PLAN FOR WHICH A CERTIFICATE OF AUTHORITY IS REQUIRED TO BECOME A MEMBER OF A GUARANTY ASSOCIATION BY THE YEAR 2000; AMENDING CHAPTER 39, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3932, IDAHO CODE, TO PROVIDE EXEMPTIONS FROM APPLICATION OF THE CHAPTER; AND AMENDING SECTION 41-503, IDAHO CODE, TO INCLUDE WITHIN THE DEFINITION OF DISABILITY INSURANCE A MANAGED CARE PLAN FOR WHICH A CERTIFICATE OF AUTHORITY IS REQUIRED UNDER CHAPTER 39, TITLE 41, IDAHO CODE, AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That the heading for Chapter 39, Title 41, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 39
HEALTH-MAINTENANCE-ORGANIZATIONS
MANAGED CARE REFORM

SECTION 2. That Section 41-3901, Idaho Code, be, and the same is hereby amended to read as follows:

41-3901. SHORT TITLE. This act chapter may be cited as the Idaho "~~Health-Maintenance-Organization~~Managed Care Reform Act."

SECTION 3. That Section 41-3902, Idaho Code, be, and the same is hereby amended to read as follows:

41-3902. INTENT AND PURPOSE. As a guide to the interpretation and application of this act chapter, the public policy of this state is declared as follows: The legislature wishes to eliminate legal barriers to the establishment of ~~health-maintenance-organizations~~ managed care plans which provide readily available, accessible and quality ~~comprehensive~~ health care to their members and to encourage their development as an optional method of health care delivery. The state of Idaho must have reasonable assurance that ~~health-maintenance organizations~~ offering health managed care plans within this state are financially and administratively sound and responsive to the needs of their members, and that such organizations are, in fact, able to deliver the benefits which they offer.

SECTION 4. That Section 41-3903, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Chapter 39, 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 41-4903, Idaho Code, and to read as follows:

41-3903. DEFINITIONS. (1) "Basic health care services" means the following services: preventive care, emergency care, inpatient and outpatient hospital and physician care, diagnostic laboratory and diagnostic and therapeutic radiological services. It does not include mental health services or services for alcohol or drug abuse, dental or vision services or long-term rehabilitation treatment.

(2) "Coinsurance" means a percentage amount a member is responsible to pay out-of-pocket for health care services after satisfaction of any applicable deductibles or copayments, or both.

(3) "Copayment" means an amount a member must pay to a provider in payment for a specific health care service which is not fully prepaid.

(4) "Deductible" means the amount of expense a member must first incur before the managed care organization begins payment for covered services.

(5) "Director" means the director of the department of insurance of the state of Idaho.

(6) "Emergency facility" means any hospital or other facility where emergency services are provided to a member including, but not

limited to, a physician's office.

(7) "Emergency services" means those health care services that are provided in a hospital or other emergency facility after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity including, but not limited to, severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent person who possesses an average knowledge of health and medicine, to result in:

(a) Placing the patient's health in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of any bodily organ or part.

(8) "Employer" means any person, firm, corporation, partnership or association.

(9) "Enrollee" means a person who either individually or through a group has entered into a contract for services under a managed care plan.

(10) "General managed care plan" means a managed care plan which provides directly or arranges to provide, at a minimum, basic health care services. A general managed care plan shall include basic health care services.

(11) "Health care contract" means a contract entered into by a managed care organization and an enrollee.

(12) "Health care services" means those services offered or provided by health care facilities and health care providers relating to the prevention, cure or treatment of illness, injury or disease.

(13) "Limited managed care plan" means a managed care plan which provides dental care services, vision care services, mental health services, substance abuse services, pharmaceutical services, podiatric care services or such other services as the director may establish by rule to be limited health care services. Limited health care services shall not include hospital, medical, surgical or emergency services except as those services are provided incident to limited health care services.

(14) "Managed care organization" means a public or private person or organization which offers a managed care plan. Unless otherwise specifically stated, the provisions of this chapter shall apply to any person or organization offering a managed care plan, whether or not a certificate of authority to offer the plan is required under this chapter.

(15) "Managed care plan" means a contract of coverage given to an individual, family or group of covered individuals pursuant to which a member is entitled to receive a defined set of health care benefits through an organized system of health care providers in exchange for defined consideration and which requires the member to use, or creates financial incentives for the member to use, health care providers owned, managed, employed by or under contract with the managed care organization.

(16) "Member" means a policyholder, enrollee or other individual participating in a managed care plan.

(17) "Person" means any natural or artificial person including, but not limited to, individuals, partnerships, associations, corporations or other legally recognized entities.

(18) "Provider" means any physician, hospital, or other person

licensed or otherwise authorized to furnish health care services.

(19) "Utilization management program" means a system of reviewing the medical necessity, appropriateness, or quality of health care services and supplies provided under a managed care plan using specified guidelines. Such a system may include, but is not limited to, preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory procedures and retrospective review.

SECTION 6. That Section 41-3904, Idaho Code, be, and the same is hereby amended to read as follows:

41-3904. CERTIFICATE OF AUTHORITY REQUIRED -- EXCEPTIONS -- APPLICATION OF CERTAIN PROVISIONS. (1) No person shall in this state act or engage in business as, or hold itself out to be, or solicit or receive advance or periodic payments in connection with, a health maintenance organization offer a managed care plan on a predetermined and prepaid basis, unless then so authorized under a certificate of authority issued by the director pursuant to this act. A person offering a managed care plan on a predetermined and prepaid basis is deemed to be transacting the business of insurance.

(2) An proposed health maintenance organization proposing to offer a managed care plan on a predetermined and prepaid basis, after it has filed its application for a certificate of authority as provided in section 41-3906, Idaho Code, and while its application is pending, if permitted by and in accordance with regulations rules promulgated by the director, may inform potential enrollees the public concerning its proposed health maintenance care services.

(3) Entities not offering a managed care plan shall not be subject to the provisions of this chapter.

(4) An entity not required to obtain a certificate of authority which holds itself out to the public or markets itself as an organization rendering basic health care services to a specified population through a managed care plan shall be subject to and must comply with the following sections of this chapter but shall not be subject to regulation by the department: 41-3902; 41-3903; 41-3904; 41-3909(1) and (2); 41-3914(1) and (2); 41-3915(1), (2), (3), (4), (5), (6) and (8); 41-3916; 41-3917; 41-3918(1), (2) and (4); 41-3919(1) and (2); 41-3920; 41-3921(2), (3) and (4); 41-3922(2); 41-3926; 41-3927; 41-3928; 41-3929; 41-3930 and 41-3932, Idaho Code.

SECTION 7. That Section 41-3905, Idaho Code, be, and the same is hereby amended to read as follows:

41-3905. QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY. The director shall not issue or permit to remain in force a certificate of authority as to any health maintenance organization authorizing the transaction of managed care plans unless it the organization offering the managed care plan is qualified therefor as follows:

(1) It must be empowered to engage in business as a health maintenance managed care organization under its articles or certificate of incorporation, or of association, or partnership agreement, or other basic organizational document, as the case may be.

(2) It must be financially responsible, and have such funds and financial resources as may reasonably be expected to enable it to fulfill its obligations to its enrollees members. An applicant organization offering a general managed care plan must have immediately available for its use cash funds constituting a surplus of its assets over all its liabilities of not less than twenty-five thousand dollars (\$25,000); and as much more comply with the capital and surplus requirements of a disability insurer under the provisions of section 41-313, Idaho Code. The director shall determine the surplus required of an organization offering a limited managed care plan, which shall be not less than twenty-five thousand dollars (\$25,000) or such increased amount as the director may find reasonably necessary by the scope of the organization's proposed operations. As to financial resources of an organization offering a limited managed care plan the director may, among other relevant factors, also consider:

(a) Any agreements with an insurer, hospital or professional service corporation, governmental agency, or other responsible organization to underwrite, insure payment for or provide the proposed health-maintenance services;

(b) Agreements with providers for the provision of health-maintenance the proposed services; and

(c) Arrangements for liability insurance, or an adequate plan of self-insurance, as to claims for loss or injury arising out of health-maintenance managed care operations;

(d) Reinsurance agreements; and

(e) Deposit requirements under subsection (7) of this section.

(3) It must propose to provide basic health care services on a service predetermined and prepaid basis, rather than on an and indemnity basis, except as to benefits covering all or a portion of the cost of out-of-area services, out-of-network services and emergency services from time to time rendered enrollees while traveling outside the geographic area proposed to be served and served by the health maintenance organization. Such emergency service indemnities may reasonably be expected not to exceed, and generally do not exceed, in any one (1) calendar year an aggregate amount equal to ten per cent (10%) of gross prepayments received or expected to be received by the health maintenance organization during the same year. If the health maintenance organization does not exceed the ten per cent (10%) limitation imposed herein, it shall not be deemed to be an insurer as defined in section 41-103, Idaho Code. This provision shall not prohibit out-of-area indemnity coverage of any amount under insurance or benefits duly provided through the health maintenance organization to the enrollee by an insurer or hospital or professional service corporation authorized to transact such business in this state; provided, however, that except for care provided by primary care providers, who shall include at least those categories of providers listed in section 41-3915(2)(e), Idaho Code, a managed care organization may require a determination that a member needs care from a category of provider not listed in section 41-3915(2)(e), Idaho Code, before a member may access out-of-network nonemergency care from a provider not listed in section 41-3915(2)(e), Idaho Code.

(4) It must have the intent to render and capability for rendering or providing coverage for good quality health maintenance care

services, which will be and are readily available and accessible to enrollees members in each geographic area in which it proposes to operate or operates, and such services must be reasonably responsive to the needs of enrollees members.

(5) Its procedures for offering health maintenance care services, and for offering and terminating health maintenance care contracts, must be reasonable and equitable.

(6) It must propose to establish, and after authorization in fact establish and maintain, reasonable and adequate procedures to:

(a) Monitor the quality of health maintenance care provided, including a reasonable system of internal peer review of diagnosis and treatment of enrollees' members' health conditions;

(b) Resolve complaints and grievances of enrollees members, as required by section 41-3918, Idaho Code; and

(c) Provide enrollees members with an opportunity to participate in matters of policy and operation as required by section 41-3916, Idaho Code.

(7) It must comply with the deposit requirements of section 41-316 or 41-316A, Idaho Code, as applicable; provided however, that the amount of the deposit required of an organization offering a limited managed care plan shall be equal to the surplus required of the organization pursuant to subsection (2) of this section.

(8) Notwithstanding anything to the contrary in this chapter, the director may allow a period of up to three (3) years following the issuance of a certificate of authority to a managed care organization after the effective date of this act to comply with the capital, surplus and deposit requirements of this chapter. The director shall establish minimum initial amounts and minimum increases in capital, surplus and deposits for such certificate holder based upon the number of enrolled members in its managed care plans. If the certificate holder fails to meet the capital, surplus or deposit requirements within the time herein allowed, the organization shall no longer be authorized to offer managed care plans on a predetermined and prepaid basis in this state. If the organization fails to meet the minimum increases established by the director, the organization shall cease to market its plans upon notice from the director.

(9) Notwithstanding anything to the contrary in this chapter, a managed care organization holding a valid Idaho certificate of authority to transact insurance as a health maintenance organization on or before the effective date of this act may have up to three (3) years from and after that date within which to comply with the increases in capital, surplus and deposit requirements imposed by this act. The director shall establish minimum increases in capital, surplus and deposits for the certificate holder based upon the number of enrolled members in its managed care plans. If the certificate holder fails to meet the capital, surplus or deposit requirements within the time herein allowed, the organization shall no longer be authorized to offer managed care plans on a predetermined and prepaid basis in this state. If the organization fails to meet the minimum increases established by the director, the organization shall cease to market its plans upon notice from the director.

SECTION 8. That Section 41-3906, Idaho Code, be, and the same is

hereby amended to read as follows:

41-3906. APPLICATION FOR CERTIFICATE OF AUTHORITY. (1) ~~Any person believing itself to be qualified therefor may apply to the director for a certificate of authority as a health maintenance organization. Every health maintenance organization already in operation in this state on the effective date of this act shall apply for such a certificate of authority within sixty (60) days after such effective date, and may continue to operate until the director acts upon the application. If the application is denied, the applicant shall thenceforth be treated as a health maintenance organization whose certificate of authority has been revoked.~~

(2) The application for a certificate of authority shall be in writing in the form prescribed by the director. It shall be verified by an officer of an applicant corporation or association, or member of an applicant firm, or by the applicant if an individual. The application shall set forth or be accompanied by:

(a) a copy of the basic organizational document of the applicant, such as articles of incorporation or of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(b) a copy of the bylaws, rules and regulations, or similar document regulating conduct of the applicant's internal affairs;

(c) a listing of the names, addresses, principal occupations, and official positions of the individuals who are to be responsible for the conduct of applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

~~(d) if applicant is a foreign corporation, proof that it has complied with sections 30-1-106 through 30-1-120, Idaho Code, and any other applicable law;~~

~~(e) a copy of any contract made or to be made between the applicant and any provider, and the applicant and any person named in subsection (c) hereof;~~

~~(fe) a statement generally describing the health maintenance managed care organization, its health care plan or plans, facilities, and personnel;~~

~~(gf) a copy of each form of health maintenance care contract proposed to be issued;~~

~~(hg) financial statements showing the applicant's audited assets, liabilities, and sources and amount of financial support. A copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the director directs that additional or more recent financial information is required for proper administration of this act chapter;~~

~~(ih) a financial plan, which includes a three (3) year projection of initial operating results anticipated, and a statement as to the sources of working capital as well as any other source of funding;~~

~~(ji) a description of the proposed method of marketing the plan;~~

~~(kj) a statement of the geographic area or areas to be served;~~

(~~tk~~) a description of the complaint grievance procedures as required under section 41-3918, Idaho Code;

(~~ml~~) a description of the system and procedures for monitoring the quality of health care services as required by section 41-3905(6)(a), Idaho Code;

(~~nm~~) a description of the mechanism by which enrollees members will be given an opportunity to participate in matters of policy and operation as required by section 41-3916, Idaho Code;

(~~on~~) if the applicant is not domiciled in this state, a power of attorney duly executed by the applicant and irrevocably appointing the director and his successors in office as the applicant's attorney upon whom may be served all lawful process in any legal action or proceeding against the health-maintenance managed care organization on a cause of action arising in this state; and

(~~po~~) such other information as the director may reasonably require as to the applicant's qualifications as a health-maintenance managed care organization; and

(~~q~~) the fees required under section 41-3922, Idaho Code, for filing the application, and for issuance of the certificate of authority, if issued.

(2) Every organization authorized to offer a managed care plan under a certificate of authority issued prior to July 1, 1997, shall comply with any new or additional requirements, other than applicable capital, surplus and deposit requirements, imposed by this act by January 1, 1998. If the organization does not comply by January 1, 1998, the organization shall no longer be authorized to offer managed care plans on a predetermined and prepaid basis in this state.

SECTION 9. That Sections 41-3907 and 41-3908, Idaho Code, be, and the same are hereby repealed.

SECTION 10. That Section 41-3909, Idaho Code, be, and the same is hereby amended to read as follows:

41-3909. RECORDS. (1) ~~A health--maintenance~~ Every managed care organization shall establish and at all times maintain adequate records of its financial and business transactions, ~~together with a medical--records--system adequate to provide accurate documentation of health-maintenance care utilization by each enrollee. The--medical records--system, as a minimum, with respect to each enrollee receiving service, shall clearly:~~

(~~a~~) Identify the patient by name, age and sex;

(~~b~~) Indicate the services provided, when, where and by whom; and

(~~c~~) Indicate the diagnosis, treatment, and drug therapy employed.

(2) The health-maintenance managed care organization shall retain its general records with respect to a particular transaction for a period of not less than six seven (67) years after termination of the transaction, and medical health records shall be retained for a period of six seven (67) years after the termination of the enrollee's member's contract.

(3) The health--maintenance managed care organization shall make all records available to the review of the director or his examiner designee for review at all reasonable times upon the director's

request; provided, however, that the availability of medical health records shall be subject to any Idaho law limiting or defining such availability.

SECTION 11. That Section 41-3910, Idaho Code, be, and the same is hereby amended to read as follows:

41-3910. REPORTS TO THE DIRECTOR. (1) Every health--maintenance managed care organization offering a managed care plan for which a certificate of authority is required shall annually, on or before the first day of March, file a report with the director, ~~---verified---by---an appropriate officer of the organization,~~ showing its audited financial condition on the last day of the preceding December. The report shall be on forms prescribed by the director and shall be verified by an appropriate officer of the organization.

(2) Such report shall include:

- (a) A financial statement of the organization, including its balance sheet and statement of income and expenditures for the preceding year certified by an independent public accountant;
- (b) Any changes in the information submitted in connection with its application for certificate of authority;
- (c) Such other information as is available to the health-maintenance managed care organization relating to the operations of the organization as the director may require by rule and-regulation to enable him to carry out his duties under this act chapter.

SECTION 12. That Section 41-3911, Idaho Code, be, and the same is hereby amended to read as follows:

41-3911. EXAMINATIONS. (1) The director shall make an examination of the affairs and operations of any health--maintenance organization offering a managed care plan for which a certificate of authority is required as often as he deems necessary but not less frequently than once every three five (35) years.

(2) Every such organization shall upon the director's request submit its books and records relating to its affairs and operations to such examination and shall facilitate the examination.

(3) ~~Medical~~ Health records of individuals and records of physicians providers providing services under a contract to with the health-maintenance managed care organization shall not be subject to such examination, except as provided in section 41-3909(3), Idaho Code.

(4) The expenses of examination shall be borne by the organization being examined and remitted by it to the director upon submission of an itemized written statement thereof.

SECTION 13. That Section 41-3912, Idaho Code, be, and the same is hereby repealed.

SECTION 14. That Chapter 39, 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 41-3912, Idaho Code, and to read as follows:

41-3912. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY. The director may initiate proceedings to suspend or revoke a certificate of authority to offer a managed care plan for the reasons and in the manner provided in title 41, Idaho Code, for mutual insurers. In addition to any other penalties, the director may impose a penalty upon the managed care organization of up to fifteen thousand dollars (\$15,000) for each and every unlawful act committed.

SECTION 15. That Section 41-3913, Idaho Code, be, and the same is hereby repealed.

SECTION 16. That Section 41-3914, Idaho Code, be, and the same is hereby amended to read as follows:

41-3914. ANNUAL DISCLOSURES. (1) Every health-maintenance managed care organization shall provide to its enrollees and make available for inspection by the general public on an annual basis:

(a) an audited statement of audited financial condition including a balance sheet and a summary of receipts and disbursements;

(b) a description of the accessibility and availability of services, including where-and-how-to-obtain-them a list of the providers currently participating in the managed care plan and of the providers who are accepting new patients, the addresses of primary care physicians and participating hospitals and the specialty of each physician and category of the other participating providers;

(c) a statement as to whether the plan includes a limited formulary of medications, and a statement that the formulary will be made available to any prospective member or member upon request;

(d) a clear and understandable description of the health-maintenance managed care organization's method of resolving enrollee complaints member grievances;

(e) a description of how the qualifications of participating providers may be obtained;

(df) such other information as the director may by regulation rule prescribe.

(2) In addition to matters specified in subsection (1) above of this section, each health-maintenance managed care organization shall make available for public inspection by-its-enrollees-and-the-general public-on-an-annual-basis a description of the benefit package or packages available offered to each class of enrollees members and their rates. Such information shall be presented in clear, readable, and concise form and shall include, at a minimum, a description of all of the material elements required of health maintenance-service care contracts.

(3) A managed care organization for which a certificate of authority is required shall furnish a copy of the information required by this section to the department.

SECTION 17. That Section 41-3915, Idaho Code, be, and the same is hereby amended to read as follows:

41-3915. HEALTH MAINTENANCE CARE CONTRACTS. (1) Any-health-main-

~~tenance organization holding a certificate of authority under this act may enter into contracts to provide health maintenance services to enrollees in exchange for a prepaid per capita or prepaid aggregate fixed sum~~

~~(2) All forms of such health care contracts or other marketing documents purporting to describe the organization's describing health maintenance care services offered by any managed care organization shall contain:~~

~~(a) A complete description of the health maintenance care services and other benefits to which the enrollee member is entitled;~~

~~(b) The locations of all facilities A description of the accessibility and availability of services, including a list of the providers participating in the managed care plan and of the providers who are accepting new patients, the addresses of primary care physicians and participating hospitals, the hours of operation, and the services which are provided in specialty of each facility physician and category of the other participating providers. The information required by this subsection (1)(b) may be contained in a separate document and incorporated in the contract by reference and shall be amended from time to time as necessary to provide members with the most current information;~~

~~(c) The Any predetermined periodic and prepaid rate of payment for health maintenance care services and for other benefits, if any, and any services or benefits for which the enrollee member is obliged to pay, including member responsibility for deductibles, copayments, and coinsurance;~~

~~(d) All exclusions and limitations on services or other benefits including any copayment feature and all restrictions relating to pre-existing preexisting conditions;~~

~~(e) A statement as to whether the plan includes a limited formulary of medications and a statement that the formulary will be made available to any member on request;~~

~~(ef) All criteria by which an enrollee a member may be terminated or denied reenrollment;~~

~~(fg) Service priorities in case of epidemic, or other emergency conditions affecting demand for health maintenance care services;~~

~~(gh) A statement that subscribers or enrollees members shall not, under any circumstances, be liable, assessable and/or in any way subject to payment for the debts, liabilities, insolvency, impairment or any other financial obligations of the health maintenance managed care organization;~~

~~(i) Grievance procedures;~~

~~(j) Procedures for notifying enrollees of any change in benefits; and~~

~~(k) A description of all prior authorization review procedures for health care services.~~

~~(2) In addition to the requirements of subsection (1) of this section, an organization offering a general managed care plan shall:~~

~~(a) Establish procedures for members to select or change primary care providers;~~

~~(b) Establish procedures to notify members of the termination of their primary care provider and the manner in which the managed care organization will assist members in transferring to another~~

participating primary care provider;

(c) Establish referral procedures for specialty care and procedures for after-hours, out-of-network, out-of-area and emergency care;

(d) Allow members direct access to network obstetricians and gynecologists for maternity care, annual visits, and follow-up gynecological care for conditions diagnosed during maternity care or annual visits;

(e) Allow family practice and general practice physicians, general internists, pediatricians, obstetricians, and gynecologists to be included in the general managed care plan's listing of primary care providers.

(3) No health-maintenance managed care organization shall cancel the enrollment of an enrollee a member or refuse to transfer an enrollee a member from a group to an individual basis for reasons relating to age, sex, race, religion, occupation, or health status. However, nothing contained herein shall prevent termination of an enrollee a member who has violated any published policies of the organization, which have been approved by the director.

(4) No health-maintenance managed care organization shall contract with any provider under provisions which require an enrollee a member to guarantee payment, other than specified copayments, deductibles and coinsurance to such provider in the event of nonpayment by the health-maintenance managed care organization for any services rendered under contract directly or indirectly between the enrollee member and the health-maintenance managed care organization.

(5) No health care provider shall require a member to make additional payments for covered services under a health care contract, other than specified deductibles, copayments, or coinsurance once a provider has agreed to provide a covered service or has accepted a referral to provide a covered service.

(6) The rates charged by any health-maintenance managed care organization to its subscribers members shall not be excessive, inadequate, or unfairly discriminatory. The director may define by rule and regulation what constitutes excessive, inadequate or unfairly discriminatory rates and may require a description of the actuarial assumptions and analysis upon which such rates are based as well as whatever other information, available to the health-maintenance managed care organization, he deems necessary to determine that a rate or proposed rate meets the requirements of this subsection. If experience rating is a common health insurance practice in the area served by the health-maintenance managed care organization, it shall have the right to experience-rate its own contracts.

(67) No such contract form or amendment to an approved contract form shall be issued unless it has been filed with the director. The contract form or amendment shall become effective thirty (30) days after such filing unless specifically disapproved by the director. Any such disapproval shall be based on the requirements of section 41-3905, Idaho Code, or subsections (1), (2), (4), or (5) or (6) of this section.

(78) The director shall disapprove any contract which, with amendments, does not constitute the entire contractual obligation between the parties involved. No portion of the charter, by-laws

bylaws, or other constituent document of the health-maintenance managed care organization shall constitute part of such a contract unless set forth in full therein or incorporated by reference as authorized in this section.

SECTION 18. That Section 41-3916, Idaho Code, be, and the same is hereby amended to read as follows:

41-3916. ~~GOVERNING--BODY~~ ADVISORY PANELS. ~~(1)--The governing body of a health-maintenance organization may include providers, other individuals, or both;~~

~~(2)--The governing body~~ Every managed care organization shall establish a mechanism to provide enrollees members an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other reasonable mechanisms. As a minimum, such an advisory body panel shall be required to review and comment upon any proposed changes to: (a) the health-maintenance organization's managed care plan's grievance procedures, and (b) nongroup enrollee member benefit packages and prepayments, prior to implementation of such policy. The substance of such comments shall be distributed to the affected enrollees members at the time notification of such policy changes are made.

SECTION 19. That Section 41-3917, Idaho Code, be, and the same is hereby amended to read as follows:

41-3917. CERTAIN WORDS PROHIBITED IN NAME OF ORGANIZATION. ~~(1)--No health-maintenance organization shall use in its name, contracts, or literature any of the words, "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in the state.~~

~~(2) No person, entity or organization offering a health care plan not authorized~~ qualified as a health-maintenance organization managed care plan under the provisions of this act chapter shall use in its name, logo, contracts or literature the phrase, "health maintenance organization," "managed care organization," "general managed care organization" or "limited managed care organization" or the initials "HMO," "MCO," "GMCO," or "LMCO."

SECTION 20. That Section 41-3918, Idaho Code, be, and the same is hereby amended to read as follows:

41-3918. GRIEVANCE SYSTEM. (1) Every health-maintenance managed care organization shall establish a complaint grievance system which has been approved by the director to resolve complaints grievances initiated by enrollees members concerning health maintenance care services. The system shall provide reasonable procedures for the resolution of complaints grievances, and shall include an appeals process which affords the member the right to a prompt review by a grievance panel before whom the member has the right either to appear or be heard, or both. Each health-maintenance A managed care organization

offering a managed care plan for which a certificate of authority is required shall have its grievance system approved by the director and shall submit to the director an annual report in a form prescribed by the director which shall include:

(a) A description of the procedures of the complaint grievance system; and

(b) The total number of complaints grievances handled through the complaint grievance system and a compilation of causes underlying the complaints grievances filed.

(2) The health-maintenance Every managed care organization shall maintain records of complaints grievances filed with it concerning health maintenance care services and each managed care organization for which a certificate of authority is required shall submit to the director a summary report at such times and in such form as the director may require. Complaints Grievances involving other persons shall be referred to such persons with a copy to the director.

(3) The director may examine such-complaint a grievance system of a managed care organization for which a certificate of authority is required, subject to the limitations concerning medical health records of individuals set forth in section 41-3909(3), Idaho Code.

(4) Every health-maintenance managed care organization must show evidence that such grievance procedures have been reviewed and approved by the enrollee member representatives through their participation on the-governing-body-or-through-the-mechanism advisory panels as set forth in section 41-3916(2), Idaho Code.

SECTION 21. That Section 41-3919, Idaho Code, be, and the same is hereby amended to read as follows:

41-3919. OPEN ENROLLMENT. (1) Requirement of an open enrollment period is intended to provide the benefits of health--maintenance managed care to the general public or to all members of the class of persons the health-maintenance managed care organization serves. Such requirement is not intended to prohibit a health--maintenance managed care organization from establishing administrative procedures that protect the quality of service to its enrollees members or the financial condition of the organization. However, during periods of open enrollment the organization shall not establish any administrative procedure that arbitrarily and unreasonably restricts enrollment.

(2) After the initial twenty-four (24) months of operation a health-maintenance every managed care organization shall have an annual open enrollment period of at least one (1) month during which it accepts enrollees members, without restrictions up to the limits of its capacity except as provided in subsection (3) of this section, as determined by the health-maintenance managed care organization, in the order in which they apply for enrollment. Health-maintenance Managed care organizations organized to provide services exclusively to a specified group or groups of individuals may limit such open enrollment to all members of such group(s).

(3) A health-maintenance managed care organization may apply to the director for authorization to impose underwriting restrictions upon enrollment. The director shall, within thirty (30) days, approve the application if he determines that such restrictions will:

- (a) Preserve the financial stability of the health-maintenance managed care organization; or
- (b) Prevent excessive adverse selection of prospective enrollees, members; or
- (c) Avoid unreasonably high or unmarketable charges for enrollee member coverage for health maintenance care services.

If the application cannot be approved the director must deny it within the thirty (30) day period.

SECTION 22. That Section 41-3920, Idaho Code, be, and the same is hereby amended to read as follows:

41-3920. DISCRIMINATION AGAINST HEALTH PROFESSIONALS ASSOCIATED WITH HEALTH-MAINTENANCE MANAGED CARE ORGANIZATIONS. It shall be unlawful for any health service institution or associations of health professionals to exclude other health professionals from working privileges, membership, or association solely on the basis that such other person is employed by or contracts with a health-maintenance managed care organization pursuant to this act chapter.

SECTION 23. That Section 41-3921, Idaho Code, be, and the same is hereby amended to read as follows:

41-3921. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS.

(1) Except as stated in this act chapter, provisions of ~~the Insurance Code~~ title 41, Idaho Code, applicable to disability insurers, shall not be applicable to the lawful transactions and business of an health maintenance organization granted offering a managed care plan for which a certificate of authority as-authorized is required pursuant to this act chapter.

(2) With respect to all managed care organizations, ~~the~~ provisions of factually accurate information regarding coverage, rates, locations and hours of service, names of affiliated institutions, and credentials of participating providers by ~~a health-maintenance~~ the organization or its personnel to potential enrollees members shall not constitute a violation of any law relating to solicitation or advertising by health care professionals.

(3) ~~Any health-maintenance~~ All managed care organizations authorized under this act and professionals associated with it them shall be exempt from the provisions of section 30-1315, Idaho Code, prohibiting persons from simultaneously being shareholders of more than one (1) professional service organization.

(4) Any ~~health-maintenance managed care~~ organization authorized under this act which contracts with a health care facility or enters into arrangements with one (1) or more groups of physicians providers organized on a group practice or individual practice basis shall not by virtue of such contracts or arrangements be deemed to have entered into a "conspiracy in restraint of trade".

(5) ~~The provisions of this act shall not apply to any employer's self-insured health plan or service established and maintained solely for its members and their immediate families, or to any self-insured health plan or service established, maintained, and insured jointly by any employer and any labor organization or organizations if such~~

~~health plan or service has been in existence and operation for five (5) years immediately preceding the effective date of this act.~~

(6) Except as expressly and specifically stated in this act chapter, the provisions of chapter 34, title 41, Idaho Code, are not amended, repealed or otherwise affected by this act chapter.

SECTION 24. That Sections 41-3922, 41-3923, 41-3924, 41-3925, 41-3926, 41-3927, 41-3929, 41-3930, 41-3931 and 41-3933, Idaho Code, be, and the same are hereby repealed.

SECTION 25. That Section 41-3928, Idaho Code, be, and the same is hereby amended to read as follows:

41-3928. TAXATION AND ANNUAL REPORT -- PENALTY FOR FAILURE TO FILE. (1) Each health maintenance organization shall annually on or before the first day of March, file with the director a report in addition to the statement required under section 41-3910, Idaho Code, on forms as approved by the director, under oath, showing the number of subscribers, as defined under section 41-3903, Idaho Code, during the preceding year. A tax is hereby imposed upon each such health maintenance organization at the rate of four cents (4¢) per subscriber per month, such amount to be computed each month. The tax imposed hereby shall be due and payable by each health maintenance organization to the director annually on or before the first day of March of the succeeding year.

The tax imposed hereby shall be in lieu of and in place of the premium tax provided in section 41-402, Idaho Code, unless the health maintenance organization conducts other business under authority of title 41, Idaho Code, which would make the organization subject to such premium tax, and except as to the tax imposed hereby, and as to the fees provided for in section 41-3922, Idaho Code, the prepayment income, funds and assets of every nonprofit health maintenance organization are exempt from all state, county and municipal taxes, other than payroll taxes and taxes on real estate and office furniture and equipment.

The director shall transmit and account for all taxes received by him hereunder as provided in section 41-406, Idaho Code offering a managed care plan for which a certificate of authority is required under this chapter shall be subject to taxation as provided in chapter 4, title 41, Idaho Code.

(2) Any health maintenance managed care organization failing to render the annual report required under section 41-3910, Idaho Code, or to render the annual filing fee required under section 41-3922, Idaho Code, or to render the report or pay the tax required under subsection (1) of this section on or before the date due, or within any extension of time thereof, not to exceed thirty (30) days, which the director for good cause may have granted, file any documents required to be filed with the director by this chapter shall be liable to a fine of twenty-five dollars (\$25.00) for each additional day of delinquency, and the taxes shall be collected by distraint and recovered by an action to be instituted by the attorney general in the name of the state in any court of competent jurisdiction. As applicable, the director shall suspend or revoke the certificate of authority of the a

delinquent ~~health--maintenance~~ managed care organization until the statement document is filed and the ~~taxes-and~~ fine, if any, are is fully paid.

SECTION 26. That Section 41-3932, Idaho Code, be, and the same is hereby amended to read as follows:

41-39323. COVERAGE OF ADOPTED NEWBORN CHILDREN -- COVERAGE OF MATERNITY AND COMPLICATIONS OF PREGNANCY. (1) Any ~~health--maintenance organization~~ contract delivered or issued for delivery in this state by an organization offering a managed care plan for which a certificate of authority is required, which provides coverage for injury or sickness for newborn dependent children of the ~~subscribers--or--other~~ members of the covered group, shall provide such coverage for such newborn children and infants, including adopted newborn children that are placed with the adoptive ~~subscriber--or--other~~ member of the covered group within sixty (60) days of the adopted child's date of birth, from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive ~~subscriber--or--other~~ member of the covered group more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "child" means an individual who has not reached eighteen (18) years as of the date of the adoption or placement for adoption. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive ~~subscriber--or--other~~ member of the covered group, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive ~~subscriber--or--other~~ member of the covered group signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with a ~~subscriber--or--other~~ member of the covered group continues in the same manner as it would with respect to a naturally born child of the ~~subscriber--or--other~~ member of the covered group until the first to occur of the following events:

(a) Date the child is removed permanently from that placement and the legal obligation terminates; or

(b) The date the ~~subscriber--or--other~~ member of the covered group rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

(2) ~~A--health-maintenance~~ The managed care organization shall not restrict coverage under a health maintenance--organization care contract of any dependent child adopted by a ~~participant--or--beneficiary member~~, or placed with a participant--or--beneficiary member for adoption, solely on the basis of a preexisting condition of the child at the time the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the ~~participant--or--beneficiary member~~ is eligible for coverage under the plan.

(3) No ~~health maintenance--organization care~~ contract which pro-

vides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state ~~on or after January 1, 1977~~, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, copayments, or coinurance provisions as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the plan. If a fixed amount is specified in such plan for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the plan. Where the plan contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the plan.

Where a plan which provides or arranges direct health care services for its members contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from prenatal care and delivery. However, expenses resulting from any delivery in excess of the deductible amount shall be treated as expenses for any other illness under the plan. If the pregnancy is interrupted, the maternity deductible charged for prenatal care and delivery shall be based on the value of the medical services received, providing that it is never more than two-thirds (2/3) of the plan's maternity deductible.

This section shall apply to all health ~~maintenance--organization~~ care contracts except any group health ~~maintenance--organization care~~ contracts made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All health ~~maintenance---organization~~ care contracts subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such plan which is in conflict with this section shall be of no force or effect.

SECTION 27. That Section 41-3934, Idaho Code, be, and the same is hereby amended to read as follows:

41-3934. LIMITATION OF BENEFITS FOR ELECTIVE ABORTIONS. All ~~health-maintenance-organization~~ policies, contracts, plans or certificates delivered, issued for delivery or renewed in this state ~~after the effective date of this section~~ by an organization offering a managed care plan for which a certificate of authority is required shall exclude coverage for elective abortions. Such exclusion may be waived by endorsement and the payment of a premium therefor. Availability of such coverage shall be at the option of the contractor. For purposes of this section, an "elective abortion" means an abortion for any reason other than to preserve the life of the female upon whom the abor-

tion is performed.

SECTION 28. That Section 41-3935, Idaho Code, be, and the same is hereby amended to read as follows:

41-39325. SERVICES PROVIDED BY GOVERNMENTAL ENTITIES. (1) From and after July 1, 1990, no ~~health-maintenance-organization~~ contract shall be issued in Idaho by an organization offering a managed care plan for which a certificate of authority is required which excludes from coverage services rendered the subscriber member while a resident in an Idaho state institution, provided the services to the subscriber member would be covered by the contract if rendered to him outside an Idaho state institution.

(2) From and after July 1, 1990, no ~~health-maintenance--organiza-tion~~ contract issued by an organization offering a managed care plan for which a certificate of authority is required may contain any provision denying or reducing benefits otherwise provided under the policy for the reason that the person insured is receiving health or mental health care or developmental services provided by the department of health and welfare, whether or not the department of health and welfare bases its charges for such services on the recipient's ability to pay. Provided, nothing in this section shall prevent the issuance of a contract which excludes or reduces benefits where the charge level or amount of the charge levied by a governmental entity for such services would vary or be affected in any way by the existence of coverage under a ~~health-maintenance--organization--contract~~ the managed care plan.

SECTION 29. That Section 41-3936, Idaho Code, be, and the same is hereby amended to read as follows:

41-39326. MAMMOGRAPHY COVERAGE. (1) From and after July 1, 1992, all ~~health-maintenance-organization~~ policies, contracts, plans or certificates issued by an organization offering a managed care plan which provide coverage for the surgical procedure known as a mastectomy which are delivered, issued for delivery, continued or renewed in this state shall provide minimum mammography examination or equivalent examination coverage. Such coverage shall include at least the following benefits:

- (a) One (1) baseline mammogram for any woman who is thirty-five (35) through thirty-nine (39) years of age.
- (b) A mammogram every two (2) years for any woman who is forty (40) through forty-nine (49) years of age, or more frequently if recommended by the woman's physician.
- (c) A mammogram every year for any woman who is fifty (50) years of age or older.
- (d) A mammogram for any woman desiring a mammogram for medical cause.

Such coverage shall not exceed the cost of the examination.

(2) As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons as determined by a licensed physician.

(3) Nothing in this section shall apply to specified accident,

specified disease, hospital indemnity, medicare supplement, long-term care or other limited benefit health insurance policies.

SECTION 30. That Section 41-3937, Idaho Code, be, and the same is hereby amended to read as follows:

41-3937. HEALTH CARE PROVIDERS -- PARTICIPATION BY ANY QUALIFIED, WILLING PROVIDER -- CONTRACTS -- GRIEVANCE PROCEDURE. (1) Any managed care organization issuing benefits pursuant to the provisions of this chapter shall be ready and willing at all times to enter into care provider service agreements with all qualified providers of the category or categories which are necessary to provide the health care services covered by an organization if the health care providers: are qualified under the laws of the state of Idaho, desire to become participant providers of the organization, meet the requirements of the organization, and practice within the general area served by the organization.

(2) Nothing in this section shall preclude an organization from refusing to contract with a provider who is unqualified or who does not meet the terms and conditions of the organization's participating provider contract or from terminating or refusing to renew the contract of a health care provider who is unqualified or who does not comply with, or who refuses to comply with, the terms and conditions of the participating provider contract including, but not limited to, practice standards and quality requirements. The contract shall provide for written notice to the participating health care provider setting forth any breach of contract for which the organization proposes that the contract be terminated or not renewed and shall provide for a reasonable period of time for the participating health care provider to cure such breach prior to termination or nonrenewal. If the breach has not been cured within such period of time the contract may be terminated or not renewed. Provided however, that if the breach of contract for which the organization proposes that the contract be terminated or not renewed is a willful breach, fraud or a breach which poses an immediate danger to the public health or safety, the contract may be terminated or not renewed immediately.

(3) Every managed care organization issuing benefits pursuant to this chapter shall establish a grievance system for providers. Such grievance system shall provide for arbitration according to chapter 9, title 7, Idaho Code, or for such other system which provides reasonable due process provisions for the resolution of grievances and the protection of the rights of the parties.

(4) No managed care organization may require as an element of any provider contract that any person agree:

(a) To deny a member access to services not covered by the managed care plan if the member is informed that he will be responsible to pay for the noncovered services and the member nonetheless desires to obtain such services;

(b) To refrain from treating a member even at that member's request and expense if the provider had been, but is no longer, a contracting provider under the managed care plan and the provider has notified the member that the provider is no longer a contracting provider under the managed care plan.

(5) A managed care organization shall not refuse to contract with or compensate for covered services an otherwise eligible provider or nonparticipating provider solely because the provider has in good faith communicated with one (1) or more current, former, or prospective patient regarding the provisions, terms or requirements of the organization's products as they relate to the needs of the provider's patients.

(6) As part of a provider contract, a managed care organization may require a provider to indemnify and hold harmless the managed care organization under certain circumstances so long as the managed care organization also agrees to indemnify and hold harmless the provider under comparable circumstances.

(7) On request and within a reasonable time, a managed care organization shall make available to any party to a provider contract any documents referred to or adopted by reference in the contract except for information which is proprietary or a trade secret or confidential personnel records.

(8) A managed care organization shall permit a contracting provider who is practicing in conformity with community standards to advocate for his patient without being subject to termination or penalty for the sole reason of such advocacy.

(9) Subsections (1) and (2) of this section shall apply to provider participation contracts entered into after July 1, 1994.

SECTION 31. That Chapter 39, 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 41-3928, Idaho Code, and to read as follows:

41-3928. INCENTIVES TO WITHHOLD CARE PROHIBITED. (1) No managed care organization shall offer a provider and no contract between a managed care organization and a provider shall contain any incentive plan that includes a specific payment made, in any type or form, to the provider as an inducement to deny, reduce, limit, or delay specific, medically necessary, and appropriate services covered by the health care contract and provided with respect to a specific member or group of members with similar medical conditions.

(2) Nothing in this section shall be construed to prohibit contracts that contain incentive plans that involve general payments such as capitation payments or shared risk agreements that are not tied to specific medical decisions involving specific members or groups of members with similar medical conditions.

SECTION 32. That Section 41-3937, Idaho Code, as added by Section 9, Chapter 365, Laws of 1994, be, and the same is hereby amended to read as follows:

41-3937~~29~~. HEALTH INSURANCE COVERAGE FOR DEPENDENT CHILDREN. (1) Where a person is required by a court or administrative order to provide health insurance coverage for a dependent child, that person is eligible for family health coverage through-a-health-maintenance-organization under a managed care plan, 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, except as provided in subsection (13) of 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 health maintenance managed care organization by certified mail, return receipt requested. The notice shall require the health-maintenance managed care organization to enroll the child in the health-insurance managed care 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 health-maintenance managed care organization 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 health-maintenance managed care organization 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 health-maintenance managed care organization 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 managed care plan; or

(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 health--maintenance managed care organization, 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;

(d) The health-maintenance managed care organization 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 wel-

fare 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 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 this 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 amount of the premium shall be withheld 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 managed care organization.

(9) If the coverage is terminated or amended, the health-maintenance managed care organization 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) The provisions of 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) A health-maintenance managed care organization shall not deny enrollment of a child under the health coverage of the child's parent for the reason that:

- (a) The child was born out of wedlock; or

(b) The child is not claimed as a dependent on the parent's federal income tax return; or

(c) The child does not reside with the parent or in the health maintenance managed care organization's service area.

(13) In any case in which a parent is required by a court or administrative order to provide health insurance coverage for a child and the parent is eligible for family health coverage ~~through a health maintenance organization under a managed care plan~~, the health maintenance managed care organization shall permit such parent, the other parent of the child, or the department of health and welfare to enroll under such family coverage, as specified under section 32-1216, Idaho Code, any such child who is otherwise eligible for such coverage without regard to any enrollment season restrictions. The health maintenance managed care organization shall not disenroll or eliminate coverage of such a child unless the health maintenance managed care organization is provided with satisfactory evidence that:

(a) Such court or administrative order is no longer in effect; or

(b) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment; or

(c) The employer has eliminated family health coverage for all of its employees.

(14) A health maintenance managed care organization shall not impose requirements on a state agency, which has been assigned the rights of an individual eligible for medical assistance and covered ~~for health benefits from the health maintenance organization under the organization's managed care plan~~, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(15) A health maintenance managed care organization, in any case in which a ~~the noncustodial parent of the child has health coverage through the health maintenance organization of a noncustodial parent under the organization's managed care plan~~ shall:

(a) Provide such information to a custodial parent or the department of health and welfare as may be necessary for the child to obtain benefits through such coverage;

(b) Permit the custodial parent, provider or the department of health and welfare to submit claims for covered services without the approval of the noncustodial parent; and

(c) Make payment on claims submitted by the custodial parent, the provider or the department of health and welfare directly to the party submitting the claim.

(16) (a) A health maintenance managed care organization may not consider the availability or eligibility for medical assistance in this or any other state under 42 U.S.C. section 1396a, (Section 1902 of the Social Security Act) herein referred to as medicaid, when considering eligibility for coverage or making payments under its plan for eligible ~~enrollees; subscribers~~ members, policyholders or certificate holders.

(b) To the extent that payment for covered expenses has been made under the state medicaid program for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the department of health and welfare is subrogated to the rights of the individual to payment

by any other party for those health care items or services.

(17) The insurer managed care organization may disenroll for non-payment of premium or dues, fraud, misrepresentation, or for failure to comply with minimum participation requirements.

SECTION 33. That Chapter 39, 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 41-3930, Idaho Code, and to read as follows:

41-3930. UTILIZATION MANAGEMENT PROGRAM REQUIREMENTS. (1) All managed care organizations performing utilization management or contracting with third parties for the performance of utilization management shall:

(a) Adopt utilization management criteria based on sound patient care and scientific principles developed in cooperation with licensed physicians and other providers as deemed appropriate by the managed care organization. Such criteria shall be sufficiently flexible to allow deviations from norms when justified on a case-by-case basis;

(b) Adopt procedures for a timely review by a licensed physician, peer provider or peer review panel when a claim has been denied as not medically necessary or as experimental. The procedure shall provide for a written statement of the reasons the service was denied and transmittal of that information to the appropriate provider for inclusion in the member's permanent medical record;

(c) Upon enrollment, require members to provide written authorization for the release of medical information to the managed care organization;

(d) Adopt procedures which protect the confidentiality of patient health records. Such procedures may permit a managed care organization to record a telephone conversation in the course of requesting patient medical information only if it complies with existing state and federal laws and the other party to the conversation is notified by voice message that he is being recorded. Upon written request and within a reasonable time, a copy of such recordings shall be provided to the other party to the conversation if the recorded conversation becomes an issue in a formal grievance procedure, and the other party agrees to reimburse the managed care organization for reasonable costs associated with providing the requested copy.

(2) If emergency services are offered, no managed care organization shall require prior authorization for emergency services. In addition, a managed care organization shall respond to member or provider requests for prior authorization of a nonemergency service within two (2) business days after complete member medical information is provided to the managed care organization unless exceptional circumstances warrant a longer period to evaluate a request. Qualified medical personnel shall be available during normal business hours for telephone responses to inquiries about medical necessity, including certification of continued length of stay.

(3) When prior approval for a covered service is required of and obtained by or on behalf of a member, the approval shall be final and

may not be rescinded by the managed care organization after the covered service has been provided except in cases of fraud, misrepresentation, nonpayment of premium, exhaustion of benefits or if the member for whom the prior approval was granted is not enrolled at the time the covered service was provided.

SECTION 34. That Chapter 39, 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 41-3931, Idaho Code, and to read as follows:

41-3931. PARTICIPATION IN GUARANTY ASSOCIATION BY THE YEAR 2000. (1) By the conclusion of the year 2000, each organization offering a managed care plan for which a certificate of authority is required under this chapter shall, as a condition of its authority to continue to offer managed care plans in this state, become a member of a guaranty association having as its purpose the protection of all members of the managed care organization in this state against failure by the organization in the performance of its obligations due to impairment or insolvency.

(2) The director may take such actions and promulgate such rules as may be necessary to effectuate the provisions of this section.

SECTION 35. That Chapter 39, 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 41-3932, Idaho Code, and to read as follows:

41-3932. EXEMPTIONS FROM APPLICATION OF CHAPTER. This chapter shall not apply to managed care programs operated under contract with the federal government under title XVIII of the federal social security act, as amended (medicare), or under contract with a plan otherwise exempt from operation of this chapter pursuant to the employee retirement income security act of 1974, as amended (ERISA). This chapter shall not apply to programs administered by the department of health and welfare under contract with the department of health and welfare under title XIX of the federal social security act, as amended (medicaid).

SECTION 36. That Section 41-503, Idaho Code, be, and the same is hereby amended to read as follows:

41-503. "DISABILITY INSURANCE" DEFINED. (1) "Disability insurance" is includes:

(a) Insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Disability insurance does not include ~~workmen's~~ worker's compensation coverages; and

(b) A managed care plan for which a certificate of authority is required pursuant to chapter 39, title 41, Idaho Code.

Approved March 19, 1997.

CHAPTER 205
(S.B. No. 1151)

AN ACT

RELATING TO FILING NOTICES OF LIENS; AMENDING TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 19, TITLE 45, IDAHO CODE, TO ADOPT A COORDINATED STATE SYSTEM OF FILING LIENS, STATING PURPOSE AND SCOPE, DEFINING TERMS, PROVIDING CREATION OF LIEN AND ATTACHMENT, PROVIDING NOTICE OF LIEN, CONTENT AND DELIVERY, PROVIDING EFFECT OF NOTICE AND PRIORITY, PROVIDING DURATION OF NOTICE, LAPSE AND CONTINUATION, PROVIDING AMENDMENT OF NOTICE OF LIEN, PROVIDING THE DUTY OF THE FILING AGENCY TO RELEASE UPON SATISFACTION, PROVIDING DUTIES OF THE SECRETARY OF STATE, AND PROVIDING THE EFFECTIVE DATE AND TRANSITION; AMENDING SECTION 56-218, IDAHO CODE, TO PROVIDE THAT NOTICE OF LIENS FOR RECOVERY OF CERTAIN MEDICAL ASSISTANCE SHALL BE FILED WITH THE SECRETARY OF STATE; AMENDING SECTION 56-218A, IDAHO CODE, TO GOVERN PROCEDURE FOR NOTICE OF LIENS FILED DURING THE LIFE OF THE RECIPIENT; AMENDING SECTION 63-3051, IDAHO CODE, TO SPECIFY THE FORM AND MANNER OF FILING NOTICE OF LIEN FOR TAXES; REPEALING SECTIONS 63-3053 AND 63-3054, IDAHO CODE; AMENDING SECTION 72-1360, IDAHO CODE, TO PROVIDE MANNER OF FILING NOTICE OF LIENS FOR WORKER'S COMPENSATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1360A, IDAHO CODE, TO PROVIDE FOR COLLECTION OF LIEN AMOUNTS; AMENDING SECTION 72-1369, IDAHO CODE, TO GOVERN THE METHOD OF COLLECTION AND WAIVER OF OVERPAYMENTS; PROVIDING EFFECTIVE DATES FOR SECTIONS 2 THROUGH 8; AND PROVIDING CONDITIONS GOVERNING THE IMPLEMENTATION OF THE PROVISIONS OF THIS ACT.

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 19, Title 45, Idaho Code, and to read as follows:

CHAPTER 19
STATE LIENS

45-1901. PURPOSE AND SCOPE. (1) The purpose of this chapter is to provide a system for filing notices of liens in favor of or enforced by the state of Idaho with the office of the secretary of state.

(2) The scope of this chapter is limited to liens in the real and personal property of:

(a) Taxpayers or other persons against whom the state tax commission has liens pursuant to title 63, Idaho Code, for unpaid per-

sonal or corporation income tax, sales tax, employee withholding taxes, fuel tax, or any other amounts due under statutes administered by the commission, plus interest, penalties and additional amounts;

(b) Persons against whom the department of labor has liens pursuant to chapter 13, title 72, Idaho Code, for unpaid employment security contributions, plus interest and penalties;

(c) Persons liable for overpayment of benefits against whom the department of labor has liens pursuant to chapter 13, title 72, Idaho Code, for overpayment of benefits, plus interest;

(d) Individuals who are subject to liens for child support delinquency pursuant to chapter 12, title 7, Idaho Code; and

(e) Individuals who are subject to liens pursuant to chapter 2, title 56, Idaho Code, for medical assistance, or the estates of such individuals.

45-1902. DEFINITIONS. (1) "Debtor" means a taxpayer or other person against whom there is a final unpaid tax assessment collectible by the state tax commission, a person against whom the department of labor has a lien for unpaid contributions or overpayment of benefits, an individual who is subject to a lien for child support delinquency, or an individual who is subject to a lien for medical assistance.

(2) "Delivered" means transmission to and receipt by the secretary of state of a notice of lien or other notice in any medium to which the filing agency and the secretary of state have agreed.

(3) "Filing agency" means the state tax commission, the department of labor or the department of health and welfare.

(4) "Person" means an individual, organization or legal entity.

45-1903. CREATION OF LIEN -- ATTACHMENT. Creation and attachment of liens for which notices are filed pursuant to this chapter are governed by the provisions of title 63, chapter 13 of title 72, chapter 12 of title 7, and chapter 2 of title 56, Idaho Code.

45-1904. NOTICE OF LIEN -- CONTENT -- DELIVERY. (1) The notice of lien shall include:

(a) The name and last known address of the debtor;

(b) The name and address of the filing agency;

(c) The basis for the lien, including, but not limited to, income tax, sales tax, employment security contributions, payments in lieu of contributions, overpayment of benefits, a child support delinquency or medical assistance;

(d) Such other information as may be required by the relevant provisions under which the lien was created and attached, or as may be agreed by the filing agency and the secretary of state.

(2) The notice of lien will be delivered to and receipt will be acknowledged by the secretary of state in a medium and format to which the filing agency and the secretary of state have agreed.

(3) Each notice of lien shall be authenticated by the filing agency in a manner to which the filing agency and the secretary of state have agreed.

(4) A notice of lien is filed when it complies with subsection (1) of this section and has been delivered to and receipt acknowledged

by the secretary of state.

45-1905. EFFECT OF NOTICE -- PRIORITY. (1) When a notice of lien is filed, the state lien is perfected in all of the existing and after-acquired property of the debtor, both real and personal, tangible and intangible, to which the lien attaches pursuant to the relevant provisions of title 63, chapter 13 of title 72, chapter 12 of title 7, or chapter 2 of title 56, Idaho Code.

(2) As to personal property, the perfected lien shall have the same priority as a security interest which becomes perfected under chapter 9, title 28, Idaho Code, at the same time the notice of lien is filed.

(3) As to real property, the perfected lien shall have the same priority as a mortgage which is recorded at the same time the notice of lien is filed.

(4) Nothing herein limits the authority of the state tax commission to subordinate its lien to another lien in the manner provided by section 63-3055, Idaho Code.

45-1906. DURATION OF NOTICE -- LAPSE -- CONTINUATION. (1) Except as provided in subsection (2) of this section, a notice of lien is effective for a period of five (5) years from the date of filing, unless sooner released by the filing agency. Effectiveness of the notice of lien lapses on the expiration of the five (5) year period unless a notice of continuation is filed prior to the lapse.

(2) A notice of lien for child support delinquency is effective until a notice of release of lien is filed by the department of health and welfare.

(3) Upon release or lapse of the notice's effectiveness, the state lien becomes unperfected. In that case, the lien is deemed to have been unperfected as against a person who became a purchaser or lien creditor before the release or lapse.

(4) Except as to notices of lien filed pursuant to subsection (2) of this section, a notice of continuation of effectiveness of the notice of lien may be filed by the filing agency within six (6) months prior to the expiration of the five (5) year period specified in subsection (1) of this section. The notice of continuation will be delivered to and receipt acknowledged by the secretary of state in a medium and format to which the filing agency and the secretary of state have agreed, and shall be authenticated by the filing agency in a manner to which the filing agency and the secretary of state have agreed. Upon filing of the notice of continuation, the effectiveness of the original notice of lien is continued for five (5) years after the last date to which the notice of lien was effective, whereupon it lapses unless another notice of continuation is filed prior to such lapse.

45-1907. AMENDMENT OF NOTICE OF LIEN. (1) The filing agency may amend a notice of lien in any respect by filing a notice of amendment with the secretary of state.

(2) The notice of amendment shall identify the notice of lien to which it relates, and it shall include such information and be in such medium and format as agreed by the filing agency and the secretary of

state.

(3) The requirements for delivery, acknowledgment of receipt and authentication of a notice of amendment shall be the same as those prescribed for a notice of lien in section 45-1904, Idaho Code.

(4) The filing of a notice of amendment does not extend the period of effectiveness of the notice of lien to which it relates.

45-1908. DUTY OF FILING AGENCY TO RELEASE UPON SATISFACTION. (1) Except as to a state lien for child support delinquency, when a state lien has been satisfied, the filing agency shall, within thirty (30) days after satisfaction, file with the secretary of state a notice of release of lien.

(2) As to a state lien for child support delinquency, the department of health and welfare shall file a notice of release of lien within thirty (30) days after:

(a) The delinquency has been satisfied; or

(b) The underlying lien is no longer valid.

(3) The notice of release will be delivered to and receipt acknowledged by the secretary of state in a medium and format to which the filing agency and the secretary of state have agreed, and shall be authenticated by the filing agency in a manner to which the filing agency and the secretary of state have agreed.

45-1909. DUTIES OF SECRETARY OF STATE. (1) The secretary of state shall maintain notices of state lien in his information management system in a form that permits them to be reduced to written form.

(2) The secretary of state will provide information concerning state liens on the same conditions and in the same form as he provides information on financing statements pursuant to subsections (2) and (7) of section 28-9-407, Idaho Code.

(3) The secretary of state will compile and publish a list of all effective notices of state lien which the filing agencies have identified as pertaining to debtors who are agricultural producers. The list will be published on the same schedule and conditions as the list of liens in farm crops which is published pursuant to section 45-312, Idaho Code. The list of notices of state lien may be appended to the list of liens in farm crops, and no fee shall be charged in addition to the fee for the list of liens in farm crops. Failure of a filing agency to identify a debtor as an agricultural producer shall not adversely affect perfection of a state lien for any purpose.

45-1910. EFFECTIVE DATE AND TRANSITION. (1) This chapter shall be in full force and effect for all notices of state lien which are filed on or after July 1, 1998.

(2) Except for notices of state lien for child support delinquency, the transition period for filing notices of state lien shall begin on January 1, 1998, and end on June 30, 1998. The following conditions shall apply to notices which were filed or recorded before January 1, 1998, and to notices filed during the transition period:

(a) A notice of state lien which was recorded with a county recorder between January 1, 1993, and June 30, 1993, shall lapse on the fifth anniversary of the recording date, unless the filing agency records a notice of renewal with the recorder prior to the

lapse and files a notice of transition and continuation with the secretary of state before July 1, 1998. A notice of transition and continuation shall include all of the information required by section 45-1904, Idaho Code, the date of the recording of the original notice with the county recorder, and a statement that the effectiveness of the notice is to be continued for another five (5) year period. In the event the filing agency files a notice of transition and continuation, the effectiveness of the notice of state lien shall lapse on the tenth anniversary of the original recording date, unless the filing agency files a further notice of continuation as required by section 45-1906(4), Idaho Code.

(b) A notice of state lien which was recorded with a county recorder between July 1, 1993, and December 31, 1997, will remain effective beyond June 30, 1998, only if a filing agency files a notice of transition with the secretary of state during the transition period. A notice of transition shall include all of the information required by section 45-1904, Idaho Code, and the date of the recording of the original notice with the county recorder. After a notice of transition has been filed, the effectiveness of the notice of state lien shall lapse on the fifth anniversary of the date of the recording with the county recorder, unless the filing agency files a notice of continuation as required by section 45-1906(4), Idaho Code.

(c) A notice of state lien which is first filed during the transition period shall be fully effective during the transition period only if the filing agency has filed a notice with the secretary of state and recorded a notice with the appropriate county recorder. A notice of state lien which is filed with the secretary of state during the transition period, and which is not recorded with the county recorder, shall be fully effective on and after July 1, 1998, and shall be effective before that date against any party with actual notice after the date of filing. A notice of state lien which is recorded with a county recorder during the transition period, but not filed with the secretary of state, shall be fully effective through June 30, 1998. A notice of state lien first filed during the transition period shall lapse on the fifth anniversary of the date of filing with the secretary of state, unless the filing agency files a notice of continuation as required by section 45-1906(4), Idaho Code.

(3) The effectiveness of a notice of state lien for child support delinquency which was recorded with a county recorder shall lapse on July 1, 1998, unless a notice of transition is filed with the secretary of state on or before July 1, 1998. If a notice of transition is filed, the notice of state lien will remain effective until a notice of release is filed pursuant to section 45-1908(2), Idaho Code.

(4) Notwithstanding the provisions of section 45-1905, Idaho Code, a state lien which was perfected under a prior law and transitioned to perfection under this chapter without a break in perfection, shall have priority as if it had been filed under this chapter on the date of its original perfection under the prior law.

SECTION 2. That Section 56-218, Idaho Code, be, and the same is hereby amended to read as follows:

56-218. RECOVERY OF CERTAIN MEDICAL ASSISTANCE. (1) Except where exempted or waived in accordance with federal law medical assistance pursuant to this chapter paid on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance may be recovered from the estate, or if there be no estate the estate of the surviving spouse, if any, shall be charged for such aid paid to either or both; provided, however, that claim for such medical assistance correctly paid to the individual may be established against the estate, but there shall be no adjustment or recovery thereof until after the death of the surviving spouse, if any, and only at a time when the individual has no surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c. Transfers of real or personal property by recipients of such aid without adequate consideration are voidable and may be set aside by an action in the district court.

(2) Except where there is a surviving spouse, or a surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c, the amount of any medical assistance paid under this chapter on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance is a claim against the estate in any guardianship or conservatorship proceedings and may be paid from the estate.

(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

(4) For purposes of this section, the term "estate" shall include:

(a) All real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; and

(b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

(5) Claims made pursuant to this section shall be classified and paid as a debt with preference as defined in section 15-3-805(5), Idaho Code.

(6) The department may file a notice of lien against the property of any estate subject to a claim under this section. In order to perfect a lien against real or personal property, the department shall, within ninety (90) days after the department is notified in writing of the death of the individual for whom medical assistance was paid under this chapter, file the a notice of lien in the same general form and manner as provided in section 56-218A(3)(a), Idaho Code, in the office of the recorder of the county in which the property of the estate is located. ~~The lien shall be recorded, indexed, and extended in the manner provided in sections 56-218A(3)(a) and 56-218A(5), Idaho Code. In order to perfect a security interest in personal property, the department shall, within ninety (90) days after the department is notified~~

~~in writing of the death of the individual for whom medical assistance was paid under this chapter, file the security interest in accordance with chapter 9, title 28~~ secretary of state, pursuant to section 45-1904, Idaho Code. Failure to file a notice of lien or a security interest does not affect the validity of claims made pursuant to this section.

(7) The director shall promulgate rules reasonably necessary to implement this section including, but not limited to, rules establishing undue hardship waivers for the following circumstances:

- (a) The only asset of the estate provides the primary source of support for other family members; or
- (b) The estate has a value below an amount specified in the rules; or
- (c) Recovery under the lien by the department will entitle the heirs of the deceased individual to public assistance.

SECTION 3. That Section 56-218A, Idaho Code, be, and the same is hereby amended to read as follows:

56-218A. MEDICAL ASSISTANCE LIENS DURING LIFE OF RECIPIENT. (1) The department may recover and may impose a lien against the real property of any individual prior to his death for medical assistance paid or about to be paid under this chapter on behalf of an individual:

- (a) Who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the state plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs; and
- (b) With respect to whom the department has determined, after notice and opportunity for hearing, that he cannot reasonably be expected to be discharged from the medical institution and to return home.

(2) No lien may be imposed on the home of an individual under subsection (1) of this section if any of the following is lawfully residing in such home:

- (a) The spouse of such individual;
- (b) Such individual's child under age twenty-one (21) years;
- (c) Such individual's child who is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c; or
- (d) A sibling of such individual who holds an equity interest in such home and who was residing in such home for a period of at least one (1) year prior to the individual's admission to the medical institution.

(3) ~~(a) In order to perfect the lien, the department shall file~~ The lien shall be perfected by filing in the office of the recorder of the county in which the real property of the individual is located a verified statement in writing setting forth the name and last known address of the individual, the name and address of the official or agent of the department filing the lien, a brief description of the medical assistance received by the individual, secretary of state a notice of lien pursuant to

section 45-1904, Idaho Code. The notice of lien shall include, in addition to the information required by section 45-1904, Idaho Code, the amount paid or about to be paid by the department on behalf of the individual, and, if applicable, the fact that the amount of the lien may increase over time. The county recorder shall record the claim in the real property records of the county where the claim shall be indexed, as deeds and other conveyances are required by law to be indexed.

(b) The department shall file any notice of lien under this section within ninety (90) days of the final determination of the department, after hearing if any, required in subsection (1)(b) of this section, with the exception of property against which the department is prevented from filing a lien pursuant to subsection (2) of this section. With respect to the property described in subsection (2) of this section, the department shall file a notice of lien within ninety (90) days after the department is notified in writing that subsection (2) of this section ceases to apply to the property.

(4) Any lien imposed in accordance with subsection (1) of this section shall dissolve upon the individual's discharge from the medical institution and return home.

~~(5) The lien, or any extension thereof, may, within five (5) years from the date of filing for record, be extended by filing for record in the office of the county recorder a new verified statement setting forth the information required in subsection (3)(a) of this section, and from the time of filing the lien shall be extended in such county for five (5) years, unless fully released or otherwise discharged.~~

~~(6)~~ No recovery shall be made under this section for medical assistance correctly paid except from such individual's estate as defined in subsection (4) of section 56-218, Idaho Code, and subject to subsections (3), (5) and (6) of section 56-218, Idaho Code, or upon sale of the property subject to a lien and may be made only after the death of such individual's surviving spouse, if any, and only at a time:

(a) When he has no surviving child who is under age twenty-one (21) years, or who is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c; or

(b) In the case of a lien on an individual's home under subsection (1) of this section, when none of the following is lawfully residing in such home who has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution:

(i) A sibling of the individual, who was residing in the individual's home for a period of at least one (1) year immediately before the date of the individual's admission to the medical institution; or

(ii) A son or daughter of the individual, who was residing in the individual's home for a period of at least two (2) years immediately before the date of the individual's admission to the medical institution and who establishes to the satisfaction of the state that he or she provided care to such individual which permitted such individual to reside at

home rather than in an institution.

(76) The director shall promulgate rules reasonably necessary to implement this section including, but not limited to, rules establishing undue hardship waivers, as provided in section 56-218(7), Idaho Code, and a procedure for notice and opportunity for hearing on the department's determination that an individual cannot reasonably be expected to be discharged from a medical institution and to return home.

SECTION 4. That Section 63-3051, Idaho Code, be, and the same is hereby amended to read as follows:

63-3051. PROPERTY SUBJECT TO LIEN. (a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount of such tax, including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state of Idaho upon all property and rights to property, whether real or personal, belonging to such person or acquired afterwards and before the lien expires. Such lien shall not be valid as against any mortgagee or other lienholder, pledgee, secured party, purchaser, or judgment lienor until notice thereof has been filed in the office of the recorder of the county in this state within which the property subject to lien is situated:

(b) ~~The notice of lien shall specify the tax period, and the amount of tax, penalty, interest and additional amount due. It shall contain the name and last known address of the taxpayer liable for the amount thereof, an identification number and a statement to the effect that the state tax commission has complied with all the provisions of this act in the determination of the amount required to be paid. Any notarization or acknowledgement of a lien including, but not limited to, a notarization or acknowledgement required in title 55, Idaho Code, may be accomplished by a printed or facsimile reproduction of the signature of the individual authorized by the state tax commission to execute the lien accompanied by a printed or facsimile reproduction of the seal of the state tax commission.~~

(c) ~~The lien may, within five (5) years from the date of filing for record of notice of lien, be extended by filing for record a new notice of lien in the office of the county recorder of any county, and from the time of such filing the lien shall be extended only to the real property of the taxpayer in such county for five (5) years, unless fully released or otherwise discharged~~ secretary of state in the form and manner provided in chapter 19, title 45, Idaho Code.

SECTION 5. That Sections 63-3053 and 63-3054, Idaho Code, be, and the same are hereby repealed.

SECTION 6. That Section 72-1360, Idaho Code, be, and the same is hereby amended to read as follows:

72-1360. LIENS. (a1) Upon the failure of any covered employer person to pay contributions or penalties when due, or the failure to repay overpayments as that term is defined in section 72-1369, Idaho

Code, the director or his authorized representative may file with the clerk of the district court of the county, wherein such employer has his principal place of business, and a copy thereof with the clerk of the district court of any county in which such employer may have real or personal property, a certificate under his official seal, stating:

(1) the name of the covered employer;

(2) his address;

(3) the amount of contributions and penalties in the form of an itemized statement thereof owing and in default; and that

(4) that the time in which an appeal or review is permitted, pursuant to section 72-1358, Idaho Code, has expired without having been taken or that delay will jeopardize collection. Thereupon, such clerk shall enter in the judgment docket of the court, the name of the employer mentioned in the certificate, the amount of such contributions and penalties in default and the date when such certificate is filed office of the secretary of state, as provided in chapter 19, title 45, Idaho Code, notice of lien.

(2) Upon delivery to the secretary of state, the notice of lien shall be filed and maintained in accordance with chapter 19, title 45, Idaho Code. When such certificate notice is duly filed and recorded, the amount of the overpayments, or contributions and or penalties in default, together with any interest due thereof, shall be a lien upon the entire interest, legal or equitable of such employer, legal or equitable person liable for overpayments, or contributions or penalties, in any property, real or personal, tangible or intangible, not exempt from execution, situated in the county where the certificate or a copy thereof was filed. The lien thus created shall be in favor of the state of Idaho and shall be prior to all other liens and encumbrances, except previously existing mortgage liens, labor liens and tax liens, and it shall have equal priority with tax liens. No lien for contributions or penalties shall be valid against one who purchases personal property from the delinquent employer in the usual course of business and in good faith and without actual notice of such lien state. Such lien may be enforced against any real or personal property of the delinquent employer person liable for overpayments or contributions or penalties by the director, his authorized representative, or by any sheriff of the various counties in the same manner as a judgment of the district court duly docketed and the amount, secured by the lien thus established, shall bear interest at the rate of the state statutory legal limit on judgments. The foregoing remedy shall be in addition to all other remedies against the covered employer person liable for overpayment of contributions or penalties. The amount of interest collected pursuant to this section may be compromised at the discretion of the director when such compromise is in the best interest of the department.

(b) The employer against whose property such lien has been filed may cause his property to be released by filing with the county clerk of the county where such lien is recorded a bond in a sum double the amount claimed in said lien, executed by a surety company licensed to do business in Idaho or by two (2) private sureties residing in Idaho, to be approved by the district judge of the district in which said lien is filed, or, in the event of his absence from the county in which said lien is filed, then by the probate judge of said county,

~~running to the state of Idaho and conditioned for the payment of all contributions, penalties, interest, and costs that may be recovered by the state of Idaho against such employer or that may be found to be a lien upon or against the property of such employer. The clerk shall then issue to such employer a certificate stating that the bond is substituted in lieu of the property of said employer and that the lien on said property is forever released and discharged and a marginal entry on said release and bond shall be made in the lien docket containing the original record of certificate of claim of lien, and if the state establishes the validity of its lien by a suit to foreclose the same, it shall be entitled to a judgment or decree against the sureties upon said bond.~~

~~(c) Any lien as provided in this section shall be released or satisfied by the director, upon the payment of the debt secured by the lien, and the property against which a lien is claimed shall be released therefrom by filing a notice of such release or satisfaction with the clerk of the county in which the certificate of claim of lien was filed.~~

(3) In any suit or action involving the title to real or personal property against which the state has ~~or may claim~~ a perfected lien, the state may shall be made a party to such suit or action.

SECTION 7. That Chapter 13, 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 72-1360A, Idaho Code, and to read as follows:

72-1360A. COLLECTION OF LIEN AMOUNTS. (1) In addition to all other remedies or actions provided by this act, it shall be lawful for the director or any of his authorized representatives, agents or deputies, to collect any liens for overpayments of benefits or contributions, together with such interest, penalties, and other additional amounts as are permitted by law, by distraint and sale, in the manner provided herein, of the property of any person liable for such overpayments of benefits or contributions, interest, penalties, or other additional amounts, who neglects or refuses to pay the same within thirty (30) days from the mailing of notice and demand for payment thereof, and who has not appealed from the assessment or determination of such contributions or overpayments, interest, penalties and other additional amounts pursuant to the provisions of this act or who has not satisfied or discharged any lien authorized and suited under this act.

(2) Property exempt from distraint shall be the same property as is exempt from execution under the provisions of chapter 6, title 11, Idaho Code.

(3) In case of neglect or refusal to repay benefit overpayments or to pay contributions, or any other amounts due as hereinabove provided, the director or his authorized representative may levy, or, by warrant issued under his own hand, authorize any of his agents, representatives, or a sheriff, constable, or deputy, to levy upon, seize and sell all property, except such as is exempt by the preceding section, belonging to any person, for the enforcement of any lien authorized pursuant to this act.

(4) When a warrant is issued by the department of labor for the collection of any amount due pursuant to a lien for benefit overpayments or contributions, together with any interest, penalty, or additional amount due thereon, for the enforcement of any lien authorized by this act, it shall be directed to any authorized agent or representative of the department, or to any sheriff, constable, or deputy, and any such warrant shall have the same force and effect as a writ of execution. It may and shall be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy and sale pursuant to a writ of execution. The sheriff, constable, or deputy shall receive upon the completion of his services pursuant to said warrant, and the director is authorized to pay to said sheriff, constable, or deputy, the same fees, commissions and expenses pursuant to said warrant as are provided by law for similar services pursuant to a writ of execution, provided however, that said fees, commissions and expenses shall be an obligation of the person liable for contributions or penalties or overpayments and may be collected from such person by virtue of the warrant. Any such warrant issued by the director shall contain, at a minimum, the name of the liable person; his address; the nature of the underlying liability; the date the liability was incurred; the amount of the liability secured by the lien; the amount of any penalty, interest or other amount due under the lien; and the interest rate on the lien.

(5) Whenever any property that is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the authorized agent or representative of the department, or the sheriff, constable, or deputy may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the person liable for the contributions, penalties, or overpayments, until the amount due from such person, together with all expenses, is fully paid.

(6) All persons, are required on demand of an authorized agent or representative of the department, or a sheriff, constable, or deputy about to distraint, or having distrained on any property or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint or the property or rights of property liable to distraint for the amount due.

(7) The distraint provisions of this act shall not be deemed exclusive but shall be in addition to any and all other existing remedies provided by law for the enforcement of this act.

SECTION 8. That Section 72-1369, Idaho Code, be, and the same is hereby amended to read as follows:

72-1369. OVERPAYMENTS, COLLECTION AND WAIVER. (a) Any person who received benefits to which he was not entitled under the provisions of this act or under an unemployment compensation or unemployment insurance law of any state or of the federal government shall be liable to repay said benefits and said benefits shall, for the purpose of this act, be considered to be overpayments. Said overpayments shall be repaid as follows:

(a) Any overpayment which has not been repaid may, in addition

to or alternatively to any other method of collection prescribed in this chapter, including the creation of a lien as provided by section 72-1360, Idaho Code, be collected without with interest thereon at the statutory rate by civil action brought in the name of the state of Idaho, and In bringing such civil actions for the collection of overpayments, the director shall have all the rights and remedies provided by the laws of this state, and any person found or adjudged liable in such civil action for any overpayments shall pay the cost of such action. Such civil actions may be commenced within the time periods specified in this section without regard to any other statute of limitations.

(2b) Collection of overpayments.

A-(i) Overpayments, other than those resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, which have not been repaid or collected, may, at the discretion of the director or his authorized representative, be deducted from any future benefits payable to said claimant under the provisions of this act;

B-(ii) Overpayments resulting from a false statement, misrepresentation, or concealment of a material fact by the claimant which have not been repaid or collected shall be deducted from any benefits payable at any time in the future, without regard to any statute of limitation and such overpayments not recovered within eight (8) years from the date of the final determination establishing liability to repay may be deemed uncollectible;

6-(iii) A civil action, filed pursuant to subsection (1) of this section, to collect overpayments resulting from a false statement, misrepresentation, or concealment of a material fact by the claimant must be commenced within eight (8) years from the date of the final determination establishing liability to repay;

(3c) Overpayments, other than those resulting from a false statement, misrepresentation or failure to report a material fact, not recovered within five (5) years from the date of the final determination establishing liability to repay shall be deemed uncollectible, and a civil action filed pursuant to subsection (1) of this section, to collect such overpayments must be commenced within the same five (5) year time period;

(4d) The director or his authorized representative may waive the requirement to repay such overpayment described in subsection (3) of this section if such payments were made solely as a result of department error or inadvertence, and made to a claimant who had no way of knowing that he was receiving benefits to which he was not entitled or if such payments were made solely as a result of an employer misreporting wages earned in a claimant's base period, and made to a claimant who could not reasonably have been expected to recognize an error in the wages reported.

(e) Any judgment obtained pursuant to this section shall, upon compliance with the requirements of chapter 19, title 45, Idaho Code, become a lien of the same type, duration, and priority as if it were created pursuant to section 72-1360, Idaho Code.

(b2) Neither the director nor any of his agents or employees

shall be liable for benefits paid to persons not entitled to the same under the provisions of this act if it appears that such payments have been made in good faith and that ordinary care and diligence have been used in the determination of the validity of the claim or claims under which such benefits have been paid.

SECTION 9. Sections 2 through 8 of this act shall be in full force and effect on and after July 1, 1998.

SECTION 10. Notwithstanding the effective dates specified in Section 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void.

Approved March 19, 1997.

CHAPTER 206
(S.B. No. 1153)

AN ACT

RELATING TO THE INDUSTRIAL SPECIAL INDEMNITY FUND; AMENDING SECTION 72-324, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; REPEALING SECTIONS 72-327 AND 72-328, IDAHO CODE, AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-327, IDAHO CODE, TO PROVIDE FOR ASSESSMENTS OF WORKER'S COMPENSATION INSURERS TO BE DEPOSITED IN THE FUND, TO PROVIDE FOR CALCULATION AND PRORATION OF THE ASSESSMENT, AND TO PROVIDE THE DATES UPON WHICH THE ASSESSMENT WILL BE PAYABLE; AND AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-328, IDAHO CODE, TO PROVIDE FOR THE COLLECTION OF DELINQUENT ASSESSMENTS AND TO PROVIDE PENALTIES.

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

SECTION 1. That Section 72-324, Idaho Code, be, and the same is hereby amended to read as follows:

72-324. MANAGEMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND. There is hereby created in the department of administration the office of manager of the industrial special indemnity fund, elsewhere in this chapter referred to as manager, whose duties shall be to administer the fund without liability on the part of the state or the manager beyond the amount of such fund. Among the powers of the manager shall be the power to evaluate, investigate, adjust claims made against the fund and make agreements, subject to the approval of the industrial commission, for compensation for injuries and occupational diseases in accordance with the provisions of this act, including the power to order payment from the fund for such medical, hospital and nursing

care charges as injured persons or those suffering from occupational diseases may be entitled to from the fund.

The compensation of such manager shall be as provided in section 59-508, Idaho Code.

The manager shall be given notice of all applications, hearings and proceedings involving rights of the fund, and shall represent the fund in all proceedings brought to enforce a claim against it. The manager shall have the authority to employ such medical or other experts and to defray the expense thereof and of such witnesses as are reasonably necessary to administer, evaluate or defend the fund. The manager may also employ such employees as are necessary to assist in the administration of the fund. The manager may also employ legal counsel, or obtain legal counsel pursuant to section 72-330, Idaho Code, to represent and conduct on behalf of the fund all suits, actions and proceedings whatsoever involving the fund.

The manager may, in his official name, sue and be sued in all the courts of the state and before the industrial commission in all actions or proceedings arising out of anything done or offered in connection with the industrial special indemnity fund or business related thereto.

The industrial commission shall compute and collect the ~~excise-tax assessment~~ provided by section 72-327, Idaho Code, and shall make quarterly reports to the fund of the same. The manager of the fund shall, each quarter of each year, prepare and file with the industrial commission and the state treasurer a report of all expenses of administration, legal expenses and payments from the fund, which reports will be kept on file and open to inspection by any interested person.

The director of the department of administration shall appoint the manager from a list of at least three (3) names provided by the industrial commission. The manager shall serve at the pleasure of the director of the department of administration.

SECTION 2. That Sections 72-327 and 72-328, Idaho Code, be, and the same are hereby repealed.

SECTION 3. That Chapter 3, 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 72-327, Idaho Code, and to read as follows:

72-327. ASSESSMENT -- METHOD OF CALCULATION AND PRORATION -- TIME FOR PAYMENT. (1) The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho, in addition to all other payments required by statute, shall, within thirty (30) days after April 1, 1998, and on or before September 1 and April 1 of each successive year thereafter, pay to the industrial commission for deposit in the industrial special indemnity fund an assessment as follows:

(a) The total annual assessment payable in the manner set forth in this section shall be equal in amount to two (2) times the amount of all expenses of the industrial special indemnity fund incurred during the immediately preceding fiscal year less the

existing cash balance of the industrial special indemnity fund as of the thirtieth day of June of the immediately preceding fiscal year;

(b) The total annual assessment shall be apportioned on a pro rata percentage basis among and between the state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho based upon the proportionate share of the total gross amount of indemnity benefits paid on Idaho worker's compensation claims during the applicable reporting period;

(c) The amount of each responsible entity's or person's assessment which is due and payable within thirty (30) days subsequent to September 1 of any year shall be calculated by dividing one-half (1/2) of the total annual assessment amount by the responsible party's proportionate share of the total gross amount of indemnity benefits paid during the preceding period of time from January 1 through June 30. The amount of each responsible entity's or person's assessment which is due and payable within thirty (30) days subsequent to April 1 of any year shall be calculated by dividing one-half (1/2) of the total applicable assessment amount by the responsible entity's or person's proportionate share of the total gross indemnity benefits paid on open worker's compensation claims during the preceding period of time from July 1 through December 31. In no case shall the amount of any such assessment be less than two hundred dollars (\$200).

(2) In arriving at the total gross amount of indemnity benefits paid, the amount of indemnity benefits shall include those payments provided for or made under the provisions of the worker's compensation law with respect to "income benefits" as defined in section 72-102, Idaho Code.

(3) For the purposes of this section, the responsible entities or persons shall report to the industrial commission their total gross indemnity benefits paid during the six (6) month period from July 1 through December 31 no later than January 31 of the next succeeding year and shall report their total gross indemnity benefits paid during the six (6) month period from January 1 through June 30 no later than July 31 of said year.

(4) A penalty for the late filing of any report required by this section will be assessed in accordance with the rules of the industrial commission.

(5) The industrial special indemnity fund shall certify to the industrial commission annually the amount of the assessment payable under this section and the industrial commission shall prepare and submit to each responsible entity or person notice of its pro rata amount payable hereunder on or before April 1, 1998, and thereafter on or before September 1 and April 1 of each succeeding year.

(6) For the purposes of this section, the cash balance of the industrial special indemnity fund in any fiscal year shall mean all money deposited or invested by the state treasurer to the credit of the industrial special indemnity fund pursuant to sections 72-325 and 72-326, Idaho Code, and all interest earned thereon.

(7) For purposes of this section, the term "fiscal year" shall

mean that period of time commencing upon July 1 in any year and ending upon June 30 of the next succeeding year.

SECTION 4. That Chapter 3, 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 72-328, Idaho Code, and to read as follows:

72-328. COLLECTION OF DELINQUENT ASSESSMENTS -- DUTY OF ATTORNEY GENERAL -- PENALTIES. (1) If any responsible entity or person required to make payment of an assessment as provided in this act shall fail to make full payment on or before ten (10) days following the time period specified in section 72-327, Idaho Code, for payment of the assessment, it shall be the duty of the attorney general to bring a civil action in the name of the state in the proper court to collect the amount of the assessment due. Any amount of assessment collected by the attorney general shall be deposited in the industrial special indemnity fund.

(2) Any responsible entity or person who is in default for ten (10) or more days in the payment of the assessment as set forth in this act shall be liable for a penalty for every ten (10) day period or any part thereof during which such failure continues. The penalty shall be in the amount of ten percent (10%) of the amount originally due. It shall be the duty of the attorney general to bring a civil action in the name of the state in the proper court to collect the amount of the penalty herein provided in addition to any unpaid assessment. Any amount of penalty and assessment collected by the attorney general shall be deposited in the industrial special indemnity fund.

(3) Any responsible surety or person who shall willfully misrepresent the amount of total gross indemnity benefits paid under the provisions of this act shall be liable to the state for a penalty in an amount ten (10) times the difference between the payments made and the amounts that should have been paid had such misrepresentation not been made. It shall be the duty of the attorney general to bring a civil action in the name of the state in the proper court to collect the amount of the penalty herein provided in addition to any unpaid assessment. Any amount of penalty and assessment collected by the attorney general shall be deposited in the industrial special indemnity fund.

Approved March 19, 1997.

CHAPTER 207
(S.B. No. 1158)

AN ACT

RELATING TO CITY RETIREMENT PLANS; AMENDING SECTION 50-1016, IDAHO CODE, TO AUTHORIZE CITIES TO COOPERATE WITH OTHER CITIES OR COUNTIES TO ESTABLISH A THIRD PARTY ADMINISTRATOR OF A RETIREMENT PLAN.

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

SECTION 1. That Section 50-1016, Idaho Code, be, and the same is hereby amended to read as follows:

50-1016. DEDUCTIONS FROM WAGES. Any city may deduct, upon written approval of the individual employee, sums certain from said employee's salary or wages for the purpose of paying said sums for premiums on group life, health, accident, disability, hospital and surgical insurance, or any other purposes approved by the city council. Any city may pay all or any part of such deductions as approved by the council.

Any city may adopt a city retirement and pension plan for the benefit of its employees and for that purpose may deduct, upon written approval of the individual employee, sums certain from said employee's wages as a contribution to said plan and any city may pay all or any part of such premiums as approved by the council and may make such other contributions as may be required to make such plan actuarially sound. Such plan may be administered by the employer or by a third party organization selected through a competitive selection process. Further, the employer may cooperate with other city or county employers for joint administration of the plan.

Approved March 19, 1997.

CHAPTER 208
(S.B. No. 1191)

AN ACT

RELATING TO INJECTION WELLS; AMENDING SECTION 42-3904, IDAHO CODE, TO REQUIRE THE OWNERS OF NEW SHALLOW INJECTION WELLS TO SUBMIT A COMPLETED NOTICE OF CONSTRUCTION FORM TO THE DEPARTMENT OF WATER RESOURCES; AMENDING SECTION 42-3905, IDAHO CODE, TO REVISE THE FEES FOR INJECTION WELL APPLICATIONS.

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

SECTION 1. That Section 42-3904, Idaho Code, be, and the same is hereby amended to read as follows:

42-3904. APPLICATION FOR PERMIT -- OWNER -- OPERATOR RESPONSIBLE -- NOTICE OF CONSTRUCTION FORM. (1) The owner or operator shall make application to the director of the department of water resources for a permit as provided in this chapter. When a facility is owned by one person but operated by another, it shall be the operator's duty to obtain a permit. Such application shall be upon forms furnished by the director which shall require information concerning the location and description of the injection well, the quantity, quality, and nature of the material being or proposed to be injected, the description of the underground formation and aquifer into which the material is proposed to be or is being injected, the availability of alternative sources of disposal, and such other information as will enable the

director to determine the effect of ~~the injection of the material~~ upon the quality of the ground water, the effect upon the beneficial uses of said ground water, the effect upon the public health and the effect upon public benefits derived therefrom, if any. Such application shall be submitted complete with fees as provided in this chapter. Mine shafts used for the disposal of wastes resulting from the mining and concentration process shall be exempt from the permit requirements of this chapter until an inventory and assessment of the contamination potential posed by such operation is completed.

(2) Owners of new shallow injection wells drilled after July 1, 1997, shall submit a notice of construction form to the department of water resources no later than thirty (30) days prior to commencement of construction for each new well. The notice of construction form shall be submitted with the fee as provided in this chapter on a form provided by the department of water resources. New shallow injection wells used for disposal of storm water from building roof drains are exempt from the notice of construction filing requirements and fees of this chapter.

SECTION 2. That Section 42-3905, Idaho Code, be, and the same is hereby amended to read as follows:

42-3905. FEES -- TRANSMITTED TO STATE TREASURER. (1) Fees provided for in this section shall accompany all applications and notice of construction forms. No such application or notice of construction form shall be accepted unless accompanied by a filing fee of fifty dollars--(\$50.00)--per application as provided in this section. A separate application shall be filed for each waste disposal and injection well and each shallow injection well for which a permit is required by the rules and--regulations adopted by the water resource board. The filing fee for each injection well requiring a permit shall be one hundred dollars (\$100) payable to the department of water resources.

(2) The notice of construction form for each new shallow injection well shall be accompanied by a fee of seventy-five dollars (\$75.00) payable to the department of water resources.

(3) All fees received under the provisions of this chapter are deemed to be nonrefundable except those fees submitted with applications that do not require a permit shall be returned to the applicant, and shall be transmitted to the state treasurer for deposit in the water administration fund as established under the provisions of section 42-238(a), Idaho Code, except that fees submitted with applications that do not require a permit shall be returned to the applicant. Fees collected may be used by the director of the department of water resources to carry out the provisions of this chapter.

Approved March 19, 1997.

CHAPTER 209
(S.B. No. 1204)

AN ACT

RELATING TO AUDITS; AMENDING CHAPTER 4, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-450C, IDAHO CODE, TO PROVIDE FOR INDEPENDENT FINANCIAL AUDITS OF AFFILIATED ORGANIZATIONS TO STATE GOVERNMENTAL AGENCIES OR ENTITIES AND TO PROVIDE FOR FILING OF THOSE STATEMENTS.

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

SECTION 1. That Chapter 4, 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 67-450C, Idaho Code, and to read as follows:

67-450C. INDEPENDENT FINANCIAL AUDITS OF AFFILIATED ORGANIZATIONS TO STATE GOVERNMENTAL AGENCIES OR ENTITIES -- FILING REQUIREMENTS.

(1) The requirements set forth in this section are minimum audit requirements for all affiliated organizations to state governmental entities, and include, without limitation, all state departments, commissions, institutions, colleges or universities, which are created pursuant to statute or the constitution and which receive an appropriation from the legislature.

As used in this section "affiliated organization" means an organization affiliated with an agency or entity of state government which meets all of the following criteria:

(a) The organization has separate legal standing, where neither direct association through appointment of a voting majority of the organization's body nor fiscal dependency exists.

(b) The affiliation with a specific primary state government agency or entity is set forth in the organization's articles of incorporation by reference to the name of the primary state government agency or entity in describing the purposes for which the organization was established.

(c) The affiliation with a specific primary state government agency or entity is set forth in the organization's application to the internal revenue service for exemption for payment of federal income tax pursuant to the internal revenue code by reference to the name of the primary government in response to any of the questions contained in the exemption application and the organization has been granted that exemption.

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 affiliated organization's governing body shall be required to include in its annual budget all necessary expenses for carrying out the provisions of this section.

The affiliated organization 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 an affiliated organization 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 an affiliated organization 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 organization'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 an affiliated organization 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 on a biennial basis and may continue biennial review cycles in subsequent years as long as the affiliated organization's annual budget does not exceed one hundred thousand dollars (\$100,000) during either year of any biennial period. Biennial reports of review shall include a review of each fiscal year since the previous review report.

(d) The governing body of an affiliated organization 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 March 19, 1997.

CHAPTER 210
(S.B. No. 1209, As Amended)

AN ACT

RELATING TO GUARDIANSHIPS OR CONSERVATORSHIPS; AMENDING SECTION 15-5-101, IDAHO CODE, TO EXPAND THE DEFINITION OF INCAPACITY FOR THE PURPOSES OF A GUARDIANSHIP OR CONSERVATORSHIP TO FOCUS ON THE ACTIONS OF THE INCAPACITATED PERSON AND THE CONSEQUENCES OF THOSE ACTIONS RATHER THAN ON THE MEDICAL CAUSES WHICH MAY UNDERLIE THE ACTIONS.

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

SECTION 1. That Section 15-5-101, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-101. DEFINITIONS AND USE OF TERMS. Unless otherwise apparent from the context, in this code:

(a) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, provided, that the term shall not refer to a developmentally disabled person as defined in section 66-402(4), Idaho Code, and provided further that:

(1) "Incapacity" means a legal, not a medical disability and shall be measured by function limitations and it shall be construed to mean or refer to any person who has suffered, is suffering, or is likely to suffer, substantial harm due to an inability to provide for his personal needs for food, clothing, shelter, health care, or safety, or an inability to manage his or her property or financial affairs;

(2) Inability to provide for personal needs or to manage property shall be evidenced by acts or occurrences, or statements which strongly indicate imminent acts or occurrences; material evidence of inability must have occurred within twelve (12) months prior to the filing of the petition for guardianship or conservatorship;

(3) Isolated instances of simple negligence or improvidence, lack of resources, or any act, occurrence, or statement, if that act, occurrence, or statement is the product of an informed judgment, shall not constitute evidence of inability to provide for personal needs or to manage property;

(4) "Informed judgment" means a choice made by a person who has the ability to make such a choice, and who makes it voluntarily after all relevant information necessary to making the decision has been provided, and who understands that he is free to choose or refuse any alternative available and who clearly indicates or expresses the outcome of his choice;

(b) A "protective proceeding" is a proceeding under the provisions of section 15-5-401 of this code to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(c) A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(d) A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

Approved March 19, 1997.

CHAPTER 211
(S.B. No. 1210)

AN ACT

RELATING TO POWERS OF TRUSTEES; AMENDING SECTION 15-7-402, IDAHO CODE, TO PROVIDE PROCEDURES WHERE A TRUSTEE MAY TERMINATE A TRUST IF THE NET FAIR MARKET VALUE OF THE ASSETS OF THE TRUST TAKEN COLLECTIVELY IS LESS THAN TWENTY-FIVE THOUSAND DOLLARS.

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

SECTION 1. That Section 15-7-402, Idaho Code, be, and the same is hereby amended to read as follows:

15-7-402. ADDITIONAL POWERS. In addition to the powers provided for in section 15-7-401, Idaho Code, a trustee shall have the following powers:

(1) To sever any trust estate on a fractional share basis into two (2) or more separate trusts for any reason.

(2) To divide a trust into two (2) or more single trusts or consolidate two (2) or more trusts into a single trust, upon those terms and conditions as it considers appropriate, provided that the trustee make a written determination that: (a) division or consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated or divided; (b) division or consolidation would facilitate administration of the trusts; and (c) division or consolidation would be in the best interests of all beneficiaries and not materially impair their respective interests. The trustee shall give written notice of the proposed division or consolidation by personal service or by certified mail to all interested persons of every trust affected by the division or consolidation and to any trustee of such trust(s) who does not join in the notice. The notice shall: (i) state the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be divided or consolidated; (iii) include a statement of assets and liabilities of each trust to be divided or consolidated, dated within ninety (90) days of the notice; (iv) fully describe the terms and manner of division or consolidation; and (v) state the reasons supporting the proposed division or consolidation. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed division or consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed division or consolidation may be indicated. If the trustee receives written consent to the proposed division or consolidation from all persons entitled to notice, the trustee may divide or consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting divided or consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the division or consolidation under this section.

(3) Any interested person may petition the court of the county in which the principal place of administration of a trust is located for

an order dividing one (1) or more trusts or consolidating two (2) or more trusts. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business. At the conclusion of the hearing, if the court finds that the requirements of subsections (2)(a), (b) and (c) of this section have been satisfied, it may direct division of one (1) or more trusts or consolidation of two (2) or more trusts on such terms and conditions as appropriate. The court, in its discretion, may provide for payment from one (1) or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(4) If the net fair market value of the assets of a trust, taken collectively, is less than twenty-five thousand dollars (\$25,000), the trustee may terminate the trust by the following procedure:

(a) The trustee shall determine a plan for distribution that agrees, as nearly as possible, with the trust's dispositive plan;

(b) The trustee shall give notice, in writing, to all interested persons of its intent to distribute the assets in accordance with the plan unless an interested person objects in writing within thirty (30) days after the date of the notice, containing also in such notice a statement of the provisions of paragraph (e) of this subsection;

(c) If no written objection is received by the trustee within thirty (30) days after the date of the written notice to all interested persons, the trustee shall proceed to distribute the trust assets in accordance with the plan;

(d) If the trustee receives a written objection to the plan within thirty (30) days after the date of the notice, the trustee shall not distribute the assets of the trust, but may then petition the court for an order authorizing distribution in accordance with the plan, and the court shall have plenary authority to approve, modify, or reject the trustee's petition;

(e) For purposes of the thirty (30) day provisions of this subsection, the "date of notice" shall be the later of the date set forth in the notice (if any) or the date of actual mailing, if mailed, or of actual delivery, if delivered in person to the interested person, and provided further that an objection in writing is timely if mailed within thirty (30) days to the trustee, with the burden of proof of the date of such mailing to be on the interested person.

The existence of a spendthrift or similar provision shall not effect the trustee's powers under this subsection unless the trust instrument specifically provides that the trustee shall not have the power to terminate the trust.

(5) This section applies to all trusts whenever created.

Approved March 19, 1997.

CHAPTER 212
(S.B. No. 1211)

AN ACT

RELATING TO COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT; AMENDING SECTION 15-3-1201, IDAHO CODE, TO CLARIFY WHEN THE AFFIDAVIT PROCEDURE MAY BE USED FOR THE COLLECTION OF ASSETS OF A DECEDENT BY A SUCCESSOR TO THE DECEDENT.

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

SECTION 1. That Section 15-3-1201, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-1201. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT. (a) Thirty (30) days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person or entity claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

- (1) the fair market value of the entire estate of the decedent which is subject to probate, wherever located, less liens and encumbrances, does not exceed twenty-five thousand dollars (\$25,000);
- (2) thirty (30) days have elapsed since the death of the decedent;
- (3) no application or petition for the appointment of a personal representative or for summary administration is pending or has been granted in any jurisdiction; and
- (4) the claiming successor is entitled to payment or delivery of the property, including entitlement as a trust pursuant to a will of the decedent.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a) of this section.

Approved March 19, 1997.

CHAPTER 213
(S.B. No. 1234)

AN ACT

RELATING TO THE COMPREHENSIVE STATE WATER PLAN; AMENDING AND APPROVING THE COMPREHENSIVE STATE WATER PLAN FOR THE SOUTH FORK SNAKE RIVER BASIN AS ADOPTED BY THE IDAHO WATER RESOURCE BOARD ON DECEMBER 13, 1996; AND DECLARING AN EMERGENCY.

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

SECTION 1. That pursuant to Section 42-1734B(6), Idaho Code, the comprehensive state water plan for the South Fork Snake River Basin, adopted by resolution of the Idaho Water Resource Board on December 13, 1996, be, and the same is hereby amended and approved. In accordance with Section 42-1734A, Idaho Code, the basin plan includes protected river reach designations summarized as follows:

(1) Bear Creek, headwaters to the point where Forest Road 077 no longer parallels the creek, as a recreational river.

(2) Bear Creek, from the point where Forest Road 077 no longer parallels the creek to Deadman Creek as a natural river.

(3) Bear Creek, from Deadman Creek to the backwaters of Palisades Reservoir as a recreational river.

(4) Big Elk Creek, from the Idaho state line to a point 100 yards upstream of Big Elk trail head, as a natural river.

(5) Big Elk Creek, from a point 100 yards upstream of Big Elk trail head to the backwaters of Palisades Reservoir, as a recreational river.

(6) Black Canyon, headwaters to South Fork Snake River, as a recreational river.

(7) Burns Creek (tributary to South Fork Snake River), Headwaters to Burns Canyon trail head, as a natural river.

(8) Burns Creek (tributary to South Fork Snake River), Burns Canyon trail head to South Fork Snake River, as a recreational river.

(9) Burns Creek (tributary to Palisades Reservoir), Headwaters to Idaho state line, as a recreational river.

(10) Cress Creek, source to Sunnyside Canal, as a recreational river.

(11) Fall Creek, headwaters to Trap Creek, as a natural river.

(12) Fall Creek, Trap Creek to South Fork Snake River, as a recreational river.

(13) Fish Creek, headwaters to McCoy Creek, as a natural river.

(14) Indian Creek (tributary to Palisades Reservoir), Idaho state line to Smith Canyon, as a recreational river.

(15) Indian Creek (tributary to South Fork Snake River), Headwaters to South Fork Snake River, as a recreational river.

(16) Little Elk Creek, headwaters to Spring Run Canyon, as a natural river.

(17) Little Elk Creek, Spring Run Canyon to Palisades Reservoir, as a recreational river.

(18) McCoy Creek, headwaters to Palisades Reservoir, as a recreational river.

(19) Palisades Creek, headwaters to Forest Trail 099 junction, as a natural river.

(20) Palisades Creek, Forest Trail 099 junction to South Fork Snake River, as a recreational river.

(21) Pine Creek, headwaters to 100 yards downstream of power line crossing (located in T2N, R43E, Sec. 15), as a recreational river.

(22) Pine Creek, 100 yards downstream of power line crossing to the South Fork Snake River, as a natural river.

(23) Pine Creek, North Fork, headwaters to Elk Flat Fork, as a natural river.

(24) Pine Creek, North Fork, Elk Flat Fork to Pine Creek, as a recreational river.

(25) Pine Creek, West Fork, Headwaters to a point 100 yards upstream of West Pine Girls Camp, as a natural river.

(26) Pine Creek, West Fork, from a point 100 yards upstream of West Pine Girls Camp to Pine Creek, as a recreational river.

(27) Pritchard Creek, headwaters to South Fork Snake River, as a recreational river.

(28) Rainey Creek, headwaters to South Fork Snake River, as a recreational river.

(29) Sheep Creek, headwaters to South Fork Snake River, as a recreational river.

(30) South Fork Snake River, Palisades Dam to Henrys Fork, as a recreational river. The recreational designation for the South Fork Snake River is not intended to prevent a water user from cleaning, maintaining, or replacing an existing water diversion structure within a reasonable proximity of the structure. A water user may remove obstructions from the stream channel such as gravel bars, if the obstructions interfere with the delivery or use of water under any existing water right.

Alteration of the stream bed necessary to keep the river within its historical meander below Heise or other similar activities necessary to fulfill the flood management responsibilities of Flood Control District No. 1 are allowed in the recreational reach designation from Grassy Banks (one (1) mile above Heise) to the confluence with Henrys Fork, provided such activities comply with the Stream Channel Protection Act and the rules adopted to implement the act.

(31) Trout Creek, headwaters to Palisades Reservoir, as a recreational river.

(32) Warm Springs, source to South Fork Snake River, as a recreational river.

(33) Wolverine Creek, headwaters to South Fork Snake River, as a recreational river.

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 19, 1997.

CHAPTER 214
(S.B. No. 1271)

AN ACT

RELATING TO WATER QUALITY; AMENDING SECTION 39-3613, IDAHO CODE, TO PROVIDE FOR THE CREATION OF A COEUR D'ALENE RIVER BASIN COMMISSION, TO PROVIDE MEMBERSHIP AND TO PRESCRIBE POWERS AND DUTIES OF THE COMMISSION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 39-3613, Idaho Code, be, and the same is hereby amended to read as follows:

39-3613. CREATION OF BASIN ADVISORY GROUPS. (1) The director, in consultation with the designated agencies, shall name, for each of the state's major river basins, no less than one (1) basin advisory group which shall generally advise the director on water quality objectives for each basin and work in a cooperative manner with the director to achieve these objectives. Each such group shall establish by majority vote, operating procedures to guide the work of the group. Members shall be compensated pursuant to section 59-509(c), Idaho Code. The membership of each basin advisory group shall be representative of the industries and interests directly affected by the implementation of water quality programs within the basin and each member of the group shall either reside within the basin or represent persons with a real property interest within the basin. Recognized groups representing those industries or interests in the basin may nominate members of the group to the director. Each basin advisory group named by the director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include a representative from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. In addition, the director shall name one (1) person to represent the public at large who may reside outside the basin. Members named to the basin advisory groups shall, in the opinion of the director, have demonstrated interest or expertise which will be of benefit to the work of the basin advisory group. The director may also name as may be needed those who have expertise necessary to assist in the work of the basin advisory group who shall serve as technical nonvoting advisers to the basin advisory group.

(2) The governor shall establish a commission to be known as the Coeur d'Alene River basin commission whose membership is stated below for the Coeur d'Alene River basin, including the north and south forks of the Coeur d'Alene River, the main stem of the Coeur d'Alene River, Lake Coeur d'Alene and the Spokane River to replace and fulfill the duties of the basin advisory group and the watershed advisory group for those rivers and Lake Coeur d'Alene as stated in this section and sections 39-3614 through 39-3616, Idaho Code, as these duties related to heavy metal impacts in the Coeur d'Alene River basin. At the discretion of the governor, the commission may be asked to perform duties other than those specified in sections 39-3613 through 39-3616, Idaho Code. For duties related to sections 39-3613 through 39-3616, Idaho Code, the commission shall report to the director. For all other duties assigned the commission by the governor, the commission shall report to the governor, the speaker of the house of representatives and the president pro tempore of the senate. The governor shall appoint the following members of the commission: one (1) representative of the governor; one (1) representative of the division of environmental quality of the department of health and welfare; one (1) representative of the department of lands; one (1) representative each of the county governments of Benewah county, Kootenai county and Sho-

shone county; one (1) representative of the trustees established under the settlement agreement of May 3, 1986, entered in State of Idaho v. Bunker Hill Co., No. 83-3161 (D. Idaho); two (2) representatives of the citizen's advisory committee of the Coeur d'Alene basin restoration project; one (1) representative of the mining industry; and one (1) representative of other affected industries.

In addition to the governor's appointees, the commission shall have the following representatives appointed: one (1) representative of the U.S. environmental protection agency appointed by the agency; one (1) representative of the U.S. department of agriculture and the U.S. department of interior to be appointed jointly by those agencies; and one (1) representative of the Coeur d'Alene tribe appointed by the tribe. The term of a member of the commission shall be three (3) years. The governor may remove at his discretion any members appointed by him. The commission shall operate by a simple majority vote of the members of the commission. The members of the commission shall elect a chairperson annually from the members of the commission. Members of the commission who are not state employees shall be compensated as provided in section 59-509(b), Idaho Code, if they are not otherwise being compensated for travel costs and per diem for serving on the commission.

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 19, 1997.

CHAPTER 215
(S.B. No. 1152, As Amended, As Amended)

AN ACT

RELATING TO THE ASSESSOR'S DETERMINATION OF OWNERSHIP OF LAND; AMENDING SECTION 63-307, IDAHO CODE, TO ALLOW RECOGNITION OF OWNERSHIP BASED UPON EVIDENCE OF OWNERSHIP OTHERWISE ADMISSIBLE IN A CIVIL TRIAL.

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

SECTION 1. That Section 63-307, Idaho Code, be, and the same is hereby amended to read as follows:

63-307. OWNERSHIP IDENTIFICATION. (1) The assessor shall ascertain the current ownership of land from documents recorded in the county recorder's office and/or from evidence of ownership furnished to the assessor which is admissible at trial in a civil action pursuant to section 54-103, Idaho Code.

(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."

Approved March 19, 1997.

CHAPTER 216
(H.B. No. 3)

AN ACT

RELATING TO BOATING; AMENDING SECTION 67-7003, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING SECTION 67-7033, IDAHO CODE, TO PROVIDE PENALTIES AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 67-7077, IDAHO CODE, TO ALLOW VESSELS TO EXCEED A SLOW, NO-WAKE SPEED IF THE PERSON IN THE WATER OR ON A DOCK IS THE VESSEL'S WATER SKIER.

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) "Boating law administrator" means the staff person of the Idaho department of parks and recreation appointed by the director and who supervises the boating program.

(5) "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.

(56) "Department" means the Idaho department of parks and recreation.

(67) "Director" means the director of the Idaho department of parks and recreation.

(78) "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.

(89) "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.

(910) "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.

(101) "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.

(112) "Operate" means to navigate or otherwise use a vessel on the water of this state.

(123) "Operator" means any person who controls the direction or propulsion of any vessel on the water of this state.

(134) "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.

(145) "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.

(156) "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.

(167) "Personal watercraft" means a small vessel which uses an outboard motor or an inboard motor powering a water jet pump as its primary source of power and is designed to be operated by a person sitting, standing or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

(158) "Private label merchandiser" means any person engaged in the business of selling or distributing, under his own trade name, vessels manufactured by another.

(179) "Regatta," "Race," "Marine Event," "Tournament," or "Exhibition" means an organized water event of limited duration which is conducted according to a prearranged schedule.

(1820) "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.

(1921) "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.

(202) "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 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.

(213) "Water of this state" means any waters in the state of Idaho over which the state has jurisdiction.

SECTION 2. That Section 67-7033, Idaho Code, be, and the same is hereby amended to read as follows:

67-7033. PENALTIES. (1) Any person who shall violate any of the provisions of this chapter or any rule or ~~regulation~~ promulgated by the department pursuant to this chapter shall be guilty of a misdemeanor and be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment.

(2) Any person who shall be convicted of any second or subsequent violation of any of the provisions of law in addition to any other penalties authorized herein shall be required to attend and successfully complete a course on safe boating approved by the state boating law administrator and may, at the discretion of the court, be refused the privilege of operating any vessel on any of the waters of this state for a period not to exceed two (2) years.

(3) Any person who shall operate any vessel during the period when he has been denied the privilege to so operate by virtue of subsection (2) of this section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than three hundred dollars (\$300), or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment.

(4) Any manufacturer who shall violate the provisions of this chapter with respect to the obligation for the installation of capacity of certification plates shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment of not more than thirty (30) days, or both such fine and imprisonment and each failure to affix a capacity or certification plate as provided in this chapter shall constitute a separate offense for each vessel with respect to which the failure occurs.

SECTION 3. That Section 67-7077, Idaho Code, be, and the same is hereby amended to read as follows:

67-7077. OPERATION OF VESSELS. It shall be unlawful for any person to operate any vessel on the water of this state: (a) in a negligent manner as prescribed in section 67-7017, Idaho Code, while within one hundred (100) feet of another vessel; or (b) at a speed greater than no wake or five (5) miles per hour while within one hundred (100)

feet of a dock, swimmer or other person in the water, except when safely pulling a water skier from a dock or when the swimmer or other person in the water is the vessel's water skier.

Approved March 20, 1997.

CHAPTER 217
(H.B. No. 27)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1335, IDAHO CODE, TO CHANGE THE NAME "DEPARTMENT OF EMPLOYMENT" TO "DEPARTMENT OF LABOR," TO ELIMINATE THE REQUIREMENT THAT EMPLOYER'S CONTRIBUTION TO THE DEPARTMENT OF LABOR'S RETIREMENT PLAN SHALL NOT BE LESS THAN THE AGGREGATE AMOUNT CONTRIBUTED DURING THE YEAR BY EMPLOYEES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 72-1352, IDAHO CODE, TO INCREASE THE AMOUNT OF WAGES REQUIRED TO BE PAID IN ANY CALENDAR QUARTER FROM THREE HUNDRED DOLLARS TO FIFTEEN HUNDRED DOLLARS FOR PURPOSES OF TERMINATING EMPLOYER COVERAGE UNDER THE EMPLOYMENT SECURITY LAW.

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

SECTION 1. That Section 72-1335, Idaho Code, be, and the same is hereby amended to read as follows:

72-1335. PERSONNEL. (a) Subject to other provisions of this act, the director is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, employees, and other persons as may be necessary in the performance of his duties under this act. The director may delegate to any such person such power and authority as he deems reasonable and proper for the effective administration of this act, and may, in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code, bond any person handling moneys or signing checks hereunder, such bond to be paid for out of the employment security administration fund.

(b) (1) Subject only to the provisions of this act and such additional provisions consistent therewith as the director shall by regulations rules prescribe, the director is authorized and directed to establish a group pension plan providing retirement, disability, and death benefits for employees of the department of employment labor through the means of group contracts negotiated with an insurer, licensed and qualified to do business under the laws of the state of Idaho, on a competitive basis.

(2) Employees covered by the plan shall include all employees (other than temporary and hourly-rated employees) who are in employee status with the department of employment labor on or after the effective date of the plan and whose employment commenced before October 1, 1980.

(3) Credited service shall mean all service by employees in the employ of the department of employment labor (exclusive of leaves

without pay other than military leave) as follows:

(i) Past service rendered prior to the effective date of the plan by employees; for this purpose prior service shall include service in any of the predecessor, component organizations thereof, as determined appropriate by the director on the effective date, and shall also include leave-of-absence for military service occurring within a period of otherwise continuous service in any such predecessor organizations.

(ii) Future service rendered on and after said effective date.

(iii) An employee of the department placed on loan or special duty with other governmental units may be deemed to be in credited service when the costs of continuing credited service are made reimbursable in accordance with agreement approved by the director.

(4) For each year of credited service each employee covered under the plan shall receive a monthly pension commencing upon retirement at or after age sixty-five (65) and continuing until death, of not less than:

Pension as %	
of Earnings	Monthly Earnings
1%	First \$350
2%	Over 350

except that with respect to credited service before the effective date of the plan such monthly pension shall be computed at the monthly rate of earnings in effect for the employee as of the effective date of the plan. Appropriate schedules and conditions for early retirement and contingency annuity option shall be included in the insurance plan. Notwithstanding any other provisions of this section to the contrary, the executive director is authorized and directed to negotiate with the insurer to invest any interest, dividends, earnings, or other moneys accruing to the funds financing the employees' retirement program with the insurer to purchase additional retirement benefits. The purchase of said additional benefits shall be contingent upon actuarial appraisals of the plan and shall be based on sound actuarial principles. Total retirement benefits to be provided under the program shall meet the requirements of the Internal Revenue Service for integration purposes.

(5) An employee who becomes totally disabled after having completed at least ten (10) years of service will, upon submission of medical evidence satisfactory to the insuring company, be eligible for a disability annuity which, together with any other form of disability pay, will not exceed on a salary bracket basis approximately one-third (1/3) of his average salary for the two (2) year period immediately preceding the commencement of his disability. Such disablement annuity shall be payable, after a twenty-six (26) week elimination period, until death, recovery, or attainment of age sixty-five (65) (at age sixty-five (65) the employee becomes entitled to his normal retirement pension which has accumulated for service prior to his disablement).

(6) The cost of past service, future service and disability pensions shall be calculated according to sound actuarial principles.

Cost of the plan, including funding of past service pensions which shall be funded over a period of time consistent with good insurance practices, shall be paid from the employment security administration fund established by section 72-1347, Idaho Code, of this act. ~~Payments each year from said fund toward the purchase of future service pensions for employees shall not be less than the aggregate amount contributed during the year by employees.~~ Each employee covered under the plan shall by payroll deduction contribute toward the cost of future service pensions at not less than the following rates:

Rate as of Monthly	
Contribution	Monthly Earnings
3%	First \$350
6%	Over 350

(7) Upon termination of service, an employee may elect to receive the refund of his contributions plus interest or may elect to have the tax-deferred contributions and interest directly rolled over to an individual retirement account or annuity or to another qualified retirement plan that accepts the roll over, pursuant to 26 U.S.C. 402(c). A vested employee, as provided in the insurance contract, who leaves his contributions in the plan will remain entitled to the pension purchased by the employer contributions on his behalf, and all other privileges under the plan.

(8) If an employee dies more than ten (10) years before his normal retirement date, all of his contributions plus interest will be returned to a previously-named beneficiary. The following provisions of this subsection shall be subject to a contingency annuity option. If an employee dies on or after the date ten (10) years prior to his normal retirement date, it will be assumed that he retired on the first day of the month following his date of death, and his beneficiary shall receive, beginning on the assumed retirement date, one hundred twenty (120) monthly pension payments. The amount of monthly pension payable will be based on the credit accrued to that time and the employee's assumed earlier retirement age. If death occurs after retirement but before one hundred twenty (120) monthly pension payments have been made, the monthly pension will be continued to his beneficiary until a total of one hundred twenty (120) monthly payments have been made.

(9) The plan shall become effective on a date agreed upon by the director and the insurer subject to other applicable provisions of the Employment Security Law and the approval of the bureau of employment security, U.S. Department of Labor.

SECTION 2. That Section 72-1352, Idaho Code, be, and the same is hereby amended to read as follows:

72-1352. PERIOD, TERMINATION, AND ELECTION OF EMPLOYER COVERAGE.

(a) Except as otherwise provided in subsection (c) of this section any employer who is or becomes a covered employer within any calendar year shall be deemed to be a covered employer until his coverage is terminated.

(b) The coverage of any covered employer may be terminated if --

(1) As of the close of any calendar quarter, it is found that

such covered employer had no individuals performing services for him in covered employment, and that the continued operation of his trade, profession, or business is not likely to result in his having a quarterly payroll of three one thousand five hundred dollars (\$31,500) or more within the ensuing two (2) calendar quarters, or (2) As of the close of a calendar year, it is found that such covered employer did not pay or become liable to pay for services rendered to him in covered employment wages amounting to three one thousand five hundred dollars (\$31,500) or more in any calendar quarter of such year, and that the continued operation of his trade, profession, or business is not likely to create covered employment as defined in section 72-1316, Idaho Code, within the ensuing calendar year.

(3) Notwithstanding the provisions in subsections (b)(1) or (b)(2) the coverage of an employer may not be terminated if he is or was subject under the provisions of the federal unemployment tax act during the current or preceding calendar year.

(c) Any employer for whom services that do not constitute covered employment are performed, may file with the director a written election that all such services with respect to which payments are not required under an unemployment compensation or insurance law of any other state or of the federal government, and which are performed by individuals for him in one or more distinct establishments or places of business, shall be deemed to constitute covered employment for not less than two (2) calendar years. Upon written approval by the director of such election, such services shall be deemed to constitute covered employment from and after the date stated in such approval. Such services shall cease to be covered employment as of January 1st of any calendar year subsequent to such two (2) calendar years, if not later than January 31st of such year either such employer has filed with the director a written notice of termination, or the director on his own motion, has given notice of termination of such coverage.

(d) Benefits payable to the employees thus covered will be payable under the same basis, the same benefit formula and eligibility conditions as prevail for all other covered employees.

Approved March 20, 1997.

CHAPTER 218
(H.B. No. 34)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1302, IDAHO CODE, TO PROVIDE A DEFINITION OF SEASONAL OR CASUAL EMPLOYEES OF A COUNTY 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 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'~~ Worker's 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) consecutive 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 or county when the city or county 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, 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.

(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 20, 1997.

CHAPTER 219
(H.B. No. 61)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1402, IDAHO CODE, TO ESTABLISH A MINIMUM FINE FOR THE ILLEGAL TAKING, POSSESSION OR WASTE OF WILD STEELHEAD OR BULL TROUT; AND AMENDING SECTION

36-1404, IDAHO CODE, TO ESTABLISH REIMBURSABLE DAMAGES FOR THE ILLEGAL TAKING, POSSESSION OR WASTE OF WILD STEELHEAD OR BULL TROUT.

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

SECTION 1. That Section 36-1402, Idaho Code, be, and the same is hereby amended to read as follows:

36-1402. PENALTY -- INFRACTION -- MISDEMEANOR -- FELONY -- REVOCATION OF LICENSE -- DISPOSITION OF MONEYS. (a) Infraction Penalty. Any person who pleads guilty to or is found guilty of an infraction of this code or rules promulgated pursuant thereto, shall be punished in accordance with the provisions of the Idaho infractions rules.

(b) Misdemeanor Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a misdemeanor under the provisions of this title or rules promulgated pursuant thereto shall, except in cases where a higher penalty is prescribed, be fined in a sum of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000) and/or by commitment to jail for not more than six (6) months. The minimum fine, per animal, fish or bird, for the illegal taking, illegal possession or the illegal waste of the following animals, fish or birds shall be as indicated below:

Animal, Fish or Bird	Minimum Fine
Bighorn sheep, mountain goat and moose	\$500
Elk	\$300
Deer and pronghorn antelope	\$200
Wild turkey, swan and sturgeon	\$200
Chinook <u>salmon, wild steelhead and bull trout</u>	\$100

(c) Felony Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a felony under the provisions of this title shall be punished in accordance with section 18-112, Idaho Code. Provided further, that the judge hearing the case shall forthwith revoke for life, the hunting, fishing or trapping license and privileges of any person who, within a five (5) year period, pleads guilty to, is found guilty of or is convicted of three (3) or more felony violations of the provisions of this title.

(d) License Revocation. Any person entering a plea of guilty or being found guilty or convicted of violating any of the provisions of this title, or who otherwise fails to comply with the requirements of a citation in connection with any such offense, may, in addition to any other penalty assessed by the court, have his hunting, fishing, or trapping privileges revoked for such period of time as may be determined by the court not to exceed three (3) years, said period beginning on the date of conviction, finding of guilt or the entry of the plea of guilty. Provided further, that the magistrate hearing the case shall forthwith revoke the hunting, fishing, or trapping privileges for a period of not less than one (1) year from the date of such conviction, finding of guilt or the entry of the plea of guilty, of any person who is convicted of, found guilty of or enters a plea of guilty for any of the following offenses:

1. Taking or possessing upland game birds, migratory waterfowl, salmon, steelhead, sturgeon, or any big game animal during closed

season.

2. Exceeding the daily bag or possession limit of upland game birds, migratory waterfowl or big game animals.

3. Taking any fish by unlawful methods as set forth in section 36-902(a) or (c), Idaho Code.

4. Unlawfully purchasing, possessing or using any license, tag or permit as set forth in section 36-405(c), Idaho Code.

5. Trespassing in violation of warning signs as set forth in section 36-1603, Idaho Code.

6. The unlawful sale or purchase of wildlife as set forth in section 36-501, Idaho Code.

7. Taking any game animal with a firearm during an archery only season.

Provided further, that the magistrate hearing the case of a first time hunting violation offender under the age of twenty-one (21) may require that the offender attend a remedial hunter education course at the offender's expense. Upon successful completion of the course, the remainder of the revocation period shall be subject to a withheld judgment so long as the offender is not convicted of any additional hunting violations during the period. The commission shall establish by rule the curriculum and cost of the hunter education remedial course.

The revocation shall consist of cancellation of an existing license for the required length of time and/or denial of the privilege of purchasing an applicable license for the length of time required to meet the revocation period decreed. In the case of persons pleading guilty, convicted or found guilty of committing multiple offenses, the revocation periods may run consecutively. In the case of pleas of guilty, convictions or findings of guilt involving taking big game animals during closed season or exceeding the daily bag or possession limit of big game, the magistrate hearing the case shall revoke the hunting, fishing or trapping privileges of any person convicted or found guilty of those offenses for a period of not less than one (1) year for each big game animal illegally taken or possessed by the person convicted or found guilty.

It shall be a misdemeanor for any person to hunt, fish, or trap or purchase a license to do so during the period of time for which such privilege is revoked by order of any court of this state. Any person pleading guilty, found guilty or convicted thereof shall be fined in an amount of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by commitment to jail for not more than six (6) months or by both such fine and commitment. Provided further, that the period of revocation of such privileges shall be extended an additional amount of time equal to the original revocation.

For the purpose of this title, the term "conviction" shall mean either a withheld judgment or a final conviction.

(e) For purposes of the wildlife violator compact, section 36-2301, Idaho Code, et seq., the department shall:

1. Suspend a violator's license for failure to comply with the terms of a citation from a party state. A copy of a report of failure to comply from the licensing authority of the issuing state shall be conclusive evidence.

2. Revoke a violator's license for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence.

(f) Disposition of Fines and Forfeitures. Distribution of fines and forfeitures remitted shall be in accordance with section 19-4705, Idaho Code.

SECTION 2. That Section 36-1404, Idaho Code, be, and the same is hereby amended to read as follows:

36-1404. UNLAWFUL KILLING, POSSESSION OR WASTE OF WILD ANIMALS, BIRDS AND FISH -- REIMBURSABLE DAMAGES -- SCHEDULE -- ASSESSMENT BY MAGISTRATES -- INSTALLMENT PAYMENTS -- DEFAULT JUDGMENTS -- DISPOSITION OF MONEYS. (a) In addition to the penalties provided for violating any of the provisions of title 36, Idaho Code, any person who pleads guilty, is found guilty of or is convicted of the illegal killing or the illegal possession or illegal waste of game animals or birds or fish shall reimburse the state for the value of each animal so killed or possessed or wasted as follows:

1. Elk, five hundred dollars (\$500) per animal killed, possessed or wasted.
2. Caribou, bighorn sheep, mountain goat and moose, one thousand dollars (\$1,000) per animal killed, possessed or wasted.
3. Deer, and pronghorn antelope, two hundred dollars (\$200) per animal killed, possessed or wasted.
4. Wild turkey and swan, two hundred dollars (\$200) per bird killed, possessed or wasted.
5. Sturgeon, two hundred dollars (\$200) per fish killed, possessed or wasted.
6. Chinook salmon, wild steelhead and bull trout, one hundred dollars (\$100) per fish killed, possessed or wasted.

(b) In every case of a plea of guilty, a finding of guilt or a conviction, the court before whom such plea of guilty, finding of guilt or conviction is obtained shall enter judgment ordering the defendant to reimburse the state in a sum or sums as hereinbefore set forth including postjudgment interest. If two (2) or more defendants are convicted of the illegal taking, killing or the illegal possession or wasting of the game animal, bird or fish, such judgment shall be declared against them jointly and severally.

(c) The judgment shall fix the manner and time of payment, and may permit the defendant to pay the judgment in installments at such times and in such amounts as, in the opinion of the court, the defendant is able to pay. In no event shall any defendant be allowed more than two (2) years from the date judgment is entered to pay the judgment.

(d) A defaulted judgment or any installment payment thereof may be collected by any means authorized for the enforcement of a judgment under the provisions of the Idaho Code.

(e) All courts ordering such judgments of reimbursement shall order such payments to be made to the department which shall deposit them with the state treasurer, and the treasurer shall place them in the state fish and game account.

(f) The court shall retain jurisdiction over the case. If at any

time the defendant is in arrears ninety (90) days or more, the court may revoke the defendant's hunting, fishing or trapping privileges until the defendant completes payment of the judgment.

Approved March 20, 1997.

CHAPTER 220
(H.B. No. 63)

AN ACT

RELATING TO FISH AND GAME LICENSES; AMENDING SECTION 36-305, IDAHO CODE, TO ALLOW THE USE OF A TEMPORARY LICENSE IN SPECIFIED CASES; AND AMENDING SECTION 36-1201, IDAHO CODE, TO ALLOW THE USE OF A TEMPORARY LICENSE AS PROOF OF LICENSURE.

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

SECTION 1. That Section 36-305, Idaho Code, be, and the same is hereby amended to read as follows:

36-305. HONORARY OR TEMPORARY LICENSES OR PERMITS -- ISSUANCE UNLAWFUL -- PENALTY. No person including the director, any employee of the department or vendor or agent thereof shall at any time or under any circumstances issue any honorary license or any temporary license permitting any person to hunt, fish or trap in the state of Idaho; except that a temporary license may be issued as allowed by commission rule for the limited purpose of providing immediate proof of licensure for:

- (a) Telephonic or other electronic license issuances; and
- (b) Temporary failure of the computerized licensing system.

Nothing in this section shall preclude the director from issuing scientific collecting permits when such permits are issued in accordance with the provisions of section 36-106(e)5, Idaho Code.

SECTION 2. That Section 36-1201, Idaho Code, be, and the same is hereby amended to read as follows:

36-1201. PRODUCTION OF WILDLIFE FOR INSPECTION -- STOP AT CHECKING STATIONS -- LICENSE MUST BE ON PERSON. No fisherman, hunter or trapper shall refuse or fail to:

(a) Inspection of Wildlife. Upon request of the director, produce for inspection any wildlife in his possession.

(b) Check Stations. Stop and report at a wildlife check station encountered on his route of travel when directed to do so by personnel on duty. Such direction may be accomplished by signs prominently displayed along the route of travel indicating those persons required to stop.

(c) License to be Carried and Exhibited on Request. Have the proper required license, temporary license, authorization number or other information required by rule, on his person at all times when hunting, fishing or trapping and produce the same for inspection upon

request of a conservation officer or any other person authorized to enforce fish and game laws. However, no person charged with violating this subsection shall be convicted if he produces in court a license, theretofore issued to him and valid at the time of his arrest.

Approved March 20, 1997.

CHAPTER 221
(H.B. No. 100)

AN ACT

RELATING TO THE STATE TREASURER AND INVESTMENT OF IDLE MONEYS; AMENDING SECTION 67-1210, IDAHO CODE, TO DELETE UNNECESSARY LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-1210, Idaho Code, be, and the same is hereby amended to read as follows:

67-1210. INVESTMENT OF IDLE MONEYS. It shall be the duty of the state treasurer to invest idle moneys in the state treasury, other than moneys in public endowment funds, in any of the following:

(a) Bonds, treasury bills, interest-bearing notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) General obligation or revenue bonds of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.

(c) General obligation or revenue bonds of any county, city, metropolitan water district, municipal utility district, school district or other taxing district of this state.

(d) Notes, bonds, debentures, or other similar obligations issued by the Farm Credit System or institutions forming a part thereof under the Farm Credit Act of 1971 [U.S.C., tit. 12, sections 2001-2259] and all Acts of Congress amendatory thereof or supplementary thereto; in bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act [U.S.C., tit. 12, sections 1421-1449]; in bonds, debentures and other obligations of the Federal National Mortgage Association established under the National Housing Act [U.S.C., tit. 12, sections 1701-1750g] as amended, and in the bonds of any federal home loan bank established under said act and in other obligations issued or guaranteed by agencies or instrumentalities of the government of the state of Idaho or of the United States, including the United States small business administration guaranteed portion of any loan approved by an Idaho banking corporation and by the state treasurer for the purpose of financing the addition to or retrofit of an underground storage tank or underground storage tank system ~~with items including, but not limited to, cathodic protection, lining or spill and overflow controls to improve the ability of an~~

~~underground--storage--tank--or--tank--system--to--prevent--the--release--of--petroleum--or--petroleum--products;--which--additions--or--retrofit--are--necessary--to--bring--the--tank--or--tank--system--into--compliance--with--underground--storage--tank--upgrade--regulations--promulgated--by--the--United--States--environmental--protection--agency--pursuant--to--subtitle--f--of--the--solid--waste--disposal--act;--as--amended--by--the--resource--conservation--and--recovery--act.~~

(e) Bonds, notes or other similar obligations issued by public corporations of the state of Idaho including, but not limited to, the Idaho state building authority, the Idaho housing authority and the Idaho water resource board, but such investment shall not extend beyond seven (7) days.

(f) Repurchase agreements covered by any legal investment for the state of Idaho.

(g) Tax anticipation notes and registered warrants of the state of Idaho.

(h) Tax anticipation bonds or notes and income and revenue anticipation bonds or notes of taxing districts of the state of Idaho.

(i) Time deposit accounts and savings accounts in state depositories including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(j) Time deposit accounts and savings accounts of state or federal savings and loan associations located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the Federal Savings and Loan Insurance Corporation including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(k) Revenue bonds of institutions of higher education of the state of Idaho.

(l) Share, savings and deposit accounts of state and federal credit unions located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the national credit union share insurance fund and/or any other authorized deposit guaranty corporation, including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

The term "idle moneys" means the balance of cash and other evidences of indebtedness which are accepted by banks as cash in the ordinary course of business, in demand deposit accounts, after taking into consideration all deposits and withdrawals, on a daily basis.

The interest received on all such investments, unless otherwise specifically required by law, shall be paid into the general account of the state of Idaho. Provided, unless otherwise specifically provided by statute, any interest earned on funds received by the state pursuant to a federal law, regulation, or federal-state agreement which governs disposition of interest earned upon such funds shall be accounted for separately to give effect to the federal law, regulation, or federal-state agreement.

If the interest is to be credited to a separate account, the state treasurer shall charge the account an investment administration fee. The amount of the fee shall be determined annually by the state trea-

surer and submitted to the board of examiners for approval as stipulated in section 67-3524, Idaho Code. The fee shall be expressed as an annual percentage of the average daily balance of the account, including separate investments, if any, of that account. The fee shall be charged monthly in an amount approximately one-twelfth ($1/12$) of the fee which would be payable on an annual basis. The amount of the investment administration fee shall constitute an appropriation from the account for which the investment administration services are rendered.

The state treasurer shall charge an investment administration fee to each such state fund or account, including the general account, which receives investment income from investments administered by the office of state treasurer. The investment administration fee shall be determined annually by the state treasurer and submitted to the board of examiners for approval, as stipulated in section 67-3524, Idaho Code. The fee shall be expressed as an annual percentage of the average daily balance of the fund or account, including separate investments, if any, of that fund or account. The fee shall be charged monthly in an amount approximately one-twelfth ($1/12$) of the fee which would be payable on an annual basis. The amount of the investment administration fee shall constitute an appropriation from the fund or account for which the investment administration services are rendered.

The term "to invest" means to use the idle moneys in the state treasury to buy, sell, including selling before maturity at either a gain or a loss, retain, or exchange any of the investments described in this section, considering the probable safety of the capital, the probable income to be derived, and the liquidity of the assets.

Approved March 20, 1997.

CHAPTER 222
(H.B. No. 132)

AN ACT

RELATING TO THE SOLICITATION TO HALT OR IMPEDE LAWFUL FOREST, MINING OR AGRICULTURAL PRACTICES; AMENDING SECTION 18-2005, IDAHO CODE, TO PROVIDE THAT SOLICITING OR CONSPIRING TO HALT, IMPEDE, OBSTRUCT OR INTERFERE WITH LAWFUL MINING OR AGRICULTURAL OPERATIONS, IF THE ACT IS PERFORMED TO EFFECT THE OBJECT OF THE SOLICITATION OR CONSPIRACY, SHALL BE A FELONY AND TO PROVIDE THAT CERTAIN PEACEFUL DEMONSTRATIONS SHALL NOT BE A VIOLATION OF THIS ACT.

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

SECTION 1. That Section 18-2005, Idaho Code, be, and the same is hereby amended to read as follows:

18-2005. SOLICITATION TO HALT OR IMPEDE LAWFUL FOREST, MINING OR AGRICULTURAL PRACTICES. Any person who solicits any other person, or conspires with any other person to commit any crime against property or person with the specific intent to halt, impede, obstruct or inter-

fere with the lawful management, cultivation or harvesting of trees or timber or with the lawful management or operations of agricultural or mining industries, if the act is performed to effect the object of the solicitation or conspiracy, shall be guilty of a felony; provided however, that any person who solicits any other person or conspires with any other person to stage a peaceful demonstration which is not designed, planned, or intended to involve the commission of any crime against property or person shall not be guilty of any crime under the provision of this section.

Approved March 20, 1997.

CHAPTER 223
(H.B. No. 137, As Amended)

AN ACT

RELATING TO THE STATE BOARD OF CORRECTION; AMENDING SECTION 20-209, IDAHO CODE, TO AUTHORIZE THE STATE BOARD OF CORRECTION TO ENTER INTO CONTRACTS WITH PRIVATE PRISON CONTRACTORS; AMENDING SECTION 20-241, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE; AMENDING CHAPTER 2, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-241A, IDAHO CODE, TO PROVIDE FOR AGREEMENTS FOR THE CONFINEMENT OF INMATES, TO PROVIDE THE POWERS AND RESPONSIBILITIES OF THE STATE BOARD OF CORRECTION WITH RESPECT TO AGREEMENTS WITH OTHER STATES, PRIVATE PRISON CONTRACTORS AND OTHER AUTHORITIES FOR THE CONFINEMENT OF INMATES, TO PROVIDE THE REQUIREMENTS AND LIMITATIONS OF CONTRACTS WITH PRIVATE PRISON CONTRACTORS AND TO PROVIDE FOR OFFENSES, INCLUDING ESCAPE, COMMITTED BY INMATES IN A FACILITY OPERATED BY A PRIVATE PRISON CONTRACTOR; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 20-209, Idaho Code, be, and the same is hereby amended to read as follows:

20-209. CONTROL AND MANAGEMENT OF PENITENTIARY CORRECTIONAL FACILITIES AND INMATES. (1) The state board of correction shall have the control, direction and management of such correctional facilities as may be acquired by law for use by the state board of correction and ~~of the present penitentiary of the state~~ and all property owned or used in connection therewith, and shall provide for the care, maintenance and employment of all inmates now or hereinafter committed to its custody.

(2) The state board of correction shall have the authority to enter into contracts with private prison contractors for the site selection, design, design/building, acquisition, construction, construction management, maintenance, leasing, leasing/purchasing, management or operation of private prison facilities or any combination of those services subject to the requirements and limitations set forth in section 20-241A, Idaho Code.

(3) The state board of correction is authorized to provide medical and counseling services to those inmates who have been exposed to the HIV (human immunodeficiency virus) which causes acquired immunodeficiency syndrome (AIDS) or who have been diagnosed as having contracted a human immunodeficiency viral disease.

(34) The state board of correction should provide educational and informational services to inmates housed in Idaho and to its department employees in order to assure that the transmission of HIV within correctional facilities is diminished.

SECTION 2. That Section 20-241, Idaho Code, be, and the same is hereby amended to read as follows:

20-241. ACCEPTANCE OF FEDERAL OR OTHER FUNDS OR PROPERTY -- AGREEMENTS--WITH-FEDERAL-OR-LOCAL-AGENCIES. The state board of correction, with the written consent of the governor, shall have the power and it shall be its duty:

1. To accept from the United States of America or any of its agencies, such funds, equipment, and supplies as may be made available to this state for any of the purposes contemplated by law, and to enter into such contract and agreements with the United States or any of its agencies, or other states, as may be necessary, proper and convenient, not contrary to the laws of the state.

2. To enter into an agreement with the board of county commissioners of any county, or with the governing officials of any municipality of this state for the payment by said county or municipality of all or any part of the cost of performance by the state board of correction of any parole or probation services or the supervision of any parole or probation case arising within the said county or municipality, as the case may be, or the maintenance therein of work camps as authorized by law.

3. To accept any grant or donation of land or any gift of money or valuable thing made to the state for any of the purposes contemplated by law.

~~4. To determine the availability of state facilities suitable for the detention and confinement of persons held under authority of state law if the state board of correction determines that suitable state facilities are not available, it may enter into an agreement with the proper authorities of the United States, another state, or a political subdivision of this state, to provide for the safekeeping, care, subsistence, proper government, discipline, and to provide programs for the reformation and rehabilitation and treatment of prisoners. Facilities made available to the state board of correction by agreement may be in this state, or in any other state, territory or possession of the United States. The state board of correction shall not enter into an agreement with an authority unable to provide the degree or kind of safekeeping, care and subsistence required by the laws of this state and the rules and regulations adopted by the state board of correction.~~

~~a. An authority, receiving physical custody for the purpose of incarceration of a person sentenced by a court under the terms of an agreement made under this section, shall be considered as acting solely as agent of this state. This state retains jurisdiction~~

~~over a person incarcerated in an institution of another state, the United States, or a political subdivision of this state;
b. The attorney general of this state shall enforce an agreement made under this section in a civil suit.~~

SECTION 3. That Chapter 2, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-241A, Idaho Code, and to read as follows:

20-241A. AGREEMENTS FOR CONFINEMENT OF INMATES. The state board of correction shall have the power and it shall be its duty:

(1) To determine the availability of state facilities suitable for the detention and confinement of prisoners held under authority of state law. If the state board of correction determines that suitable state facilities are not available, it may enter into an agreement with the proper authorities of the United States, another state, a political subdivision of this state or another state, or a private prison contractor, to provide for the safekeeping, care, subsistence, proper government, discipline, and to provide programs for the reformation, rehabilitation and treatment of prisoners. Facilities made available to the state board of correction by agreement may be in this state, or in any other state, territory or possession of the United States. The state board of correction shall not enter into an agreement with an authority unable to provide the degree or kind of safekeeping, care and subsistence required by state or federal laws, the constitution of the state of Idaho, the United States constitution, and the rules adopted by the state board of correction. All contracts or agreements entered into by the state board of correction and a private prison contractor shall be subject to the provisions of this section and section 20-209, Idaho Code.

(a) An authority or private prison contractor, receiving physical custody for the purpose of incarceration of a person sentenced by a court under the terms of an agreement made under this section, shall be considered as acting solely as an agent of this state. This state retains jurisdiction over a person incarcerated in an institution of another state, the United States, a political subdivision of this state or another state, or of a private institution;

(b) The attorney general of this state shall enforce an agreement or contract made under this section in a civil suit.

(2) The state board of correction shall have the authority to enter into contracts with private prison contractors for the site selection, design, design/building, acquisition, construction, construction management, maintenance, leasing, leasing/purchasing, management or operation of private prison facilities or any combination of these services, subject to the following requirements and limitations:

(a) Any request for proposals, any original contract, any contract renewal, any price or cost adjustment or any other amendment to any contract for the incarceration of individuals in a private institution, shall be reviewed by the board of correction;

(b) No contract authorized by the provisions of this section

shall be awarded until the private prison contractor demonstrates to the satisfaction of the state board of correction that the contractor possesses the necessary qualifications and experience to provide the services specified in the contract; that the contractor can provide the necessary qualified personnel to implement the terms of the contract; that the financial condition of the contractor is such that the terms of the contract can be fulfilled; that the contractor has the ability to comply with applicable court orders and corrections standards; and that the proposed private prison facilities or the correctional services proposed by the contractor meet constitutional minimums;

(c) No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the state board of correction that the contractor can obtain insurance or provide self-insurance to indemnify the state against possible claims arising from the operation of prison facilities by the contractor, and to compensate the state for any losses incurred due to the operation of prison facilities;

(d) Contracts awarded to private prison contractors pursuant to the provisions of this section shall be entered into for a period specified in each contract, subject to availability of funds annually appropriated by the Idaho legislature for that purpose. No contract awarded pursuant to this section shall provide for the encumbrance of funds beyond the amount available for a fiscal year;

(e) A contract may provide for annual contract price or cost adjustments, except that any adjustments may be made only once each year effective on the anniversary of the effective date of the contract.

(3) Any contract between the state board of correction and a private prison contractor, whereby the contractor provides for the housing, care, and control of inmates in a nondepartmental facility operated by the contractor, shall contain, in addition to other provisions, terms and conditions;

(a) A requirement that the contractor is to provide said services in a facility which meets standards as required by the Idaho department of correction;

(b) If a private prison institution is to be located in the state of Idaho on private land, it shall be required that the contractor obtain written authorization from the governing board of any municipality in which the facility is to be located, or if the facility is not to be located within the municipality, written authorization from the board of county commissioners of the county in which the facility is to be located;

(c) A requirement that the private prison contractor shall provide training to its personnel to a level acceptable to the Idaho department of correction. The Idaho department of correction may provide training to the personnel of a private prison contractor and may charge a reasonable fee for the training, not to exceed the cost of training. The provisions of this section shall not be construed to confer peace officer status upon any employee of the private prison contractor or to authorize the use of firearms

except to prevent escape from the facility or from custody while being transported to or from the facility or to prevent an act which would cause death or serious bodily injury to any person. The provisions of this section shall not be construed to confer Idaho state employee status upon any employee of the private prison contractor;

(4) Contracts awarded under the provisions of this section shall, at a minimum, comply with the following:

(a) Provide for internal and perimeter security to protect the public, employees and inmates;

(b) Provide that the private prison contractor shall not benefit financially from the labor of inmates nor shall any inmate ever be placed in a position of authority over another inmate. Any profits realized from the operation of a prison enterprise program shall revert to the department of correction or appropriate governmental authority. Private prison contractors may work with the Idaho department of correction in setting up work and training programs. Private prison contractors shall be authorized to purchase services and commodities from the Idaho department of correction which are necessary for implementing work or training opportunities as outlined in this section;

(c) Impose discipline on inmates only in accordance with applicable Idaho department of correction rules and procedures;

(d) Provide proper food, clothing, housing and medical care as provided for in the contract.

(5) A private prison contractor, in carrying out its duties and responsibilities under contract with the state board of correction, shall not be bound by the enactments of the legislature which govern the appointment, qualifications, duties, salaries or benefits of wardens, managers or other correctional employees. No employee of the private prison contractor shall be considered an employee of the state of Idaho. A private prison contractor shall not employ any person who does not satisfy the board of correction's personnel policies.

(6) The director of the Idaho department of correction or his designee shall monitor the performance of the private prison contractor. In all such contracts the state shall retain clear supervisory and monitoring powers over the operation and management of the private institutions to insure that the inmates are properly cared for and that the employees of the facility and the public are adequately protected. Included in the powers and responsibilities of the director of the Idaho department of correction or his designee when acting as the chief contract monitor of the private prison contract are:

(a) Approval of all inmate releases on furlough or work release;

(b) Approval of the type of work offenders may perform pursuant to this section and review and approval of any incentive pay plan presented by the private prison contractor for offender pay;

(c) Approval of the training program for the private prison contractor's employees;

(d) A determination if the minimum requirements of the contract are being satisfactorily performed;

(e) Promulgation of rules interpreting or making specific application of the provisions of this section;

(f) A determination if appropriate policies and procedures of the

Idaho department of correction are being followed by the private prison contractor and its personnel.

(7) No contract for correctional services may authorize, allow, or imply a delegation of authority or responsibility to a private prison contractor which would allow the contractor to:

(a) Develop or implement procedures for calculating inmate release dates;

(b) Approve the type of work inmates may perform and the wages which may be given to inmates engaging in the work;

(c) Place an inmate under less restrictive custody or more restrictive custody or take any disciplinary actions contrary to rules and procedures approved by the Idaho department of correction;

(d) Develop or implement procedures regarding the care, custody and treatment of inmates which are contrary to the Idaho department of correction's policies and procedures, state or federal law.

(8) Any offense, which if committed in a state institution or facility would be a crime, including escape, shall also be a crime if committed by or with regard to offenders assigned to an institution or facility operated pursuant to a contract between the state and a private prison contractor.

(9) Any reference in the Idaho Code to imprisonment in a state penitentiary, or state prison, or incarceration under the control and custody of the Idaho board of correction shall be interpreted to include incarceration in a private prison facility.

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 20, 1997.

CHAPTER 224
(H.B. No. 152)

AN ACT

RELATING TO THE TELEPHONE SOLICITATION ACT; AMENDING SECTION 48-1003, IDAHO CODE, TO MAKE UNLAWFUL THE SENDING OF UNSOLICITED ADVERTISEMENTS TO A TELEPHONE FACSIMILE MACHINE.

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

SECTION 1. That Section 48-1003, Idaho Code, be, and the same is hereby amended to read as follows:

48-1003. UNLAWFUL ACTS. (1) It is an unlawful act for a telephone solicitor to:

(a) Intimidate or torment any person of normal and reasonable sensitivities in connection with a telephone solicitation;

(b) Refuse to hang up and free the purchaser's line immediately

once requested to do so by the purchaser;

(c) Misrepresent the price, quality, or availability of the goods or services being offered to the purchaser, or not to disclose all material matters relating directly or indirectly to the offered goods or services;

(d) Advertise, represent, or imply that the person has the approval or endorsement of any government, governmental office, or agency, unless such is the fact;

(e) Advertise, represent, or imply that the person has a valid registration number when the person does not;

(f) Fail to comply with the provisions of section 48-603A, Idaho Code; and

(g) Violate any applicable provision or requirement of this chapter; and

(h) Send an unsolicited advertisement to a telephone facsimile machine.

(2) Any violation of the provisions of this chapter is an unlawful, unfair, and deceptive act or practice in trade or commerce for the purpose of applying the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

Approved March 20, 1997.

CHAPTER 225
(H.B. No. 154)

AN ACT

RELATING TO BANKS AND BANKING; AMENDING SECTION 26-107, IDAHO CODE, TO PROVIDE A STATUTORY REFERENCE RELATING TO APPLICATION TO NATIONAL BANKS; AMENDING CHAPTER 3, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-311, IDAHO CODE, TO PROVIDE FOR TREATMENT OF BRANCHES AFTER RELOCATION INTO IDAHO; AMENDING SECTION 26-1104, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE; AND AMENDING SECTION 26-1604, IDAHO CODE, TO PROVIDE A STATUTORY REFERENCE TO CLARIFY THE ABILITY OF CERTAIN BANKS TO CONTINUE BRANCHING.

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

SECTION 1. That Section 26-107, Idaho Code, be, and the same is hereby amended to read as follows:

26-107. SECTIONS APPLICABLE TO NATIONAL BANKS. The provisions of sections 26-215, 26-301 through and including, 26-309, 26-311, 26-716, 26-717, 26-718, 26-1203, 26-1206, 26-1207, 26-1208, and 26-1209, 26-1601 through 26-1605, 26-2601 through 26-2612, Idaho Code, shall also apply to national banks.

SECTION 2. That Chapter 3, Title 26, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 26-311, Idaho Code, and to read as follows:

26-311. BRANCHES FOLLOWING RELOCATION. Notwithstanding any other provision of law, a bank that relocates its main office from another state into Idaho pursuant to 12 U.S.C. 30, 12 U.S.C. 36, and section 26-1101, Idaho Code, shall continue to be authorized to establish and operate branches within this state as provided in section 26-301, Idaho Code, even if, after its relocation into Idaho, its home state as defined by section 26-1603, Idaho Code, becomes a state other than Idaho.

SECTION 3. That Section 26-1104, Idaho Code, be, and the same is hereby amended to read as follows:

26-1104. FEES. (1) On January 15 of each year, the director shall fix and collect from each bank a fee based upon the amount of the total assets of the bank as of December 31 of the preceding calendar year, which fees shall not exceed the amounts set forth in the following schedule:

TOTAL ASSETS	MAXIMUM FEE
\$0 to \$1 million.....	\$1,500 Flat Fee
\$1 million to \$10 million.....	\$2,000 + \$.25 per thousand dollars of assets in excess of \$1 million
\$10 million to \$50 million.....	\$4,250 + \$.19 per thousand dollars of assets in excess of \$10 million
\$50 million to \$100 million.....	\$11,850 + \$.12 per thousand dollars of assets in excess of \$50 million
\$100 million to \$500 million.....	\$17,850 + \$.10 per thousand dollars of assets in excess of \$100 million
\$500 million to \$1 billion.....	\$57,850 + \$.09 per thousand dollars of assets in excess of \$500 million
\$1 billion to \$3 billion.....	\$102,850 + \$.08 per thousand dollars of assets in excess of \$1 billion
\$3 billion to \$10 billion.....	\$262,850 + \$.07 per thousand dollars of assets in excess of \$3 billion
\$10 billion to \$20 billion.....	\$369,425 + \$.03 per thousand dollars of assets in excess of \$10 billion
\$20 billion and over.....	\$689,425 + \$.02 per thousand dollars of assets in excess of \$20 billion

(2) In addition to the foregoing each bank shall pay to the director an additional sum not to exceed one hundred dollars (\$100) for each office and branch office maintained by said bank. The director shall collect from each bank for each special examination of its condition an amount sufficient to reimburse the director for the actual expenses incurred in connection therewith.

(3) For banks operating in Idaho with a home state other than Idaho ~~pursuant to chapter 16, title 26, Idaho Code~~, the director shall, in his discretion, set annual fees on any basis, provided that such fees shall not be higher than if only the branches operating solely in Idaho were considered in making the fee calculation. Under this subsection (3), the director, in his discretion, shall adjust annual fees according to the level of participation of the department of finance in the supervision process, subject to the maximum fee provided in subsection (1) of this section.

(4) For banks chartered under this act with branches in states

other than Idaho pursuant to chapter 16, title 26, Idaho Code, the director shall, in his discretion, set annual fees on any basis, provided that such fees shall not be any higher than if the branches operated outside Idaho were not a factor in the fee calculation.

(5) All fees, fines, examination and miscellaneous charges collected by the director pursuant to the Idaho bank act shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

SECTION 4. That Section 26-1604, Idaho Code, be, and the same is hereby amended to read as follows:

26-1604. MERGER APPROVAL. (1) A bank whose home state is a state other than Idaho may acquire control of, acquire all or substantially all of the assets of, or merge with a bank whose home state is Idaho. Except as authorized in this chapter or section 26-311, Idaho Code, no bank, the home state of which is a state other than Idaho, may establish or maintain an office in this state, or conduct the business of banking in this state.

(2) A bank whose home state is Idaho may not enter into any transaction the result of which would be the acquisition of a branch or branches of the bank with an out-of-state bank without the acquisition of all or substantially all of the assets of the preexisting Idaho bank; provided that, in the event that a bank is required by the federal government to divest one (1) or more branches in connection with an interstate transaction, such branches may be sold to financial institutions located in Idaho subject to the approval of the director.

(3) A bank whose home state is Idaho may acquire control of, acquire all or substantially all of the assets of, or merge with a bank whose home state is a state other than Idaho. A bank with a home state other than Idaho shall apply to and receive the approval of the director prior to any acquisition transaction which, if approved, would result in a bank, the home state of which is Idaho, becoming a branch or branches of the out-of-state bank. The director may accept copies of applications for such transactions made to other state or federal bank supervisory agencies. Without the prior approval of the director pursuant to this chapter, any merger transaction between a bank chartered by or located in this state and any out-of-state bank is unlawful.

(4) Banks chartered by this state and national banks, the main offices of which are located in this state, may establish or maintain branch banks in other states only in accordance with this chapter.

(5) A bank, the home state of which is Idaho, shall apply to and receive the approval of the director prior to any merger transaction which, if approved, would result in one (1) or more banks chartered by or located in one (1) or more other states becoming branches of a bank whose home state is Idaho.

Approved March 20, 1997.

CHAPTER 226
(H.B. No. 172)

AN ACT

RELATING TO INVESTMENT BY INSURERS; AMENDING SECTION 41-716, IDAHO CODE, TO INCREASE THE AMOUNT AN INSURER MAY INVEST IN CERTAIN INVESTMENT TRUST SECURITIES WITHIN LIMITS SPECIFIED AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-716, Idaho Code, be, and the same is hereby amended to read as follows:

41-716. INVESTMENT TRUST SECURITIES. An insurer may invest in the securities of any open-end management type investment company or investment trust registered with the federal securities and exchange commission under the Investment Company Act of 1940 as from time to time amended, if such investment company or trust has been organized for not less than three (3) years and has assets of not less than twenty-five million dollars (\$25,000,000) as at the date of investment by the insurer. The aggregate amount invested under this section shall not exceed ~~ten-per-cent~~ twenty-five percent (±025%) of the insurer's assets with limitations of five percent (5%) of the insurer's assets in any one (1) fund and ten percent (10%) of the insurer's assets in any one (1) fund family.

Approved March 20, 1997.

CHAPTER 227
(H.B. No. 187)

AN ACT

RELATING TO FEES; AMENDING SECTION 31-3201, IDAHO CODE, TO INCREASE THE CRIMINAL AND CIVIL FEES GOING TO THE COUNTY JUSTICE FUND; AND AMENDING SECTION 49-328, IDAHO CODE, TO INCREASE THE FEE FOR REINSTATING A SUSPENDED, REVOKED OR DISQUALIFIED DRIVER'S LICENSE FOR DEPOSIT INTO THE COUNTY JUSTICE FUND.

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

SECTION 1. That Section 31-3201, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201. CLERK OF DISTRICT COURT -- FEES. (1) The clerk of the district court shall lawfully charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law:

For filing and docketing abstract or transcript of judgment from another court \$2.00

For issuing execution upon an abstract or transcript of judgment and filing same on return \$2.00
 For recording execution issued upon abstract or transcript of judgment, per page \$2.00
 For taking affidavits, including jurat \$1.00
 For taking acknowledgments, including seal \$1.00
 For filing and indexing designation of agent of foreign corporation \$2.00
 For filing and indexing notarial statement \$2.00
 For making copy of any file or record, by the clerk, the clerk shall charge and receive, per page \$1.00
 For comparing and conforming a prepared copy of any file or record, the clerk shall charge and receive, per page \$.50
 For certifying the same an additional fee for certificate and seal \$1.00
 For all services not herein enumerated, and of him lawfully required, the clerk of the district court shall demand and receive such fees as are herein allowed for similar services.

(2) All fees collected under the provisions of this section shall be paid over to the county treasurer, at the same time and in the same manner as other fees.

(3) In addition to all other fines, forfeitures and costs levied by the court, the clerk of the district court shall collect five ten dollars (\$510.00) as an administrative surcharge fee on each criminal or-infraction case, and five dollars (\$5.00) on each infraction to be paid over to the county treasurer at the same time and in the same manner as other fees, for the support of the county justice fund, or the current expense fund if no county justice fund has been established, and shall collect five ten dollars (\$510.00) as an administrative surcharge fee on each civil case, including each appeal, to be paid over to the county treasurer for the support of the county court facilities fund, or to the district court fund if no county court facilities fund has been established.

(4) Provided further, an additional handling fee of two dollars (\$2.00) shall be imposed on each monthly installment of criminal or infraction fines, forfeitures, and other costs paid on a monthly basis.

SECTION 2. That Section 49-328, Idaho Code, be, and the same is hereby amended to read as follows:

49-328. REINSTATEMENT OF REVOKED, DISQUALIFIED OR SUSPENDED DRIVER'S LICENSE -- FEE -- WHEN REINSTATEMENT PROHIBITED. (1) When the period of revocation, disqualification or suspension of a driver's license has expired, or the reason for the revocation, disqualification or suspension no longer exists, the department shall reinstate the driver's license or driving privileges on application of the driver. The application shall be in the form prescribed by the department and accompanied by a reinstatement fee of fifteen dollars (\$15.00) which shall be deposited in the state highway account.

(2) A driver's license which has been suspended under section 49-1505, Idaho Code, for failure to pay an infraction penalty shall not be reinstated until the licensee provides proof that the infrac-

tion penalty has been paid to the court.

(3) In addition to any other fees required in this section to be collected, the department shall collect ~~twenty-five~~ fifty dollars (\$~~250.00~~) for reinstating a driver's license after conviction for driving under the influence, without privileges, and after conviction or other violation of any other traffic related misdemeanor or infraction, of which fees ~~twenty~~ forty dollars (\$~~240.00~~) shall be paid over to the county treasurer of the county in which the conviction occurred for support of that county's justice fund, or the current expense fund if no county justice fund has been established and the ~~five~~ ten dollars (\$~~510.00~~) shall be deposited in the state highway account.

(4) In addition to any other fees required in this section to be collected, the department shall collect one hundred fifteen dollars (\$115) for reinstating a driver's license after a suspension imposed under the provisions of section 18-8002 or section 18-8002A, Idaho Code, or after a suspension arising out of any alcohol or drug related offense, other than a suspension imposed upon a person under eighteen (18) years of age pursuant to section 18-1502(d), Idaho Code. Funds collected pursuant to this subsection shall be deposited in the state highway account. The department shall reevaluate the amount of the reinstatement fee herein imposed not later than February, 1996, to determine the sufficiency of the fee to meet the costs associated with the implementation of section 18-8002A, Idaho Code.

Approved March 20, 1997.

CHAPTER 228
(H.B. No. 195)

AN ACT

RELATING TO THE MANUFACTURED HOME SETUP CODE; AMENDING SECTION 44-2101A, IDAHO CODE, TO DEFINE "RESPONSIBLE MANAGING EMPLOYEE" AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 44-2202, IDAHO CODE, TO PROVIDE FOR THE INSTALLATION AND INSPECTION OF A MOBILE OR MANUFACTURED HOME BY A RESPONSIBLE MANAGING EMPLOYEE OF A LICENSED INSTALLER.

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

SECTION 1. That Section 44-2101A, Idaho Code, be, and the same is hereby amended to read as follows:

44-2101A. DEFINITIONS. As used in this chapter:

(1) "Administrator" means the administrator of the division of building safety of the state of Idaho.

(2) "Manufactured home" means a structure as defined in section 39-4105(143), Idaho Code.

(3) "Manufactured home broker" means any person engaged in the business of selling or exchanging used units only, or who buys, sells, lists or exchanges three (3) or more used units in any one (1) calendar year, except as otherwise provided in this chapter.

(4) "Manufactured home dealer" means any person engaged in the business of selling or exchanging new and used units, or who buys, sells, lists or exchanges three (3) or more new and used units in any one (1) calendar year, except as otherwise provided in this chapter.

(5) "Manufactured home salesman" means any person employed by a manufactured home dealer or broker for a salary, commission or compensation of any kind to sell, list, purchase or exchange or to negotiate for the sale, listing, purchase or exchange of units, except as otherwise provided in this chapter.

(6) "Manufactured home service company" includes "manufactured home installer" and means any person other than a manufactured home dealer who provides service, setup, or both, of manufactured or mobile homes.

(7) "Manufacturer" means any person engaged in the business of manufacturing manufactured homes that are offered for sale, lease or exchange in the state of Idaho.

(8) "Mobile home" means a structure similar to a manufactured home, but built to a state mobile home code which existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code).

(9) "Person" means a natural person, corporation, partnership, trust, society, club, association, or other organization.

(10) "Principal place of business" means an enclosed structure accessible and open to the public, at which the business is lawfully conducted in accordance with the terms of all applicable building codes, zoning and other land use regulatory ordinances, in which building the public may contact the dealer, broker or salesman, and at which place shall be kept and maintained the books, records and files necessary to conduct the business. There shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic.

(11) "Responsible managing employee" means the person designated by the employer to supervise other employees, either personally or through others.

(12) "Unit" means a mobile or manufactured home.

SECTION 2. That Section 44-2202, Idaho Code, be, and the same is hereby amended to read as follows:

44-2202. INSTALLATION PERMITS AND INSPECTIONS REQUIRED. (1) The owner or the installer of a mobile/manufactured home must obtain an installation permit as required by city or county ordinance before installing a mobile/manufactured home that will be used as a residence on a building site or in a park. The installer's license must be in effect at the time of the application for the installation permit.

(2) Cities and counties, which have by ordinance adopted a building code, shall establish a permit process for the installation of all mobile/manufactured homes within their respective jurisdictions and shall provide for inspection of all work required by the manufacturer's installation instructions or the installation and setup provisions of this chapter, whichever is applicable pursuant to the provisions of section 44-2201, Idaho Code. Fees for installation permits and inspections shall be as established by the city or county having jurisdiction.

(3) Immediately upon completion of the installation of a mobile or manufactured home, a licensed installer or the responsible managing employee of the licensed installer shall perform an inspection of the completed installation to ensure compliance with the Idaho manufactured home setup code. Such inspection shall be recorded on an inspection record document approved by the division and a copy shall be provided to the homeowner upon completion of the inspection.

Approved March 20, 1997.

CHAPTER 229
(H.B. No. 199)

AN ACT

RELATING TO THE IDAHO PROPERTY CONDITION DISCLOSURE ACT; AMENDING SECTION 55-2503, IDAHO CODE, TO CLARIFY DEFINITIONS; AMENDING SECTION 55-2504, IDAHO CODE, TO INCLUDE RENTAL PROPERTY; AMENDING SECTION 55-2505, IDAHO CODE, TO ADD AN EXEMPTION FOR TRANSFER FROM A DECEDENT'S ESTATE; AMENDING SECTION 55-2513, IDAHO CODE, TO PROVIDE FOR AN AMENDMENT TO DISCLOSURE STATEMENT; AND AMENDING SECTION 55-2515, IDAHO CODE, TO REVISE RESCISSION REQUIREMENTS.

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

SECTION 1. That Section 55-2503, Idaho Code, be, and the same is hereby amended to read as follows:

55-2503. DEFINITIONS. As used in this chapter:

(1) "Political subdivision" has the same meaning as provided in section 7-1303, Idaho Code.

(2) "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use.

(3) "Seller" means the owner of residential real property as defined in this chapter.

SECTION 2. That Section 55-2504, Idaho Code, be, and the same is hereby amended to read as follows:

55-2504. PROPERTY CONDITION DISCLOSURE REQUIRED. Any person who intends to transfer any residential real property, including nonowner occupied rental property, on or after July 1, 1994, by any of the methods as set forth herein shall complete all applicable items in a property disclosure form prescribed under section 55-2508, Idaho Code. Except as provided in section 55-2505, Idaho Code, this chapter applies to any transfer by sale, exchange, installment sale contract, a lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property improved with or consisting of not less than one (1) nor more than four (4) dwelling

units.

SECTION 3. That Section 55-2505, Idaho Code, be, and the same is hereby amended to read as follows:

55-2505. EXEMPTIONS. The provisions of this chapter do not apply to any transfer of residential real property that is any of the following:

(1) A transfer pursuant to court order including, but not limited to, a transfer ordered by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy, a transfer as a result of the exercise of the power of eminent domain, and a transfer that results from a decree for specific performance of a contract or other agreement between persons;

(2) A transfer to a mortgagee by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;

(3) A transfer to a beneficiary of a deed of trust by a trustor in default;

(4) A transfer by a foreclosure sale that follows a default in the satisfaction of an obligation secured by a mortgage;

(5) A transfer by a sale under a power of sale following a default in the satisfaction of an obligation that is secured by a deed of trust or another instrument containing a power of sale occurring within one (1) year of foreclosure on the default;

(6) A transfer by a mortgagee, or a beneficiary under a deed of trust, who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or a deed of trust or who has acquired the residential real property by a deed in lieu of foreclosure;

(7) A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;

(8) A transfer from one (1) co-owner to one (1) or more other co-owners;

(9) A transfer made to the transferor's spouse or to one (1) or more persons in the lineal line of consanguinity of one (1) or more of the transferors;

(10) A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of a property settlement agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation;

(11) A transfer to or from the state, a political subdivision of the state, or another governmental entity;

(12) A transfer that involved newly constructed residential real property that previously has not been inhabited;

(13) A transfer to a transferee who has occupied the property as a personal residence for one (1) or more years immediately prior to the transfer;

(14) A transfer from a transferor who both has not occupied the property as a personal residence within one (1) year immediately prior to the transfer and has acquired the property through inheritance or devise;

- (15) A transfer by a relocation company to a transferee within one
(1) year from the date that the previous owner occupied the property.
(16) A transfer from a decedent's estate.

SECTION 4. That Section 55-2513, Idaho Code, be, and the same is hereby amended to read as follows:

55-2513. AMENDMENT TO FORM. Any disclosure of an item of information in the property disclosure form described in section 55-2508, Idaho Code, may be amended in writing by the transferor of the residential real property at any time following the delivery of the form in accordance with section 55-2510, Idaho Code. Transferor shall amend the disclosure statement prior to closing if transferor discovers any of the the information on the original statement has changed. In the event of amendments to the statement, transferee's right to rescind is strictly limited to the amendments to the disclosure statement. The amendment shall be subject to the provisions of this chapter.

SECTION 5. That Section 55-2515, Idaho Code, be, and the same is hereby amended to read as follows:

55-2515. RESCISSION BY TRANSFEREE. Subject to section 55-2504, Idaho Code, if a transferee of residential real property receives a property disclosure form or an amendment of that form as described in section 55-2508, Idaho Code, after the transferee has entered into a transfer agreement with respect to the property, the transferee, after his receipt of the form or amendment may rescind the transfer agreement in a written, signed and dated document that is delivered to the transferor or his agents in accordance with section 55-2510, Idaho Code. ---without incurring any Transferee's rescission must be based on a specific objection to a disclosure in the disclosure statement. The notice of rescission shall specifically identify the disclosure objected to by the transferee. Transferee incurs no legal liability to the transferor because of the rescission including, but not limited to, a civil action for specific performance of the transfer agreement. Upon the rescission of the transfer agreement the transferee is entitled to the return of, and the transferor shall return, any deposits made by the transferee in connection with the proposed transfer of the residential real property.

Subject to the provisions of section 55-2505, Idaho Code, a rescission of a transfer agreement may only occur if the transferee's written, signed and dated document of rescission is delivered to the transferor or his agent or subagent within three (3) business days following the date on which the transferee or his agent receives the property disclosure form prescribed under section 55-2508, Idaho Code. If no signed notice of rescission is received by the transferor within the three (3) day period, transferee's right to rescind is waived.

Approved March 20, 1997.

CHAPTER 230
(H.B. No. 215)

AN ACT

RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-212, IDAHO CODE, TO PROVIDE THAT A FAMILY MEMBER EMPLOYEE OF THE OWNER OF A SOLE PROPRIETORSHIP MAY ELECT EXEMPTION FROM COVERAGE UNDER SPECIFIED CONDITIONS AND TO DEFINE "MEMBER OF AN EMPLOYER'S FAMILY."

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

SECTION 1. 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 of members of an employer's family not dwelling in his household if the employer is the owner of a sole proprietorship, provided the family member has filed with the commission a written declaration of his election for exemption from coverage. For the purposes of this subsection, "member of an employer's family" means a natural person or the spouse of a natural person who is related to the employer by blood, adoption or marriage within the first degree of consanguinity.

(6) Employment which is not carried on by the employer for the sake of pecuniary gain.

(67) 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 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.

(78) Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States.

(89) 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 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.

(910) 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.

(101) Volunteer ski patrollers.

(112) Officials of athletic contests involving secondary schools, as defined in section 33-119, Idaho Code.

Approved March 20, 1997.

CHAPTER 231
(H.B. No. 218)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-115, IDAHO CODE, TO PROVIDE FOR PRIORITY IN PAYMENT OF CERTAIN CLAIMS ON THE BIG GAME SECONDARY DEPREDAATION ACCOUNT AND TO MAKE A TECHNICAL CORRECTION; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 36-115, Idaho Code, be, and the same is hereby amended to read as follows:

36-115. BIG GAME SECONDARY DEPREDAATION ACCOUNT. (a) The big game secondary depredation account is hereby created in the state treasury. Moneys in the account are subject to appropriation for the purposes recited in section 36-1108(b), Idaho Code, section 36-114(d), Idaho Code, section 36-1109 and section 36-1110, Idaho Code. Moneys in the account shall be invested as provided in section 67-1210, Idaho Code, and interest earned on investment of idle moneys in the account shall be paid to the account. The big game secondary depredation account shall be under the administrative direction of the state controller.

(b) In addition to any moneys appropriated to the account from other sources, the state controller shall transfer the earned interest not to exceed two hundred and fifty thousand dollars (\$250,000) from the fish and game account to the big game secondary depredation account each fiscal year until a total of one million two hundred fifty thousand dollars (\$1,250,000) has been transferred to the account.

(c) The principal amount in the account shall not be appropriated, but only the interest earned on investment of the moneys in the account shall be available for appropriation. The state controller shall annually report to the legislature, the division of financial management, the director of the department of agriculture and the director of the department of fish and game the amount of interest earnings and the availability of such earnings for appropriation. However, should the balance in the account ever exceed three million dol-

lars (\$3,000,000), interest earnings that exceed the amount appropriated for any fiscal year shall be transferred to the fish and game set-aside account for habitat rehabilitation. Transferred funds shall be spent pursuant to an appropriation for the set-aside account.

(d) Any payment for damages pursuant to sections 36-1108(b) and 36-114(d), Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order not more than one-third (1/3) of the amount of the approved claim that is to be paid from the big game secondary depredation account to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game secondary depredation account.

(B) The balance of all unpaid approved claim amounts, including claims submitted under the provisions of sections 36-1109 and 36-1110, Idaho Code, shall be accumulated to a total as of June 30. If the balance in the big game secondary depredation account appropriation is sufficient to pay the balance of all approved claims, the director shall pay them. If the balance is not sufficient to pay all approved claims, the director shall authorize a proportionate amount to be paid to each claimant. However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code.

(C) The director shall encumber the balance of moneys appropriated from the big game secondary depredation account, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars (\$1,000) must be deducted from each such statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from either the big game primary depredation account or from the big game secondary depredation account, but the owner or lessee is required to absorb only a single one thousand dollar (\$1,000) deductible per claim, whether the claim is paid solely from the big game primary depredation primary depredation account or from both depredation accounts.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

(e) Any claim for damages pursuant to section 36-1109, Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order that not more than one-third (1/3) of the amount of the approved claim to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game secondary deprecation account.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the big game secondary deprecation account appropriation is sufficient to pay all approved claims, the director shall promptly pay them. If the balance is not sufficient to pay the balance of all approved claims, the director shall pay a proportionate share to each claimant. However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code.

(C) The director shall encumber the balance of the appropriation, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following conditions ~~and requirements apply~~ applies:

~~(A) -- The amount of one thousand dollars (\$1,000) must be deducted from each such statement. This deductible is a net loss to the owner or caretaker, and will not be compensated for from the big game secondary deprecation account.~~

~~(B) -- The total amount of all claims that may be paid from the big game secondary deprecation account for domestic sheep or cattle losses shall not exceed twenty-five thousand dollars (\$25,000) in any one (1) fiscal year.~~

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

(f) Any claim for damages to forage pursuant to section 36-1110, Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order not more than one-third (1/3) of the amount of the approved claim to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game sec-

ondary depreciation account.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the big game secondary depreciation account appropriation is sufficient to pay all approved claims, the director shall pay them. If the balance is not sufficient to pay all approved claims, the director shall authorize a proportionate amount to be paid to each claimant. However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code.

(C) The director shall encumber the balance of the appropriation, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars (\$1,000) must be deducted from each statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from the big game secondary depreciation account.

(B) The total amount of all claims for damages to forage that may be paid from the big game secondary depreciation account shall not exceed twenty-five per cent (25%) of the amount of interest earned from investments of moneys in that account in any one (1) fiscal year.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

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 July 1, 1996.

Approved March 20, 1997.

CHAPTER 232
(H.B. No. 228)

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING SECTION 41-4706, IDAHO CODE, TO PROVIDE THAT A SMALL EMPLOYER CARRIER MAY USE GEOGRAPHY AS A CASE CHARACTERISTIC FOR PURPOSES OF SETTING PREMIUM RATES WITHOUT THE APPROVAL OF THE DIRECTOR AND TO PROVIDE CORRECT NOMENCLATURE; AND AMENDING SECTION 41-5206, IDAHO CODE, TO PROVIDE THAT AN INDIVID-

UAL CARRIER MAY USE GEOGRAPHY AS A CASE CHARACTERISTIC FOR PURPOSES OF SETTING PREMIUM RATES WITHOUT THE APPROVAL OF THE DIRECTOR.

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

SECTION 1. That Section 41-4706, Idaho Code, be, and the same is hereby amended to read as follows:

41-4706. RESTRICTIONS RELATING TO PREMIUM RATES. (1) Premium rates for health benefit plans subject to the provisions of this chapter shall be subject to the provisions of the following provisions:

(a) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent (20%).

(b) For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent (25%) of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) Any adjustment, not to exceed fifteen percent (15%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business; and

(iii) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claim experience, health status and duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) Premium rates for health benefit plans shall comply with the requirements of this section notwithstanding any assessments paid or payable by small employer carriers pursuant to section 41-4711, Idaho Code.

(f) In the case of health benefit plans delivered or issued for delivery prior to the effective date of this chapter, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (b) of this section for a period of three (3) years following the effective date of this chapter. In such case, the percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

- (i) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and
 - (ii) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.
- (g) (i) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by the amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans; and
- (ii) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.
- (h) For the purposes of this subsection, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize such a network, provided that utilization of the restricted provider network results in substantial differences in claims costs.
- (i) The small employer carrier shall not use case characteristics, other than age, individual tobacco use, geography, as defined by rule of the director, or gender, without prior approval of the director.
- (j) A small employer carrier may utilize age as a case characteristic in establishing premium rates, provided that the same rating factor shall be applied to all dependents under the age of twenty-three (23), and the same rating factor shall be applied on a quinquennial basis as to individuals or nondependents twenty (20) years of age or older.
- (k) The director may establish regulations rules to implement the provisions of this section and to assure that rating practices used by small employer carriers are consistent with the purposes of this chapter, including regulations rules that:
- (i) Assure that differences in rates charged for health

benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans;

(ii) Prescribe the manner in which case characteristics may be used by small employer carriers; and

(iii) Prescribe the manner in which a small employer carrier is to demonstrate compliance with the provisions of this section, including requirements that a small employer carrier provide the director with actuarial certification as to such compliance.

(2) A small employer carrier shall not transfer a small employer involuntarily into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration of coverage since issue.

(3) The director may suspend for a specified period the application of subsection (1)(a) of this section as to the premium rates applicable to one (1) or more small employers included within a class of business of a small employer carrier for one (1) or more rating periods upon a filing by the small employer carrier and a finding by the director either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of all of the following:

(a) The extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or actual or expected variation in health status of the employees of the small employer and their dependents;

(b) The provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claim experience, that affect changes in premium rates;

(c) The provisions relating to renewability of policies and contracts; and

(d) The provisions relating to any preexisting condition provision.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the director annually on or before March 15, an actuarial certification certifying that the carrier is in compliance with the provisions of

this chapter and that the rating methods of the small employer carrier are actuarially sound. Such certification shall be in a form and manner, and shall contain such information, as specified by the director. A copy of the certification shall be retained by the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (4)(a) of this section available to the director upon request. Except in cases of violations of the provisions of this chapter, the information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the director to persons outside of the department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

SECTION 2. That Section 41-5206, Idaho Code, be, and the same is hereby amended to read as follows:

41-5206. RESTRICTIONS RELATING TO PREMIUM RATES. (1) Premium rates for health benefit plans subject to the provisions of this chapter shall be subject to the following provisions:

(a) The premium rates charged during a rating period to individuals with similar case characteristics for the same or similar coverage, or the rates that could be charged to such individuals under the rating system, shall not vary from the index rate by more than twenty-five percent (25%) of the index rate.

(b) The percentage increase in the premium rate charged to an individual for a new rating period may not exceed the sum of the following:

(i) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the individual carrier is no longer enrolling new individuals, the individual carrier shall use the percentage change in the base premium rate, provided that such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the individual carrier is actively enrolling new individuals.

(ii) Any adjustment, not to exceed fifteen percent (15%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claim experience, health status or duration of coverage of the individual or dependents as determined from the individual carrier's rate manual; and

(iii) Any adjustment due to change in coverage or change in the case characteristics of the individual as determined from the individual carrier's rate manual.

(c) Premium rates for health benefit plans shall comply with the requirements of this section notwithstanding any assessments paid or payable by carriers pursuant to section 41-4711, Idaho Code.

(d) In the case of health benefit plans delivered or issued for delivery prior to the effective date of this chapter, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (b) of this section for a period of three (3)

years following the effective date of this chapter. In such case, the percentage increase in the premium rate charged to an individual for a new rating period shall not exceed the sum of the following:

- (i) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the individual carrier is no longer enrolling new individuals, the individual carrier shall use the percentage change in the base premium rate, provided that such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the individual carrier is actively enrolling new individuals; and
 - (ii) Any adjustment due to change in coverage or change in the case characteristics of the individual as determined from the carrier's rate manual.
- (e) (i) Individual carriers shall apply rating factors, including case characteristics, consistently with respect to all individuals. Rating factors shall produce premiums for identical individuals which differ only by the amounts attributable to plan design and do not reflect differences due to the nature of the individuals assumed to select particular health benefit plans; and
- (ii) An individual carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.
- (f) For purposes of this subsection, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize such a network, provided that utilization of the restricted provider network results in substantial differences in claims costs.
- (g) The individual carrier shall not use case characteristics, other than age, individual tobacco use, geography as defined by rule of the director, or gender, without prior approval of the director.
- (h) An individual carrier may utilize age as a case characteristic in establishing premium rates, provided that the same rating factor shall be applied to all dependents under the age of twenty-three (23), and the same rating factor shall be applied on a quinquennial basis as to individuals or nondependents twenty (20) years of age or older.
- (i) The director may establish rules to implement the provisions of this section and to assure that rating practices used by individual carriers are consistent with the purposes of this chapter, including rules that:
- (i) Assure that differences in rates charged for health benefit plans by individual carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the individuals assumed to select particular health benefit plans;
 - (ii) Prescribe the manner in which case characteristics may be used by individual carriers; and

(iii) Prescribe the manner in which an individual carrier is to demonstrate compliance with the provisions of this section, including requirements that an individual carrier provide the director with actuarial certification as to such compliance.

(2) The director may suspend for a specified period the application of subsection (1)(a) of this section as to the premium rates applicable to one (1) or more individuals for one (1) or more rating periods upon a filing by the individual carrier and a finding by the director either that the suspension is reasonable in light of the financial condition of the individual carrier or that the suspension would enhance the efficiency and fairness of the marketplace for individual health insurance.

(3) In connection with the offering for sale of any health benefit plan to an individual, an individual carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of all of the following:

(a) The extent to which premium rates for an individual are established or adjusted based upon the actual or expected variation in claims costs or actual or expected variation in health status of the individual and his dependents;

(b) The provisions of the health benefit plan concerning the individual carrier's right to change premium rates and the factors, other than claim experience, that affect changes in premium rates;

(c) The provisions relating to renewability of policies and contracts; and

(d) The provisions relating to any preexisting condition provision.

(4) (a) Each individual carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each individual carrier shall file with the director annually on or before September 15, an actuarial certification certifying that the carrier is in compliance with the provisions of this chapter and that the rating methods of the individual carrier are actuarially sound. Such certification shall be in a form and manner, and shall contain such information, as specified by the director. A copy of the certification shall be retained by the individual carrier at its principal place of business.

(c) An individual carrier shall make the information and documentation described in subsection (4)(a) of this section available to the director upon request. Except in cases of violations of the provisions of this chapter, the information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the director to persons outside of the department except as agreed to by the individual carrier or as ordered by a court of competent jurisdiction.

CHAPTER 233
(H.B. No. 249)

AN ACT

RELATING TO STOPPING AND INSPECTION OF CERTAIN VEHICLES BY PORT OF ENTRY EMPLOYEES; AMENDING SECTION 40-511, IDAHO CODE, TO PROVIDE RED LIGHT STOPPING AUTHORITY TO AUTHORIZED TRANSPORTATION DEPARTMENT EMPLOYEES IF ANY VEHICLE WEIGHING EIGHTEEN THOUSAND POUNDS OR MORE PROCEEDS THROUGH A WEIGHING STATION WITHOUT REGARD FOR THE DIRECTIONAL SIGNALS.

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

SECTION 1. That Section 40-511, Idaho Code, be, and the same is hereby amended to read as follows:

40-511. STOPPING AND INSPECTION. (1) Wherever by the laws of the state of Idaho any vehicle with a maximum gross weight of eighteen thousand (18,000) pounds or more, excepting those transporting livestock or placardable quantities of hazardous materials, is used to transport any merchandise, product or commodity within the state, within the state to without the state, or from without the state to within the state, the owner or operator of either the motor vehicle or trailer, as defined in chapter 1, title 49, Idaho Code, used to transport such merchandise, product or commodity is hereby required to stop at such ports of entry or checking stations established by the Idaho transportation department and submit to inspection, grading or weighing, for compliance with the laws of the state of Idaho.

(2) Vehicles or combinations of vehicles with a maximum gross weight of ten thousand (10,000) pounds or more transporting livestock or placardable quantities of hazardous materials are required to stop at all ports of entry or checking stations established by the Idaho transportation department.

(3) It shall be the duty of such owner or operator of every motor vehicle or trailer to drive the motor vehicle or trailer upon any state owned stationary or portable scale or private scale, certified by the state of Idaho when requested to do so by any peace officer, excepting fish and game officers, or authorized employees of the Idaho transportation department.

(4) Authorized employees of the transportation department may stop any vehicle with a maximum gross weight of eighteen thousand (18,000) pounds or more by displaying a flashing red light if the authorized employee has probable cause to believe the vehicle bypassed a weighing or inspection station or proceeded through the station without regard for the directional signals. Authorized employees may direct a vehicle which has bypassed a weighing or inspection station or has proceeded through the station without regard for the directional signals, to return to the bypassed inspection or weighing station and may issue a citation for failure to stop as required in this

section. The operator of a vehicle shall bring the vehicle to a stop, pulling off the traveled portion of the highway when directed to do so by an authorized employee of the transportation department by use of emergency lights or siren.

Approved March 20, 1997.

CHAPTER 234
(H.B. No. 255, As Amended)

AN ACT

RELATING TO PEACE OFFICER STANDARDS AND TRAINING; AMENDING SECTION 19-5109, IDAHO CODE, TO PROVIDE LANGUAGE THAT GIVES DISCRETIONARY AUTHORITY TO THE POST COUNCIL TO DECERTIFY OFFICERS FOR CERTAIN CONDUCT.

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

SECTION 1. That Section 19-5109, Idaho Code, be, and the same is hereby amended to read as follows:

19-5109. POWERS OF THE COUNCIL -- STANDARDS OF TRAINING, EDUCATION AND EMPLOYMENT OF PEACE OFFICERS -- CERTIFICATION -- PENALTIES.

(a) It shall be the duty of and the council shall have the power:

(1) To establish the requirements of minimum basic training which peace officers shall complete in order to be eligible for permanent employment as peace officers, and the time within which such basic training must be completed.

(2) To establish the requirements of minimum education and training standards for employment as a peace officer in probationary, temporary, part-time, and/or emergency positions.

(3) To establish the length of time a peace officer may serve in a probationary, temporary, and/or emergency position.

(4) To approve, deny approval or revoke the approval of any institution or school established by the state or any political subdivision or any other party for the training of peace officers.

(5) To establish the minimum requirements of courses of study, attendance, equipment, facilities of all approved schools, and the scholastic requirement, experience and training of instructors at all approved schools.

(6) To establish such other requirements for employment, retention and promotion of peace officers, including minimum age, physical and mental standards, citizenship, moral character, experience and such other matters as relate to the competence and reliability of peace officers.

(7) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state.

(8) To receive and file for record copies of merit regulations or local ordinances passed by any political subdivision.

(9) To maintain permanent files and transcripts for all peace

officers certified by the council to include any additional courses or advance courses of instruction successfully completed by such peace officers while employed in this state.

(10) To receive applications for financial assistance from the state and from political subdivisions and disburse available state funds to the state and to political subdivisions for salaries and allowable living expenses or any part thereof, as authorized by the council, incurred while in attendance at approved training programs and schools. The annual reimbursements authorized by this section shall not exceed the funds available for such purpose and authorized by section 31-3201B, Idaho Code.

(11) To allow a police officer of a federally recognized Indian tribe within the boundaries of this state to attend the peace officer standards and training academy if said police officer meets minimum physical and educational requirements of the academy. The Indian tribal law enforcement agency shall reimburse the peace officer standards and training academy for the officer's training. Upon satisfactory completion of the peace officer standards and training academy, the tribal police officer shall receive a certificate of satisfactorily completing the academy.

(b) After January 1, 1974, any peace officer as defined in section 19-5101(d), Idaho Code, employed after January 1, 1974, except any elected official, any deputy sheriff working as a detention officer in the county jail, or serving civil process, the superintendent of the Idaho state police, or any person serving under a temporary commission with any law enforcement agency in times of natural or man-caused disaster declared to be an emergency by the board of county commissioners or by the governor of the state of Idaho, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, or any peace officer acting under a special deputy commission from the department of law enforcement, shall be certified by the council within one (1) year of employment; provided, however, that the council may establish criteria different than that required of other peace officers for certification of city police chiefs or administrators within state agencies having law enforcement powers, who, because of the number of full-time peace officers they supervise, have duties which are primarily administrative. Any such chief of police or state agency administrator employed in such capacity prior to July 1, 1987, shall be exempt from certification.

(c) No peace officer shall have or exercise any power granted by any statute of this state to peace officers unless such person shall have been certified by the council within one (1) year of the date upon which such person commenced employment as a peace officer, except in cases where the council, for good cause and in writing, has granted additional time to complete such training. The council ~~shall also have the power to withdraw the certification of any peace officer who is convicted or found guilty of any crime punishable by one (1) year in the county jail or any term of imprisonment in the state prison, or who is convicted of any crime of dishonesty~~ may decertify any officer who pleads guilty or is found guilty, regardless of the form of judgment or withheld judgment of:

(1) Any felony or offense which would be a felony if committed in

this state;

(2) Any misdemeanor;

(3) Any unlawful use, possession, sale or delivery of any controlled substance; or who

(4) Willfully or otherwise falsifies or omits any information to obtain any certified status; or who

(5) Violates any of the standards of conduct as established by the council's code of ethics, as adopted and amended by the council.

All proceedings taken by the council shall be done in accordance with chapter 52, title 67, Idaho Code.

(d) Any law enforcement agency as defined in section 19-5101(c), Idaho Code, in which any peace officer shall resign as a result of any disciplinary action or in which a peace officer's employment is terminated as a result of any disciplinary action, shall, within thirty (30) days of such action, make a report to the council.

Approved March 20, 1997.

CHAPTER 235
(H.B. No. 257)

AN ACT

RELATING TO THE DUTIES OF THE DEPARTMENT OF FISH AND GAME REGARDING THE ENDANGERED SPECIES ACT; AMENDING SECTION 36-715, IDAHO CODE, TO EXTEND THE SUNSET CLAUSE DATE, TO PROVIDE THAT THE DEPARTMENT OF FISH AND GAME IS AUTHORIZED TO WORK IN CONJUNCTION WITH THE WOLF OVERSIGHT COMMITTEE TO DEVELOP AND COORDINATE WOLF MANAGEMENT PLANS WITH STATE AGENCY OFFICIALS OF THE STATES OF WYOMING AND MONTANA AND TO PROVIDE THE EFFECT OF WOLF MANAGEMENT PLAN.

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

SECTION 1. That Section 36-715, Idaho Code, be, and the same is hereby amended to read as follows:

36-715. DUTIES OF THE DEPARTMENT OF FISH AND GAME REGARDING THE ENDANGERED SPECIES ACT. (1) Since wolf/dog hybridizations are known to exist within Idaho and these hybrids are not protected by the United States endangered species act, a biological evaluation shall be required of the animal to determine species priority before the department of fish and game may take any action in accordance with the United States endangered species act.

(2) The department of fish and game shall not be authorized to expend funds, transfer assets or enter into a cooperative agreement with any agency, department or entity of the United States government concerning wolves unless expressly authorized by state statute except that the department is authorized to provide a representative to participate on the northern rocky mountain wolf recovery team and to participate in activities regarding nuisance wolves.

(3) If a wolf is sighted, the burden of proof concerning the

reported presence of the wolf within Idaho shall rest with the observer and the department of fish and game shall take no action to enforce the United States endangered species act regarding wolves in absence of that proof.

(4) From the effective date of this act through ~~June 1, 1996~~ December 31, 1999, the department of fish and game is authorized to work in conjunction with the wolf oversight committee, as established by the wolf EIS participation plan dated February, 1992, in the development and implementation of an Idaho wolf management plan, provided that:

(a) ~~The department is authorized to receive up to fifteen thousand dollars (\$15,000) from the U.S. fish and wildlife service for the sole use in the development of said plan. If additional funding for the development of the plan is required, said funding shall come primarily from federal sources, but may also come from the department's nongame wildlife management fund. Receipt and expenditures of all moneys used in the development of the plan shall be done in coordination with the wolf oversight committee work in conjunction with the wolf oversight committee to develop and coordinate wolf management plans with state agency officials of the states of Wyoming and Montana.~~

(b) Any Idaho wolf management plan so developed by the department and wolf oversight committee shall take into consideration local economies, custom, culture, and private property rights. The department and the wolf oversight committee may consult with federal entities and coordinate with state and local government entities in the development of the plan.

(c) Upon completion of an Idaho wolf management plan, the department and the wolf oversight committee shall provide a report to the senate resources and environment committee and to the house resources and conservation committee and shall provide written copies to all interested parties. When the plan is complete, the speaker of the house of representatives and the president pro tempore of the senate may authorize a joint meeting of the senate resources and environment committee and the house resources and conservation committee to be held during the interim to review the Idaho wolf management plan.

(d) Members of the wolf oversight committee shall serve without compensation, but shall be reimbursed actual expenses for attending meetings of the committee from funds provided by the department of fish and game at prevailing state rates.

Approved March 20, 1997.

CHAPTER 236
(H.B. No. 267)

AN ACT

RELATING TO THE APPROPRIATION TO THE IDAHO TRANSPORTATION DEPARTMENT FOR EMERGENCY REPAIRS DUE TO FLOOD DAMAGE; AMENDING SECTION 40-701A, IDAHO CODE, TO PROVIDE FOR USE OF STATE HIGHWAY ACCOUNT

FUND MONEYS FOR REPAIR OF FLOOD DAMAGE OCCURRING IN 1997; AMENDING SECTION 1, CHAPTER 356, LAWS OF 1996, TO EXTEND THE EFFECTIVE DATE THROUGH JUNE 30, 1999, AND TO CHANGE THE EXPENSE CLASS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 40-701A, Idaho Code, be, and the same is hereby amended to read as follows:

40-701A. RESTRICTED HIGHWAY FUND. (1) In order to insure that authorized increases in highway user taxes and fees are expended exclusively on the construction and maintenance of highways, bridges and railroad crossings, there is established in the state treasury the "Restricted Highway, Bridge and Railroad Crossing Maintenance, Repair and Construction Fund" hereafter referred to as the restricted highway fund, to which shall be credited:

(a) Moneys as provided by sections 49-402(1) and 40-701(2)(a), Idaho Code; and

(b) All other moneys as may be provided by law; and

(c) Interest earned on the investment of idle moneys in the restricted fund shall be paid to the restricted highway fund.

(2) Moneys in the fund shall be apportioned as follows:

(a) Beginning April 1, 1996, all moneys accruing to the fund in an amount not to exceed six million dollars (\$6,000,000) shall be transferred to the state highway account to be administered by the Idaho transportation department for use as the state and local match for federal highway administration (FHWA) and federal emergency management agency (FEMA) road and bridge projects. Such moneys shall be used exclusively for repair and restoration of local and state roads damaged by the 1996 and by the 1997 flooding in the counties of Adams, Benewah, Boise, Bonner, Boundary, Clearwater, Elmore, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Owyhee, Payette, Shoshone, Valley and Washington. When apportionment of moneys to the state highway account is sufficient to meet the purposes for which the moneys are designated, but not exceeding six million dollars (\$6,000,000), no additional transfers shall be made as provided in this subsection, and moneys accruing to the fund shall thereafter be apportioned as provided in subsections (2)(b) and (2)(c) of this section. Any unused moneys transferred to the state highway account under the provisions of this subsection shall be returned to the restricted highway fund.

(b) Fifty percent (50%) to the state highway account; and

(c) Fifty percent (50%) to local highway jurisdictions in accordance with the provisions of section 40-709, Idaho Code.

(3) Subsequent to apportionment of moneys as required in subsection (2)(a) of this section, the state controller shall remit moneys apportioned to the state highway account, and shall cause the remittance of moneys apportioned to the local highway jurisdictions not later than January 25, April 25, July 25 and October 25 of each year.

(4) Moneys apportioned from the fund as provided in subsections (2)(b) and (2)(c) of this section shall be used exclusively for the construction, repair and maintenance of the roads, highways, bridges

and railroad crossings within the state.

(5) On or before February 1 of each year, the Idaho transportation department and the local highway technical assistance council shall each submit a report to both the senate transportation committee and the house transportation and defense committee of the Idaho legislature, which provides a detailed accounting of the moneys apportioned, the projects for which moneys from the fund were expended, and the effect such expenditures have had on addressing the backlog of highway, bridge and railroad crossing needs.

SECTION 2. That Section 1, Chapter 356, Laws of 1996, be, and the same is hereby amended to read as follows:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 324, Laws of 1995, there is hereby appropriated to the Idaho Transportation Department, the following amount, to be expended for the Contract Construction Program in conformance with Section 40-701A, Idaho Code, according to the designated expense class from the listed fund for the period from the effective date of this section, through June 30, 19979:

FOR:

~~Capital-Output~~ Trustee and Benefit Payments \$6,000,000

FROM:

State Highway Fund \$6,000,000

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 20, 1997.

CHAPTER 237

(H.B. No. 272, As Amended)

AN ACT

RELATING TO IDENTIFICATION CARDS; AMENDING SECTION 49-2443, IDAHO CODE, TO PROVIDE FOR ISSUANCE OF AN IDENTIFICATION CARD UPON PRESENTATION OF A BIRTH CERTIFICATE AND EITHER A SOCIAL SECURITY CARD OR CURRENT MEDICAID CARD IF THE APPLICANT HAS NO PHOTO IDENTIFICATION OR OTHER SECONDARY DOCUMENT SATISFACTORY TO THE IDAHO TRANSPORTATION DEPARTMENT AS ACCEPTABLE TO VERIFY IDENTITY.

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

SECTION 1. That Section 49-2443, Idaho Code, be, and the same is hereby amended to read as follows:

49-2443. APPLICATION. Application for an identification card must be made in person before an examiner authorized by the department to issue driver's licenses. The examiner shall obtain the following from the applicant:

- (1) The true and full name and Idaho residence address and mailing address, if different, of the applicant;
- (2) The identity and date and place of birth of the applicant as set forth in a certified copy of his birth certificate and, subject to subsection (6) of this section, other satisfactory evidence of identity acceptable to the examiner or the department;
- (3) The height and weight of the applicant;
- (4) The color of eyes and hair of the applicant; and
- (5) Applicant's signature.
- (6) An applicant who has no photo identification or other secondary identification document satisfactory to the department as acceptable to verify identity shall be eligible to receive an identification card upon presentation of a certified copy of his birth certificate and either a social security card or current medicaid card.

Approved March 20, 1997.

CHAPTER 238
(H.B. No. 284)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE; AMENDING SECTION 18-8002A, IDAHO CODE, TO ADD DEFINITIONS, TO REQUIRE PEACE OFFICERS TO INFORM DRIVERS AT THE TIME OF EVIDENTIARY TESTING OF THE CONSEQUENCES OF REFUSING TO SUBMIT TO OR FAILING AN EVIDENTIARY TEST, TO PROVIDE RULEMAKING AUTHORITY OF THE DEPARTMENT OF LAW ENFORCEMENT, TO INCREASE THE TIME IN WHICH A PEACE OFFICER MUST FORWARD A NOTICE OF SUSPENSION, TO ADD CODE REFERENCES, TO AUTHORIZE PEACE OFFICERS TO SUBMIT A DUPLICATE COPY OF THE ORIGINAL TEST RESULTS WITH THEIR STATEMENTS, AND TO PROVIDE THE CIRCUMSTANCES UNDER WHICH TEMPORARY DRIVING PRIVILEGES WILL BE ISSUED; AMENDING SECTION 18-8002B, IDAHO CODE, TO STAY ENFORCEMENT OF SECTION 18-8002A, IDAHO CODE, UNTIL JANUARY 1, 1998 AND TO CORRECT A CODE REFERENCE; REPEALING SECTION 18-8002B, IDAHO CODE; AMENDING SECTION 49-326, IDAHO CODE, TO REDUCE FROM TWENTY-ONE DAYS TO TWENTY DAYS, THE TIME THAT HEARINGS MUST BE HELD AFTER RECEIPT OF THE REQUEST, AUTHORIZING HEARING OFFICERS TO EXTEND THE HEARING DATE BY TEN DAYS FOR GOOD CAUSE SHOWN, AUTHORIZING HEARING OFFICERS TO ADMINISTER OATHS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-328, IDAHO CODE, TO ALLOW THE DEPARTMENT TO COLLECT ONLY ONE FEE PER REINSTATEMENT; AMENDING SECTION 49-330, IDAHO CODE, TO ALLOW DRIVERS WHOSE DRIVER'S LICENSES HAVE BEEN CANCELLED, SUSPENDED, DISQUALIFIED, OR RESTRICTED TO FILE A PETITION FOR JUDICIAL REVIEW; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted By The Legislature Of The State Of Idaho:

SECTION 1. That Section 18-8002A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF

DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF TESTS. (1) Definitions. As used in this section:

(a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.

(b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.

(bc) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.

(cd) "Director" means the director of the Idaho transportation department.

(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, including additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho department of law enforcement or by a laboratory approved by the Idaho department of law enforcement under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho department of law enforcement. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho department of law enforcement or by any other method approved by the Idaho department of law enforcement shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(df) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have authority to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing and make a final ruling on the issues before him.

(eg) "Hearing request" means a request for an administrative hearing on the suspension imposed by the provisions of this section.

(2) Information to be given. At the time of evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the person shall be

informed substantially as follows (but need not be informed verbatim):

If you refuse to submit to or if you fail to complete and pass evidentiary testing for alcohol or other intoxicating substances:

(a) The peace officer will seize your driver's license and issue a notice of suspension and a temporary driving permit to you, but no peace officer will issue you a temporary driving permit if your driver's license or permit has already been and is suspended or revoked. No peace officer shall issue a temporary driving permit to a driver of a commercial vehicle who refuses to submit to or fails to complete and pass an evidentiary test;

(b) You have the right to request a hearing within seven (7) days of the notice of suspension of your driver's license to show cause why you refused to submit to or to complete and pass evidentiary testing and why your driver's license should not be suspended;

(c) If you refused or failed to complete evidentiary testing and do not request a hearing before the court or do not prevail at the hearing, your driver's license will be suspended. The suspension will be for one hundred eighty (180) days if this is your first refusal. The suspension will be for one (1) year if this is your second refusal within five (5) years. You will not be able to obtain a temporary restricted license during that period; and

(d) If you complete evidentiary testing and fail the testing and do not request a hearing before the department or do not prevail at the hearing, your driver's license will be suspended. This suspension will be for ninety (90) days if this is your first failure of evidentiary testing, but you may request restricted driving privileges after the first thirty (30) days. The suspension will be for one (1) year if this is your second failure of evidentiary testing within five (5) years. You will not be able to obtain a temporary restricted license during that period;

(e) After submitting to evidentiary testing you may, when practicable, at your own expense, have additional tests made by a person of your own choosing.

(3) Rulemaking authority of the department of law enforcement. The Idaho department of law enforcement may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

(a) A form restating the substance of the information required to be provided in subsection (2) of this section. The information in this form shall be considered by operation of this section to comply with the information required to be given by subsection (2) of this section;

(b) What testing is required to complete evidentiary testing under this section; and

(c) What calibration or checking of testing equipment must be performed to comply with the department's requirements. Unless the Idaho department of law enforcement has prescribed to the contrary by rule, the following shall apply: a test for alcohol concentration in breath as defined in section 18-8004, Idaho Code, and subsection (1)(e) of this section will be valid for the purposes of this section if the breath alcohol testing instrument was approved for testing by the Idaho department of law enforcement in accordance with section 18-8004, Idaho Code, not more than ninety (90) days before the evidentiary testing. A test for alcohol concentra-

tion in blood or urine as defined in section 18-8004, Idaho Code, that is reported by the Idaho department of law enforcement or by any laboratory approved by the Idaho department of law enforcement to perform this test will be valid for the purposes of this section.

(4) Suspension.

(a) Upon receipt of the sworn statement of a peace officer that there existed legal cause to believe a person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances and that the person submitted to a test and the test results indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall suspend the person's driver's license, or driver's permit, to-drive driving privileges or non-resident driving privileges:

(i) For a period of ninety (90) days for a first failure of evidentiary testing under the provisions of this section. The first thirty (30) days of the suspension shall be absolute and the person shall have absolutely no driving privileges of any kind. Restricted driving privileges applicable during the remaining sixty (60) days of the suspension may be requested as provided in subsection (89) of this section.

(ii) For a period of one (1) year for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years. No driving privileges of any kind shall be granted during the suspension imposed pursuant to this subsection. The person may request an administrative hearing on the suspension as provided in subsection (67) of this section. Any right to contest the suspension shall be waived if a hearing is not requested as therein provided.

(b) The suspension shall become effective thirty (30) days after service upon the person of the notice of suspension. The notice shall be in a form provided by the department and shall state:

(i) The reason and statutory grounds for the suspension;

(ii) The effective date of the suspension;

(iii) The suspension periods to which the person may be subject as provided in subsection (24)(a) of this section;

(iv) The procedures for obtaining restricted driving privileges;

(v) The rights of the person to request an administrative hearing on the suspension and that if an administrative hearing is not requested within seven (7) days of service of the notice of suspension the right to contest the suspension shall be waived;

(vi) The procedures for obtaining an administrative hearing on the suspension;

(vii) The right to judicial review of the hearing officer's decision on the suspension and the procedures for seeking such review.

~~(3) Information when testing requested; At the time evidentiary testing is requested; in addition to the information required under~~

~~the provisions of section 18-8002(3), Idaho Code, the person shall be informed that if he takes the test and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, Idaho Code;~~

~~(a) His driver's license shall be seized by the peace officer and a temporary permit which shall be valid for a period not to exceed thirty (30) days shall be issued by the peace officer; provided, however, that no peace officer shall issue a temporary permit pursuant to this subsection to a driver whose driver's license or permit has already been and is suspended, revoked, cancelled, disqualified or denied;~~

~~(b) Effective not later than thirty (30) days after service upon him of the notice of suspension his license shall be suspended for ninety (90) days, the first thirty (30) days of which shall be absolute, for a first failure of evidentiary testing under the provisions of this section; or for a period of one (1) year, all of which shall be absolute, for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years;~~

~~(c) He may request restricted driving privileges for the remaining sixty (60) days of a ninety (90) day suspension;~~

~~(d) He has the right to request an administrative hearing on the suspension before a hearing officer designated by the department within seven (7) days of the date of service upon him of the notice of suspension, and the right to judicial review of that decision;~~

~~(e) After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing;~~

(45) Service of suspension by peace officer. If the driver submits to evidentiary testing after the information in section 18-8002(3), Idaho Code, and subsection (32) of this section has been provided and the results of the test indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code:

(a) The peace officer shall take possession of the person's driver's license, shall issue a temporary permit which shall be valid for a period not to exceed thirty (30) days from the date of issuance, and, acting on behalf of the department, shall serve the person with a notice of suspension in the form and containing the information required under subsection (24) of this section.

(b) Within three five (35) business days following service of a notice of suspension the peace officer shall forward to the department a copy of the completed notice of suspension form upon which the date of service upon the driver shall be clearly indicated, a copy of any completed temporary permit form along with any confiscated driver's license, and a sworn statement of the officer setting forth:

- (i) The identity of the person;
- (ii) Stating the officer's legal cause to stop the person;
- (iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of

- a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code;
- (iv) That the person was advised of the consequences of taking and failing the evidentiary test as provided in subsection (32) of this section;
- (v) That the person was lawfully arrested;
- (vi) That the person was tested for alcohol concentration, drugs or other intoxicating substances as provided in this chapter, and that the results of the test indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code.

A certified copy or duplicate original of the results of all tests for alcohol concentration, drugs or other intoxicating substances as shown by analysis of blood, urine or breath administered at the direction of the officer shall accompany the officer's statement. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

(56) Additional tests. After submitting to evidentiary testing at the request of the peace officer, the person may, when practicable, at his own expense, have additional tests for alcohol concentration or for the presence of drugs or other intoxicating substances made by a person of his own choosing. The person's failure or inability to obtain additional tests shall not preclude admission of the results of evidentiary tests administered at the direction of the peace officer unless additional testing was denied by the peace officer.

(67) Administrative hearing on suspension. A person who has been served with a notice of suspension after submitting to an evidentiary test may request an administrative hearing on the suspension before a hearing officer designated by the department. The request for hearing shall be in writing and must be received by the department within seven (7) calendar days of the date of service upon the person of the notice of suspension, and shall include what issue or issues shall be raised at the hearing. The date on which the hearing request was received shall be noted on the face of the request. ~~The person may use the form provided by the department to request an administrative hearing on the suspension, but use of the form is not required.~~

If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for one ten (10) day period. Such extension shall not operate as a stay of the suspension and any temporary permit shall expire thirty (30) days after service of the notice of suspension, notwithstanding an extension of the hearing date beyond such thirty (30) day period. Written notice of the date, and time and place of the hearing shall be sent to the party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The department may conduct all ~~or part of the~~ hearings 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. ~~If the hearing is not conducted by electronic means, it shall be held at a place designated by rule of the department in one (1) or more~~

~~location--in--each--of--the--administrative--districts--of--the--department
which--are--headquartered--in--Coeur-d'Alene;--Lewiston;--Boise;--Shoshone;
Pocatello--and--Rigby.~~

The hearing shall be recorded. The sworn statement of the arresting officer, and the copy of the notice of suspension and any temporary permit issued by the officer shall be admissible at the hearing without further evidentiary foundation. The results of any tests for alcohol concentration or the presence of drugs or other intoxicating substances by analysis of blood, urine or breath administered at the direction of the peace officer and the records relating to calibration, certification, approval or quality control pertaining to equipment utilized to perform the tests shall be admissible as provided in section 18-8004(4), Idaho Code. The arresting officer shall not be required to appear participate unless directed to do so by a subpoena issued by the hearing officer.

The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension if unless he finds, by a preponderance of the evidence, that:

- (a) The peace officer did not have legal cause to stop the person; or
- (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
- (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
- (d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
- (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (32) of this section.

If the hearing officer finds that the person has not met his burden of proof, he shall sustain the suspension. The hearing officer shall make findings of fact and conclusions of law on each issue and shall enter an order vacating or sustaining the suspension. If the suspension is vacated, the person's driver's license, unless unavailable by reason of an existing suspension, revocation, cancellation, disqualification or denial shall be returned to him. The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that no motions for reconsideration of such order shall be allowed and new evidence can be submitted.

The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension required to be imposed under the provisions of this section. If a

license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of suspension may shall run concurrently, with the total period of suspension not to exceed the longer of the applicable suspension periods, unless the court ordering the suspension in the criminal case orders to the contrary.

(78) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code.

(89) Restricted driving privileges. A person served with a notice of suspension for ninety (90) days pursuant to this section may apply to the department for restricted driving privileges, to become effective after the thirty (30) day absolute suspension has been completed. The request may be made at any time after service of the notice of suspension. Restricted driving privileges will be issued for the person to travel to and from work and for work purposes, to attend an alternative high school, work on a GED, for postsecondary education, or to meet the medical needs of the person or his family if the person is eligible for restricted driving privileges.

(910) Rules. The department may adopt rules under the provisions of chapter 52, title 67, Idaho Code, deemed necessary to implement the provisions of this section.

SECTION 2. That Section 18-8002B, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002B. ENFORCEMENT OF 18-8002A, IDAHO CODE, STAYED. On and after the effective date of this act and until ~~July~~ January 1, 1997~~8~~, no peace officer in the state of Idaho shall enforce the provisions of section 18-8002A, Idaho Code.

SECTION 3. That Section 18-8002B, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 49-326, Idaho Code, be, and the same is hereby amended to read as follows:

49-326. AUTHORITY OF DEPARTMENT TO SUSPEND, DISQUALIFY OR REVOKE DRIVER'S LICENSE AND PRIVILEGES. (1) If the court has not ordered the suspension of a license or privileges, the department is authorized to suspend, disqualify or revoke the license or privileges of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the driver:

(a) Has committed an offense for which mandatory revocation or disqualification of license or privileges is required upon conviction;

(b) Has been convicted in any court in this state of an offense against a municipal ordinance which would have been grounds for suspension, revocation or disqualification of his driver's license

or privileges had the charge been prosecuted under a state law;

(c) Is incompetent to drive a motor vehicle;

1. Any person who in the opinion of the department, based upon recommendation of the person's personal physician, is afflicted with or subject to any condition which brings about momentary or prolonged lapses of consciousness or control, which is or may become chronic, or when the person is suffering from a physical or mental disability or disease serving to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating it upon the streets and highways, or any person who is unable to understand highway signs, warning, regulating or directing traffic, is incompetent to drive a motor vehicle.

2. Any person who shall not have minimum visual acuity with or without corrective lenses of 20/40 in at least one (1) eye as determined by the Snellen system or other available systems is incompetent to operate a motor vehicle, however, the department shall have the authority to license such person upon the recommendation of an ophthalmologist or qualified physician and upon passage of a skills test. At 20/70 or more in both eyes with or without corrective lenses the department may suspend the driver's license and privileges. Any person who applies for or receives any type of tax, welfare or other benefits or exemptions for the blind shall be conclusively presumed incompetent to operate a motor vehicle.

3. Any person, department, or political subdivision of the state of Idaho who receives an application for any type of tax, welfare, aid or other benefits or exemptions for the blind shall immediately forward the name, address, sex, date of birth, and date of application of the applicant to the department;

(d) Has permitted an unlawful or fraudulent use of a driver's license;

(e) Has committed an offense in another state which if committed in Idaho would be grounds for suspension, disqualification or revocation;

(f) Has been convicted of the offense of reckless driving, or fleeing or attempting to elude a peace officer, and providing that the operating privilege shall be suspended for a period of thirty (30) days upon conviction and providing further, that if a second conviction occurs within a two (2) year period of time from the time of the first conviction, the suspension shall be for ninety (90) days, and if a third conviction shall occur within a three (3) year period of time from the time of the first conviction, the period of suspension shall be for one (1) year;

(g) Has failed to satisfy a judgment as set forth in chapter 12, title 49, Idaho Code;

(h) Has failed to maintain proof of financial responsibility as set forth in chapter 12, title 49, Idaho Code;

(i) Has a driving record which shows a violation point count of twelve (12) or more points in any consecutive twelve (12) month period;

(j) Is an habitual violator of traffic laws;

(k) Has been convicted of the offense of violation of a restricted license and providing the driver's license and privileges be suspended for a period of thirty (30) days;

(l) Has been convicted for the offense of leaving the scene of an accident involving damages to a vehicle, the period of revocation shall be one (1) year;

(m) Has been convicted for the offense of leaving the scene of an accident resulting in injury or death, the period of revocation shall be one (1) year;

(n) Is under the age of eighteen (18) years and is not satisfactorily enrolled in school, has not received a waiver pursuant to or has not completed school as provided in section 49-303A, Idaho Code.

(2) A violation point is assessed for conviction of any charge or with proof of any infraction involving a moving traffic violation. A value of one (1) point shall be given for a less serious violation and up to four (4) points for a more serious violation. Conviction or proof of infraction for only one (1) violation arising from one (1) occasion of arrest or citation shall be counted in determining the violation point count.

(3) The department is authorized and directed to establish a violation point count system for various moving traffic violations and infractions occurring either within or without the state of Idaho, affecting all holders of driver's licenses issued by the department.

(4) Notification of suspension, revocation, cancellation or disqualification. Upon suspending, revoking, canceling or disqualifying the driver's license or driving privileges of any person, the department shall immediately notify the applicant or licensee in writing, at the licensee's address on file with the department pursuant to section 49-320, Idaho Code. Upon his request the department shall afford him an opportunity for a hearing before ~~the director or~~ a hearing officer appointed by the director. The hearing ~~shall~~ may be held by telephone within twenty-one (21) days after receipt of the request, unless this period is for good cause shown, extended by the hearing officer for one ten-day period. ~~The place of the hearing shall be designated by rule of the department in one (1) or more locations in each of the administrative districts of the department which are headquartered at Coeur d'Alene, Lewiston, Boise, Shoshone, Pocatello and Rigby.~~ The notice and hearing shall be required prior to the imposition of additional suspension or disqualification periods beyond the periods as set forth in this section. Upon a hearing the ~~director or his duty~~ authorized agent hearing officer may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee. Upon the hearing the department shall either rescind its order or, with good cause, may affirm or extend the suspension or disqualification of the driver's license or revoke the driver's license.

Whenever a driver's license, permit or driving privilege has been suspended or revoked by the department as provided in this section, other than as set forth in subsection (1)(c), (d), (g), (h), (m) or (n), the department may issue a temporary restricted permit restricting the time, area and purpose of use. The application, eligibility requirements and form of the temporary restricted permit shall be pro-

vided by administrative rule.

(5) The department shall not suspend a driver's license or privileges for a period of more than one (1) year and upon revoking a driver's license or privileges shall not in any event grant application for a new driver's license until the expiration of one (1) year after the revocation. The provisions of this subsection shall not be applicable with respect to the issuance of temporary restricted permits as provided in section 49-325, Idaho Code.

(6) The department shall not disqualify a driver for a period longer than specified by 49 CFR part 383.

SECTION 5. That Section 49-328, Idaho Code, be, and the same is hereby amended to read as follows.

49-328. REINSTATEMENT OF REVOKED, DISQUALIFIED OR SUSPENDED DRIVER'S LICENSE -- FEE -- WHEN REINSTATEMENT PROHIBITED. (1) When the period of revocation, disqualification or suspension of a driver's license has expired, or the reason for the revocation, disqualification or suspension no longer exists, the department shall reinstate the driver's license or driving privileges on application of the driver.

(2) The application shall be in the form prescribed by the department and accompanied by a reinstatement fee of fifteen dollars (\$15.00) which shall be deposited in the state highway account.

(23) A driver's license which has been suspended under section 49-1505, Idaho Code, for failure to pay an infraction penalty shall not be reinstated until the licensee provides proof that the infraction penalty has been paid to the court.

(34) In addition to any other fees required in this section to be collected, the department shall collect twenty-five dollars (\$25.00) for reinstating a driver's license after conviction for driving under the influence, without privileges, and after conviction or other violation of any other traffic related misdemeanor or infraction, of which fees twenty dollars (\$20.00) shall be paid over to the county treasurer of the county in which the conviction occurred for support of that county's justice fund, or the current expense fund if no county justice fund has been established and the five dollars (\$5.00) shall be deposited in the state highway account.

(45) In addition to any other fees required in this section to be collected, the department shall collect one hundred fifteen dollars (\$115) for reinstating a driver's license after a suspension imposed under the provisions of section 18-8002 or section 18-8002A, Idaho Code, or after a suspension arising out of any alcohol or drug related offense, other than a suspension imposed upon a person under eighteen (18) years of age pursuant to section 18-1502(d), Idaho Code. Funds collected pursuant to this subsection shall be deposited in the state highway account. The department shall reevaluate the amount of the reinstatement fee herein imposed not later than February, ~~1996~~ 2000, to determine the sufficiency of the fee to meet the costs associated with the implementation of section 18-8002A, Idaho Code.

(6) When there is more than one (1) reason why a driver's license was revoked or suspended or why a driver was disqualified, the department shall not collect multiple fees for reinstatement, but shall only

collect one (1) reinstatement fee, which shall be the greater reinstatement fee, provided however, the department shall collect two (2) reinstatement fees for reinstating a driver's license for multiple suspensions under chapter 80, title 18, Idaho Code, arising from the same occurrence.

SECTION 6. That Section 49-330, Idaho Code, be, and the same is hereby amended to read as follows.

49-330. RIGHT OF APPEAL TO COURT. Any person denied a driver's license by the department or whose driver's license has been cancelled, suspended, disqualified, or revoked, or restricted by the department, ~~except where suspension is court-ordered~~ shall have the right to file a petition ~~within thirty (30) days of notification of action, for a hearing in the matter in the district court in the county where the person resides and the court shall set the matter for hearing upon thirty (30) days¹ written notice to the department. The court shall take testimony, examine the facts of the case, and determine whether the petitioner is entitled to a driver's license or is subject to suspension, cancellation, disqualification or revocation of the driver's license~~ for judicial review pursuant to chapter 52, title 67, Idaho Code.

SECTION 7. Sections 1, 2, 4, 5 and 6 of this act shall be in full force and effect on and after July 1, 1997. Section 3 of this act shall be in full force and effect on and after January 1, 1998.

Approved March 20, 1997.

CHAPTER 239
(H.B. No. 294)

AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION; AMENDING CHAPTER 9, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-909, IDAHO CODE, TO AUTHORIZE THE PUBLIC UTILITIES COMMISSION TO EXEMPT CERTAIN SECURITIES OR CLASS OF SECURITIES OR ANY PUBLIC UTILITY OR CLASS OF PUBLIC UTILITIES FROM THE PROVISIONS OF THE SECURITIES ISSUANCE LAW BY PUBLIC UTILITIES IF THE COMMISSION FINDS IT IN THE PUBLIC INTEREST TO DO SO.

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

SECTION 1. That Chapter 9, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-909, Idaho Code, and to read as follows:

61-909. EXEMPTIONS. The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any security or any class of securities for

which an application is required under this chapter or any public utility or class of public utility from the provisions of this chapter if it finds that the application thereof to such security, class of securities, public utility or class of public utility is not required by the public interest.

Approved March 20, 1997.

CHAPTER 240
(H.B. No. 306)

AN ACT

RELATING TO LIMITED PARTNERSHIPS; AMENDING SECTION 53-234, IDAHO CODE, TO PROVIDE UPON WITHDRAWAL ANY WITHDRAWING PARTNER IS ENTITLED TO RECEIVE ANY DISTRIBUTION TO WHICH HE IS ENTITLED UNDER THE PARTNERSHIP AGREEMENT AND IF NOT OTHERWISE PROVIDED IN THE AGREEMENT, THE WITHDRAWING PARTNER SHALL BE AN ASSIGNEE OF THE LIMITED PARTNERSHIP AS OF THE DATE OF WITHDRAWAL.

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

SECTION 1. That Section 53-234, Idaho Code, be, and the same is hereby amended to read as follows:

53-234. DISTRIBUTION UPON WITHDRAWAL. Except as provided in sections 53-231 through 53-238, Idaho Code, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, ~~he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in~~ shall be an assignee of the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

Approved March 20, 1997.

CHAPTER 241
(H.B. No. 307, As Amended)

AN ACT

RELATING TO THE PAYMENT OF PROPERTY TAXES; AMENDING SECTION 63-902, IDAHO CODE, TO PROVIDE THAT TAX NOTICES SHALL CONTAIN PAYMENT OPTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-902, Idaho Code, be, and the same is hereby amended to read as follows:

63-902. PROPERTY TAX NOTICE AND RECEIPTS -- DUTY OF TAX COLLEC-

TOR. (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;
- (k) The different payment options available to the taxpayer, his agent or representative shall be printed in boldface type in a contrasting color or highlighted on the face of the tax notice.

(2) The tax notices shall be numbered consecutively and the numbers 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 prop-

erty 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.

SECTION 2. This act shall be in full force and effect on and after July 1, 1998.

Approved March 20, 1997.

CHAPTER 242
(H.B. No. 314, As Amended)

AN ACT

RELATING TO BUSINESS INVENTORY THAT IS EXEMPT FROM AD VALOREM PROPERTY TAXATION; AMENDING SECTION 63-602W, IDAHO CODE, TO PROVIDE WHEN ALL NEWLY CONSTRUCTED SINGLE FAMILY HOMES SHALL BE EXEMPT FROM TAXATION, TO PROVIDE APPLICATION OF THE OCCUPANCY TAX AND TO PROVIDE FOR RULES; AMENDING SECTION 63-3638, IDAHO CODE, TO CLARIFY THAT THE BUSINESS INVENTORY PHASEOUT REPLACEMENT MONEYS SHALL NOT APPLY TO PROPERTY EXEMPT FROM TAXATION THAT IS NEWLY CONSTRUCTED SINGLE FAMILY HOMES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-602W, Idaho Code, be, and the same is hereby amended to read as follows:

63-602W. BUSINESS INVENTORY EXEMPT FROM TAXATION -- BUSINESS INVENTORY THAT IS A COMPONENT OF REAL PROPERTY THAT IS A SINGLE FAMILY DWELLING. 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 or other 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.
- (3) All partial and newly constructed single family homes for a period not to exceed one (1) year from the date of completion, provided that it is identified by filing a declaration of completion with the county assessor within forty-five (45) days of completion or prior to January 1 of the following year, whichever comes first. The date for completion shall be evidenced by a valid final electrical or plumbing inspection certificate, certificate or other documentation authorized by the county assessor signifying the home is complete or until the home becomes occupied. Once property is occupied as defined

in section 63-317, Idaho Code, it shall be subject to the tax provided by section 63-317, Idaho Code. The state tax commission shall promulgate rules to standardize the application form and definition for the exemption provided by this subsection.

SECTION 2. 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 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 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 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 and finance association, as soon as possible, from any moneys available therefor and in excess of the amounts which the association determines will keep it self-supporting.

(2) An amount equal to the sum required by the provisions of section 63-709, Idaho Code, is continuously appropriated and shall be paid as provided by section 63-709, 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 distributed 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 subsections (1) and (2) of section 63-602W, 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 subsections (1) and (2) of section 63-602W, 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 cur-

rent 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 3. This act shall be in full force and effect on and after January 1, 1998.

Approved March 20, 1997.

CHAPTER 243
(H.B. No. 316)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3027E, IDAHO CODE, TO ALLOW CERTAIN TAXPAYERS TO FILE A SPREADSHEET NO LATER THAN SIX MONTHS AFTER FILING THE IDAHO INCOME TAX RETURN.

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

SECTION 1. That Section 63-3027E, Idaho Code, be, and the same is hereby amended to read as follows:

63-3027E. OPERATIVE DATES. (a) Sections 63-3027B through 63-3027E, Idaho Code, shall be operative for the computation of taxes

for the earlier of either of the following:

- (1) Taxable years beginning on or after January 1, 1988.
- (2) Taxable years beginning on or after January 1 of the year after the year in which the board of examiners, upon advice of the attorney general, certifies to the tax commission that action has been taken by the United States, whether by statute, regulation, executive order, or any other means as may be appropriate, to comply substantially with the following:

(A) A requirement that any corporation required to file a United States tax return or which could be included in a consolidated federal tax return be required to file with the Internal Revenue Service a domestic disclosure spreadsheet if its payroll, property, or sales in a foreign country exceeds one million dollars (\$1,000,000). The spreadsheet shall provide for full disclosure as to the income reported to each state, the state tax liability, and the method used for apportioning or allocating income to the states, and any other information as provided for by regulations as may be necessary to determine properly the amount of taxes due to each state and to identify the water's-edge corporate group and those of its affiliates of which more than twenty per cent (20%) of the voting stock is directly or indirectly owned or controlled by a common owner or owners.

(B) That the information filed pursuant to paragraph (2)(A) of this subsection will be available to qualified states. A "qualified state" is any state that does not require the use of the worldwide unitary method of taxation except in circumstances substantially similar to those authorized in subsection (c) of section 63-3027B, Idaho Code.

(C) That qualified states are authorized access to all material developed by the Internal Revenue Service in its examination of multinational operations.

(b) If sections 63-3027B through 63-3027E, Idaho Code, become operative pursuant to paragraph (1) of subsection (a) of this section, the tax commission may require, and taxpayers described in this subsection must file with, no later than six months after filing the Idaho income tax return, a spreadsheet to provide full disclosure as to the income reported for the year to each-state-for-the-year the other states that require unitary combined reporting, the tax liability for each such state, and the method used for allocating or apportioning income to the such states, the property, payroll, and destination sales of the water's-edge corporate group in each state, and to identify the water's-edge corporate group and those of its affiliates of which more than twenty per cent (20%) of the voting stock is directly or indirectly owned or controlled by a common owner or owners. The provisions of this subsection shall apply only to corporations which both make a water's-edge election and have during the taxable year, payroll, property or sales in a foreign country which exceeds one million dollars (\$1,000,000). Notwithstanding the requirement to file a spreadsheet in any tax year, a taxpayer may forego filing such a spreadsheet by submitting to the state tax commission a written declaration of its intention to forego filing such spreadsheet for such year. In the event such declaration is filed in any tax year,

no spreadsheet shall be required of such taxpayer and the percentage to be applied under section 63-3027C(c)(3) for such year shall be eighty per cent (80%) rather than eighty-five per cent (85%).

Approved March 20, 1997.

CHAPTER 244
(H.B. No. 359)

AN ACT

RELATING TO NUCLEAR WASTE; AMENDING CHAPTER 8, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-806A, IDAHO CODE, TO ESTABLISH THE INEEL SETTLEMENT FUND, TO DESCRIBE THE MAKE-UP OF THE FUND, TO PROVIDE FOR EXPENDITURES TO MITIGATE THE IMPACTS OF THE IDAHO NATIONAL ENGINEERING AND ENVIRONMENTAL LABORATORY WORKFORCE RESTRUCTURING AND FOR OTHER PURPOSES AND TO PROVIDE FOR TREATMENT OF SURPLUS MONEYS.

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

SECTION 1. That Chapter 8, 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 67-806A, Idaho Code, and to read as follows:

67-806A. INEEL SETTLEMENT FUND. (1) There is hereby established in the state treasury a fund, separate and apart from all other public moneys or funds of this state, to be known as the INEEL settlement fund.

(2) The fund shall consist of all payments received from the U.S. department of energy, or a successor agency, pursuant to the 1995 court approved settlement between the state of Idaho, the U.S. department of energy and the U.S. navy.

(3) Moneys in the fund may be expended by the office of the governor, consistent with the terms of the court approved settlement, to mitigate the impacts of the Idaho national engineering and environmental laboratory workforce restructuring on the Idaho economy by furthering the creation of sustainable jobs and diversification of the southeastern Idaho economy, and for other purposes mutually acceptable to the governor of the state of Idaho and the U.S. department of energy.

(4) All moneys placed in the fund are hereby continuously appropriated to the office of the governor for the purposes described in this section.

(5) Pending use, surplus moneys in the fund shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code. Interest earned on the investments shall be returned to the fund.

Approved March 20, 1997.

CHAPTER 245
(H.B. No. 360)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 1998 FROM THE SECONDARY DEPREDAATION 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 amount, to be expended for the designated program according to the designated standard classification from the listed fund for the period July 1, 1997, through June 30, 1998: WINTER FEEDING AND HABITAT IMPROVEMENT:

FROM:	
Fish and Game Secondary Depredation Fund	\$100,000
FOR:	
Trustee and Benefit Payments	\$100,000

Approved March 20, 1997.

CHAPTER 246
(H.B. No. 369)

AN ACT

RELATING TO FIREWORKS; REPEALING CHAPTER 26, TITLE 39, IDAHO CODE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 26, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO REQUIRE A WHOLESALE OR IMPORT LICENSE, TO REQUIRE A PERMIT FOR RETAIL SALES, TO REQUIRE A PERMIT FOR PUBLIC DISPLAY OR OTHER EVENTS USING FIREWORKS, TO PROVIDE AUTHORIZED DATES FOR THE SALE AND USE OF FIREWORKS, TO PROVIDE FOR USE AND CONSTRUCTION OF TEMPORARY FIREWORKS STANDS, TO PROVIDE FOR SHORT-TERM STORAGE OF FIREWORKS, TO PROVIDE PROHIBITIONS, TO PROVIDE EXCEPTIONS, TO PROVIDE FOR LIABILITY OF PARENTS OR GUARDIANS, TO PROVIDE FOR ENFORCEMENT, TO PROVIDE PENALTIES INCLUDING INJUNCTIONS AND TO PROVIDE FOR RULEMAKING; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 26, Title 39, Idaho Code, be, and the same is hereby repealed.

SECTION 2. 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 26, Title 39, Idaho Code, and to read as follows:

CHAPTER 26
FIREWORKS

39-2601. SHORT TITLE. This act shall be known and may be cited as the "Fireworks Act of 1997."

39-2602. DEFINITIONS. As used in this chapter, these terms shall have the following meanings:

(1) "Authority having jurisdiction" means a city fire department if the area is within a city, or a fire protection district formed pursuant to provisions of the Idaho Code if the area is within a fire protection district, or the county commission if the area is not within a city or fire protection district.

(2) "Department" means the department of insurance, division of the state fire marshal.

(3) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation. Fireworks include items classified as common or special fireworks by the United States bureau of explosives or contained in the regulations of the United States department of transportation and designated as UN 0335 1.3G or UN 0336 1.4G. The term "fireworks" shall not include any automotive safety flares, toy guns, toy cannons, caps or other items designed for use with toy guns or toy cannons, party poppers, pop-its or other devices which contain twenty-five hundredths (.25) of a grain or less of explosive substance.

(4) "Importer" means any person who, for any purpose other than personal use, or a use associated with a specific public display or other event permit, is the first receiver of any fireworks in this state.

(5) "License" means a nontransferable, formal authorization, issued by the department to engage in the acts of importing fireworks into this state or operating a wholesale fireworks business within this state.

(6) "Nonaerial common fireworks" means any fireworks such as ground spinners, fountains, sparklers, smoke devices or snakes designed to remain on or near the ground and not to travel outside a fifteen (15) foot diameter circle or emit sparks or other burning material which land outside a twenty (20) foot diameter circle or above a height of twenty (20) feet. Nonaerial common fireworks do not include firecrackers, jumping jacks, or similar products.

(7) "Permit" means an authorization given by the authority having jurisdiction pursuant to section 39-2604 or 39-2605, Idaho Code.

(8) "Special fireworks" means any fireworks designed primarily for display and classified as special fireworks by the United States bureau of explosives or designated as UN 0335 1.3G.

(9) "Wholesale" means sale of fireworks to a retailer or wholesaler.

39-2603. WHOLESALE AND IMPORT LICENSE REQUIRED. (1) A license shall be required for any person to import fireworks into this state or to operate a wholesale fireworks business in this state.

(2) Fireworks shall only be delivered in this state by a person with a valid wholesale or import license under the following circumstances:

- (a) (i) To a person with a valid sales tax seller's permit issued pursuant to section 63-3620, Idaho Code; and
- (ii) During a period beginning sixty (60) days prior to a

date on which the retail sale or use of nonaerial common fireworks is authorized under this chapter; or

(b) To a person with a valid permit issued pursuant to section 39-2605, Idaho Code, within a reasonable time period before the display or event.

(3) Possession of a wholesale or import license does not authorize the holder of the license to sell nonaerial common fireworks at retail, but a wholesaler or importer may also hold a retail permit in compliance with the provisions of this chapter.

(4) Wholesale or import licenses shall be issued for a twelve (12) month period beginning on March 31 each year and shall be non-transferable. The license shall be issued if the application is complete and in compliance with applicable law.

(5) Wholesale or import license applications shall be on a form approved by the department and shall include the name and address of the applicant (or the names of all partners, if a partnership, the name of the corporation and the corporate officers if a corporation, or the name of the limited liability company and all of its members, if a limited liability company) the primary location of the business, each location at which fireworks are to be stored and the applicant's Idaho sales tax seller's permit number, if applicable.

(6) A bond or valid certificate of public liability and property-casualty insurance providing coverage of at least one hundred thousand dollars (\$100,000) for personal injury and property damage shall be presented at the time of application.

(7) The department may impose a fee for issuing a license under this section which shall not exceed one hundred dollars (\$100).

(8) The license required under this section may be revoked if the licensee violates any provisions of this chapter. A license revocation proceeding shall comply with the provisions of chapter 52, title 67, Idaho Code.

(9) The license shall be displayed in public view at each location listed on the license.

(10) An importer or wholesaler shall keep a record of all wholesale transactions showing the name, address, sales tax seller's permit number, if applicable, and type and quantity of items sold.

39-2604. PERMIT REQUIRED FOR RETAIL SALES. (1) The local authority having jurisdiction may require a permit for the retail sale of nonaerial common fireworks.

(2) If a permit is required the applications shall be on a form approved by the authority having jurisdiction and shall include the name and address of the applicant (or the names of all partners, if a partnership, the name of the corporation and the corporate officers if a corporation, or the name of the limited liability company and all of its members, if a limited liability company) the primary location of the business, each location at which fireworks are to be stored and the applicant's Idaho sales tax seller's permit number, if applicable.

(3) A bond or valid certificate of public liability and property-casualty insurance providing coverage of up to one hundred thousand dollars (\$100,000) for personal injury and property damage may be required at the time of application.

(4) The authority having jurisdiction may assess a fee for issu-

ing a permit under this section which shall not exceed twenty-five dollars (\$25.00).

(5) The permit shall be issued if the application is complete and in compliance with applicable law, shall be valid for twelve (12) months from the date of issuance and shall be nontransferable.

(6) The permit required under this section may be revoked if the permittee violates any provisions of this chapter. A permit revocation proceeding shall comply with the provisions of chapter 52, title 67, Idaho Code.

(7) The permit shall be displayed in public view at the location listed on the permit.

39-2605. PERMIT REQUIRED FOR PUBLIC DISPLAY OR OTHER EVENT USING FIREWORKS. (1) The authority having jurisdiction may, at its discretion, issue a permit for public display or other events in the following circumstances:

(a) After determining that the public display will be supervised by a qualified person and will not constitute an unreasonable hazard to persons or property. Appropriate national fire protection association or uniform fire code provisions may be used as guidance for this determination.

(b) After determining that sales and use of fireworks outside the normal sales period provided in section 39-2606, Idaho Code, or proposing the use of fireworks in addition to nonaerial common fireworks will not constitute an unreasonable hazard to persons or property.

(2) An application for a permit for public display or other event shall be on a form approved by, and contain the information reasonably requested by, the authority having jurisdiction.

(3) The permit shall be nontransferable, shall list the specific date or dates upon which the display or event shall occur and the types of fireworks and uses that will be allowed.

(4) A bond or valid certificate of public liability and property-casualty insurance providing coverage of up to one million dollars (\$1,000,000) for personal injury and property damage may be required at the time of application for public display of special fireworks.

(5) The authority having jurisdiction may assess a fee for issuing a permit for public display under this section which shall not exceed one hundred twenty-five dollars (\$125). There shall be no fee for the issuance of a permit for any event other than a public display event.

(6) Alteration of fireworks may be performed by a person in possession of a valid public display permit.

39-2606. AUTHORIZED DATES FOR THE SALE AND USE OF FIREWORKS. (1) Nonaerial common fireworks may be sold at retail and used beginning at midnight June 23, and ending at midnight July 5 and beginning at midnight December 26 and ending at midnight January 1. The authority having jurisdiction may at its discretion extend each period of sales by not more than five (5) days.

(2) Fireworks may be sold and used at any time in compliance with permits issued under the provisions of section 39-2605, Idaho Code.

39-2607. TEMPORARY FIREWORKS STANDS. Retail sales of nonaerial common fireworks shall be allowed only from within a temporary fireworks stand unless the authority having jurisdiction finds appropriate circumstances justifying reasonable variance from strict compliance with this section. An existing permanent building which was used for the retail sale of fireworks in 1996 may continue to be used for that purpose if the building meets or exceeds the standards for temporary buildings established by this section and is operated, insofar as it is applicable, as provided by this section. Temporary fireworks stands shall be subject to the following provisions:

(1) A stand shall not be located within twenty-five (25) feet of any building or within one hundred (100) feet of the nearest fuel dispensing device.

(2) A stand shall meet the minimum structural stability requirements for temporary buildings as required by applicable local building codes. If no local building codes have been adopted, applicable state codes may be used.

(3) A stand shall meet the minimum requirements for temporary buildings for all lighting circuits or other electrical equipment used in conjunction with the operation of the stand as required by applicable local building codes or, if no local building codes have been adopted, by applicable state codes.

(4) A stand shall have two (2) exits, each a minimum of thirty (30) inches wide at each end of the stand or as near the ends as is practical in a mobile home conversion. One (1) additional door is required for each thirty-two (32) feet of rear wall in excess of thirty-two (32) feet. All doors shall open outward from the stand and shall be kept unlocked and unlatched during the hours of operation and free and clear of supplies and materials at all times.

(5) A stand shall have at least two (2) fire extinguishers with a 2A minimum rating, in good working order, with a current inspection tag in place, placed near the exits in a visible and readily accessible manner.

(6) "No smoking within 25 feet" signs shall be prominently displayed on all four (4) sides of the stand. Smoking shall not be permitted inside the stand.

(7) A stand shall not be erected before May 5 nor remain up after July 20 for the first sales period; nor shall it be erected before December 7 or remain up after January 16 for the second sales period. The premises on which the stand is erected shall be cleared of all structures and debris no later than July 20 or January 16, respectively.

(8) The fireworks stand operator shall not permit the discharge of fireworks within twenty-five (25) feet of the stand.

(9) The stand operator shall not allow any rubbish to accumulate in or around the stand causing a fire nuisance.

(10) Only noncombustible waste containers shall be permitted within the stand.

(11) Fireworks shall not be left in the stand when it is not open for business unless the stand is locked or secured. If fireworks are not stored in the stand they shall be stored in compliance with section 39-2608, Idaho Code.

(12) Notice as provided by the authority having jurisdiction

cautioning each person purchasing fireworks of the prohibitions, liabilities and penalties incorporated in this chapter shall be posted at all retail locations.

(13) The authority having jurisdiction may charge a one (1) time inspection fee of twenty-five dollars (\$25.00) for inspection of a temporary fireworks stand.

39-2608. SHORT-TERM STORAGE. (1) A short-term storage facility may be used for the storage of nonaerial common fireworks for a period of sixty (60) days prior to, and fifteen (15) days after, any authorized retail sales date. The authority having jurisdiction shall be notified of the address or location of all short-term storage facilities when fireworks will not be stored in a temporary fireworks stand. If the short-term storage facility is not within the boundaries of the jurisdiction having issued the retail sales permit the permittee shall notify the authority having jurisdiction where the storage is to take place.

(2) Short-term storage is allowed in any of the following, provided it is locked or otherwise secured: a temporary fireworks stand, truck, trailer, or other vehicle. A truck, trailer or other vehicle used for short-term storage must remain at least twenty-five (25) feet from the stand during any time the stand is open for business, but may abut the stand when it is closed. A truck, trailer or vehicle used for short-term storage must be at least twenty-five (25) feet from any other inhabited building. Short-term storage may occur in a locked or secured shed, garage, barn or other building or storage container which is detached from an inhabited building and contains no open flames, including heating and lighting sources. The authority having jurisdiction may, in its discretion, allow short-term storage to occur in an attached garage with a one (1) hour fire wall separating the garage from any inhabited area.

39-2609. GENERAL PROHIBITIONS. It shall be unlawful for any person, except in compliance with this chapter, to:

- (1) Alter any fireworks;
- (2) Throw any fireworks from, into, or at a moving vehicle or at any person;
- (3) Sell or use any fireworks at any time not permitted under this chapter;
- (4) Use fireworks in any area that constitutes a severe fire threat based on the vegetative conditions during the current fire season as determined by the county commission or authority having jurisdiction, provided that notice of such areas is given in advance.

39-2610. EXCEPTIONS. The provisions of this chapter do not apply to and shall not prohibit:

- (1) The use of flares, noisemakers or signals designed and used for the purpose of protecting the public;
- (2) The use of blank cartridges;
- (3) The use of flares or noisemakers designed and labeled specifically for pest control purposes and approved by the Idaho department of fish and game;
- (4) The continued use of existing facilities for long-term stor-

age of fireworks by wholesalers;

(5) Manufacturing of fireworks in this state; and

(6) The importation, storage and sale of fireworks for export from this state, or interstate commerce in fireworks.

39-2611. LIABILITY OF PARENTS OR GUARDIANS. The parents, guardians or other persons having custody or control of a minor shall be liable for damage caused by the use of fireworks by the minor.

39-2612. ENFORCEMENT. This chapter shall be enforced by the department, cities, counties, fire protection districts or other law enforcement agencies of the state.

39-2613. PENALTIES -- INJUNCTIONS. Any person violating the provisions of this chapter or any rules issued hereunder is guilty of a misdemeanor. Notwithstanding the existence or use of any other penalty or remedy, any person who violates the provisions of this chapter or any of the rules promulgated pursuant to this chapter may, upon application to or with written consent of the authority having jurisdiction, be enjoined in the manner provided by law from continuing the violation. Fireworks being used in violation of this chapter may be confiscated by the authority having jurisdiction.

39-2614. RULES. The department may adopt any rules necessary to carry out the provisions of this chapter which are consistent with the provisions of this chapter and which are necessary to carry out its duties under the provisions of this chapter.

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 20, 1997.

CHAPTER 247
(H.B. No. 372)

AN ACT

RELATING TO ADMINISTRATIVE RULES; CONTINUING CERTAIN RULES IN FULL FORCE AND EFFECT UNTIL JULY 1, 1998; CONTINUING RULES APPROVED, MODIFIED, AMENDED OR EXTENDED BY ADOPTION OF A CONCURRENT RESOLUTION OF THE FIRST REGULAR SESSION OF THE FIFTY-FOURTH IDAHO LEGISLATURE IN FULL FORCE AND EFFECT UNTIL JULY 1, 1998 OR UNTIL SUCH TIME AS THEY SHALL EXPIRE; PROVIDING THAT RULES REJECTED BY CONCURRENT RESOLUTION SHALL BE NULL, VOID AND OF NO FORCE AND EFFECT; AUTHORIZING AGENCIES TO AMEND OR REPEAL CERTAIN RULES PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT AND DECLARING THE EFFECT OF THIS ACT UPON ADMINISTRATIVE RULES; AND PROVIDING SEVERABILITY.

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

SECTION 1. Except as provided in Sections 2, 3 and 4 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1997, pursuant to the provisions of Subsections (1) and (2) of Section 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1998, at which time they shall expire as provided in Section 67-5292, Idaho Code.

SECTION 2. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been affirmatively approved, modified, amended or extended by the adoption of a Concurrent Resolution by both the Senate and House of Representatives in the First Regular Session of the Fifty-fourth Idaho Legislature shall continue in full force and effect in such approved, modified, amended or extended language until July 1, 1998, at which time they shall expire as provided in Section 67-5292, Idaho Code, or until such earlier time as provided in the rule or as otherwise provided by statute, unless further extended by statute.

SECTION 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the First Regular Session of the Fifty-fourth Idaho Legislature shall be null, void and of no force and effect as provided in Section 67-5291, Idaho Code.

SECTION 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending or repealing rules which have been continued in full force and effect until July 1, 1998, pursuant to Sections 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code, and subject to submission to the Legislature for approval. Nothing contained in this act shall endow any administrative rule continued in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect have been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

SECTION 5. 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 20, 1997.

CHAPTER 248
(H.B. No. 373)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR FISCAL YEAR 1998; 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 fund sources for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. MANAGEMENT AND SUPPORT:					
FROM:					
State Highway Fund					
(Dedicated)	\$ 8,992,000	\$ 4,686,700	\$ 450,600		\$ 14,129,300
State Highway Fund					
(Federal)	71,200	146,000			217,200
TOTAL	\$ 9,063,200	\$ 4,832,700	\$ 450,600		\$ 14,346,500
B. TRANSPORTATION PLANNING:					
FROM:					
State Highway Fund					
(Dedicated)	\$ 580,200	\$ 178,200	\$ 81,500		\$ 839,900
State Highway Fund					
(Federal)	1,123,100	624,200		\$ 685,000	2,432,300
TOTAL	\$ 1,703,300	\$ 802,400	\$ 81,500	\$ 685,000	\$ 3,272,200
C. MOTOR VEHICLES:					
FROM:					
State Highway Fund					
(Dedicated)	\$ 5,114,000	\$ 3,327,200	\$ 193,100		\$ 8,634,300
D. HIGHWAYS:					
FROM:					
State Highway Fund					
(Restricted)	\$ 958,900	\$ 747,300			\$ 1,706,200
State Highway Fund					
(Dedicated)	49,887,700	31,352,900	\$ 9,989,100	\$ 383,900	91,613,600
State Highway Fund					
(Federal)	9,559,200	2,582,100			12,141,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Idaho Traffic Safety Fund (Federal)				1,610,000	1,610,000
State Highway Fund (Local)	<u>239,600</u>	<u>73,400</u>		<u>48,300</u>	<u>361,300</u>
TOTAL	\$60,645,400	\$34,755,700	\$ 9,989,100	\$2,042,200	\$107,432,400
E. CAPITAL FACILITIES:					
FROM:					
State Highway Fund (Dedicated)			\$ 2,215,000		\$ 2,215,000
F. CONTRACT CONSTRUCTION & RIGHT-OF-WAY ACQUISITION:					
FROM:					
State Highway Fund (Restricted)			\$ 17,471,800		\$ 17,471,800
State Highway Fund (Dedicated)			35,107,000		35,107,000
State Highway Fund (Federal)			107,987,100		107,987,100
State Highway Fund (Local)			<u>2,537,400</u>		<u>2,537,400</u>
TOTAL			\$163,103,300		\$163,103,300
G. AERONAUTICS:					
FROM:					
State Aeronautics Fund (Dedicated)	\$ 549,800	\$ 360,700	\$ 125,300	\$ 500,000	\$ 1,535,800
State Aeronautics Fund (Federal)		<u>192,900</u>			<u>192,900</u>
TOTAL	\$ 549,800	\$ 553,600	\$ 125,300	\$ 500,000	\$ 1,728,700
H. PUBLIC TRANSPORTATION:					
FROM:					
State Highway Fund (Dedicated)	\$ 147,800	\$ 95,100	\$ 10,000		\$ 252,900
State Highway Fund (Federal)	<u>188,600</u>	<u>2,400</u>		<u>\$3,030,000</u>	<u>3,221,000</u>
TOTAL	\$ 336,400	\$ 97,500	\$ 10,000	\$3,030,000	\$ 3,473,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. INTER/INTRA DEPARTMENT SERVICES:					
FROM:					
State Aeronautics Fund (Billing)	\$ 112,900	\$ 243,200			\$ 356,100
State Highway Fund (Billing)	57,500	583,700			641,200
TOTAL	\$ 170,400	\$ 826,900			\$ 997,300
GRAND					
TOTAL	\$77,582,500	\$45,196,000	\$176,167,900	\$6,257,200	\$305,203,600

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 seven hundred forty-four (1,744) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 20, 1997.

CHAPTER 249
(H.B. No. 374)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC HEALTH TRUST FUND FOR THE PUBLIC HEALTH DISTRICTS FOR FISCAL YEAR 1998; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE FOOD PROTECTION PROGRAM.

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

SECTION 1. There is hereby appropriated \$7,729,800 from the General Fund to be deposited in the Public Health Trust Fund for the period July 1, 1997, through June 30, 1998.

SECTION 2. The Public Health Districts are hereby directed to file a financial and statistical report with the Governor and the Leg-

islature no later than January 15, 1998, on the status of the Food Protection Program.

Approved March 20, 1997.

CHAPTER 250
(H.B. No. 375)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF ENVIRONMENTAL QUALITY FOR FISCAL YEAR 1998; APPROPRIATING MONEYS FROM THE HAZARDOUS WASTE EMERGENCY FUND FOR FISCAL YEAR 1998; 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 39-3630, IDAHO CODE; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS TO THE ENVIRONMENTAL REMEDIATION FUND; EXPRESSING LEGISLATIVE INTENT REGARDING THE ENVIRONMENTAL REMEDIATION FUND AND REQUIRING AN ANNUAL REPORT; AND PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS TO THE DRINKING WATER LOAN FUND.

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, 1997, through June 30, 1998:

	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		\$ 50,000	\$ 228,900
Cooperative					
Welfare					
Fund - DEQ					
(Federal)	<u>1,063,600</u>	<u>360,000</u>		<u>465,000</u>	<u>1,888,600</u>
TOTAL	\$ 1,225,100	\$ 377,400		\$ 515,000	\$ 2,117,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
B. PLANNING AND SUPPORT SERVICES:					
FROM:					
General					
Fund	\$ 120,000	\$ 107,000			\$ 227,000
Air Quality Permitting					
Fund	120,600	202,900	\$ 2,800		326,300
Cooperative Welfare					
Fund - DEQ (Other)	198,400	84,600			283,000
Water Pollution Control					
Fund	425,900	597,200	4,500		1,027,600
Hazardous Waste Training, Emergency and Monitoring					
Fund	365,800	328,300			694,100
Cooperative Welfare					
Fund - DEQ (Federal)	<u>1,218,400</u>	<u>1,197,000</u>	<u>7,200</u>		<u>2,422,600</u>
TOTAL	\$ 2,449,100	\$2,517,000	\$ 14,500		\$ 4,980,600
C. AIR AND HAZARDOUS WASTE:					
FROM:					
General					
Fund	\$ 405,100	\$ 62,900			\$ 468,000
Cooperative Welfare					
Fund - DEQ (Other)	9,100	11,500			20,600
Hazardous Waste Training, Emergency and Monitoring					
Fund	838,900	97,200			936,100
Air Quality Permitting					
Fund	869,200	194,000	\$ 32,000		1,095,200
Cooperative Welfare					
Fund - DEQ (Federal)	<u>1,333,900</u>	<u>70,400</u>	<u>6,400</u>		<u>1,410,700</u>
TOTAL	\$ 3,456,200	\$ 436,000	\$ 38,400		\$ 3,930,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
D. WATER QUALITY AND REMEDIATION:					
FROM:					
General					
Fund	\$ 604,600	\$ 74,700			\$ 679,300
Cooperative					
Welfare					
Fund - DEQ					
(Other)	1,165,200	376,600	\$ 23,000	\$ 228,800	1,793,600
Water					
Pollution					
Control					
Fund	4,051,500	2,186,100	58,000	8,325,500	14,621,100
Hazardous					
Waste Training,					
Emergency and					
Monitoring					
Fund	229,200	196,700			425,900
Air Quality					
Permitting					
Fund	252,600	88,400		189,000	530,000
Environmental					
Remediation					
Fund	118,900	1,007,000		1,200,000	2,325,900
State Agricultural					
Smoke Management					
Fund		28,900			28,900
Bunker Hill					
Trust Fund					
		160,000		70,000	230,000
Cooperative					
Welfare					
Fund - DEQ					
(Federal)	3,497,200	1,330,800	95,000	1,590,300	6,513,300
TOTAL	\$ 9,919,200	\$5,449,200	\$176,000	\$11,603,600	\$27,148,000
GRAND					
TOTAL	\$17,049,600	\$8,779,600	\$228,900	\$12,118,600	\$38,176,700

SECTION 2. Notwithstanding the provisions of Section 39-4417, Idaho Code, there is hereby appropriated \$400,000 from the Hazardous Waste Emergency Fund to be deposited into the Hazardous Waste Training, Emergency, and Monitoring Fund for the period July 1, 1997, through June 30, 1998.

SECTION 3. As appropriated, the State Controller shall make transfers of the General Fund, the Water Pollution Control Fund, the Hazardous Waste Training, Emergency and Monitoring Fund and the Air Quality Permitting Fund to the Cooperative Welfare Fund - DEQ, periodically, as requested by the Administrator of the Division of Environ-

mental Quality and approved by the Board of Examiners.

SECTION 4. 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 1997, to be used for nonrecurring expenditures only for the period July 1, 1997, through June 30, 1998. The reappropriation shall be computed by the Department of Health and Welfare from available moneys.

SECTION 5. 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, 1997, through June 30, 1998.

SECTION 6. 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, 1997, through June 30, 1998. Transfers of moneys between programs in the same appropriation bill are still subject to the approval of the Division of Financial Management.

SECTION 7. In accordance with Section 67-3519, Idaho Code, the Department of Health and Welfare is authorized no more than three hundred forty-four and fifty-five hundredths (344.55) full-time equivalent positions in the Division of Environmental Quality at any point during the period July 1, 1997, through June 30, 1998, unless specifically authorized by the Governor. The Joint Committee will be notified promptly of any increased positions so authorized.

SECTION 8. It is legislative intent that the appropriation of moneys from the Water Pollution Control Fund specifically supersedes the provisions of Section 39-3630, Idaho Code.

SECTION 9. 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, 1997, through June 30, 1998.

SECTION 10. 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.

SECTION 11. Of the appropriation contained in Section 1 of this act for the Safe Drinking Water Program, the State Controller is hereby directed to make a cash transfer of \$2,800,000 from the Water

Pollution Control Fund to the Drinking Water Loan Fund for the period July 1, 1997 through June 30, 1998.

Approved March 20, 1997.

CHAPTER 251
(H.B. No. 376)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR MEDICAL ASSISTANCE SERVICES FOR FISCAL YEAR 1998; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE GENERAL FUND; RE-APPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; AND EXEMPTING THE DEPARTMENT FROM APPROPRIATION TRANSFER LIMITATIONS.

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 Medical Assistance Services the following amounts to be expended according to the designated expense classes from the various funds listed for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
MEDICAL ASSISTANCE SERVICES:				
FROM:				
General Fund	\$2,433,200	\$2,798,900	\$117,336,700	\$122,568,800
Cooperative Welfare Fund (Other)	999,600	122,800	17,057,800	18,180,200
Medical Assistance Fund			15,000	15,000
Liquor Control Fund			650,000	650,000
Cooperative Welfare Fund (Federal)	<u>3,824,200</u>	<u>4,230,300</u>	<u>275,234,700</u>	<u>283,289,200</u>
TOTAL	<u>\$7,257,000</u>	<u>\$7,152,000</u>	<u>\$410,294,200</u>	<u>\$424,703,200</u>

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 Medical Assistance Services any unexpended and unencumbered balances of the Cooperative Welfare Fund as appropriated for Medical Assistance Services for fiscal year 1997, to be used for nonrecurring expenditures only for the period July 1, 1997, through June 30, 1998. 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 Medical Assistance Services is hereby authorized to expend all receipts collected in Medical Assistance Services as noncognizable funds for the period July 1, 1997, through June 30, 1998.

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, 1997, through June 30, 1998. 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.

Approved March 20, 1997.

CHAPTER 252
(H.B. No. 377)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE DEPARTMENT OF REVENUE AND TAXATION FOR FISCAL YEAR 1998; 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	\$13,787,600	\$4,305,900	\$491,500	\$18,585,000
Multi-State Tax Compact Fund	82,400	212,500	14,100	309,000
Administration and Accounting Fund		70,900		70,900
Administration and Accounting Services to Transportation Fund	1,501,800	501,600	53,800	2,057,200
Abandoned Property Trust-Unclaimed Property Fund	294,800	66,800		361,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
Seminars and Publications Fund		139,900		139,900
TOTAL	<u>\$15,666,600</u>	<u>\$5,297,600</u>	<u>\$559,400</u>	<u>\$21,523,600</u>

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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. GENERAL SERVICES:				
FROM:				
General Fund	\$ 2,636,700	\$1,500,200	\$227,700	\$ 4,364,600
Administration and Accounting Fund		35,800		35,800
Administration and Accounting - Services to Transportation Fund	292,800	111,200	34,400	438,400
Seminars and Publications Fund		30,000		30,000
TOTAL	<u>\$ 2,929,500</u>	<u>\$1,677,200</u>	<u>\$262,100</u>	<u>\$ 4,868,800</u>
B. AUDIT AND COLLECTIONS:				
FROM:				
General Fund	\$ 6,959,000	\$1,208,900	\$110,600	\$ 8,278,500
Multi-State Tax Compact Fund	82,400	212,500	14,100	309,000
Administration and Accounting Fund		9,300		9,300
Administration and Accounting - Services to Transportation Fund	919,000	225,700	17,200	1,161,900
Abandoned Property Trust - Unclaimed Property Fund	294,800	66,800		361,600
TOTAL	<u>\$ 8,255,200</u>	<u>\$1,723,200</u>	<u>\$141,900</u>	<u>\$10,120,300</u>

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
C. REVENUE OPERATIONS:				
FROM:				
General Fund	\$ 2,195,100	\$1,205,400	\$ 65,000	\$ 3,465,500
Administration and Accounting Fund		25,800		25,800
Administration and Accounting - Services to Transportation Fund	290,000	164,700	2,200	456,900
Seminars and Publications Fund		17,500		17,500
TOTAL	\$ 2,485,100	\$1,413,400	\$ 67,200	\$ 3,965,700
D. COUNTY SUPPORT:				
FROM:				
General Fund	\$ 1,873,400	\$ 366,400	\$ 88,200	\$ 2,328,000
Seminars and Publications Fund		92,400		92,400
TOTAL	\$ 1,873,400	\$ 458,800	\$ 88,200	\$ 2,420,400
E. BOARD OF TAX APPEALS:				
FROM:				
General Fund	\$ 123,400	\$ 25,000		\$ 148,400
GRAND TOTAL	\$15,666,600	\$5,297,600	\$559,400	\$21,523,600

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, 1997, through June 30, 1998, 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 20, 1997.

CHAPTER 253
(H.B. No. 380)

AN ACT

APPROPRIATING MONEYS FOR THE OFFICE OF THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 1998; LIMITING FULL-TIME EQUIVALENT POSITIONS; RE-APPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; SET-

TING FORTH CONDITIONS FOR THE REAPPROPRIATION; AND ESTABLISHING AN AMOUNT OF THE APPROPRIATION TO BE EXPENDED FOR AN ORGANIZATIONAL STRUCTURE REVIEW.

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

SECTION 1. There is hereby appropriated to the State Board of Education for the Office of the State Board of Education the following amounts to be expended according to the designated standard classifications from the listed fund for the period July 1, 1997, through June 30, 1998:

FOR:	
Personnel Costs	\$ 824,400
Operating Expenditures	301,700
Capital Outlay	<u>18,500</u>
TOTAL	\$1,144,600
FROM:	
General Fund	\$1,144,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the agency is authorized no more than thirteen and eighty-five one hundredths (13.85) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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.

SECTION 3. There is hereby reappropriated to the State Board of Education for the Office of the State Board of Education the unexpended and unencumbered balance of any General Fund appropriation contained in Section 1, Chapter 278, Laws of 1996, to be used for non-recurring expenditures for the period July 1, 1997, through June 30, 1998.

SECTION 4. The reappropriation granted in Section 3 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is zero, the reappropriation in Section 3 is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount reappropriated in Section 3 of this act shall be in the proportion that the reappropriation for the Office of the State Board of Education bears to the total General Fund reappropriation authority granted to all state agencies.

SECTION 5. Of the amount appropriated in Section 1 of this act, \$50,000 is to be used for a review of the administrative and program activities of the Office of the State Board of Education, the Division of Vocational Education, the Department of Education and the Division of Vocational Rehabilitation to identify any duplication of responsi-

bilities or effort together with any associated cost savings and to determine if structural changes would improve the efficiency and effectiveness of program delivery.

Approved March 20, 1997.

CHAPTER 254
(H.B. No. 382)

AN ACT

APPROPRIATING MONEYS FOR THE IDAHO EDUCATIONAL PUBLIC BROADCASTING SYSTEM FOR FISCAL YEAR 1998; 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 State Board of Education for the Idaho Educational Public Broadcasting System the following amounts, to be expended according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	\$ 747,400	\$516,300	\$25,900	\$1,289,600
Federal Grants				
Fund	<u>792,100</u>	<u>211,400</u>		<u>1,003,500</u>
TOTAL	<u>\$1,539,500</u>	<u>\$727,700</u>	<u>\$25,900</u>	<u>\$2,293,100</u>

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho Educational Public Broadcasting System is authorized no more than thirty-seven (37) full-time equivalent positions to be funded by the appropriation in Section 1 of this act, at any point during the period July 1, 1997, through June 30, 1998, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 20, 1997.

CHAPTER 255
(H.B. No. 383)

AN ACT

APPROPRIATING MONEYS TO THE LOTTERY COMMISSION FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT TO CLARIFY THE SCOPE OF THE APPROPRIATION.

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

SECTION 1. There is hereby appropriated to the Lottery Commission in the Department of Self-Governing Agencies the following amounts, to be expended for administrative costs according to the designated standard classifications from the listed fund for the period July 1, 1997, through June 30, 1998:

FOR:	
Personnel Costs	\$1,955,800
Operating Expenditures	7,649,000
Capital Outlay	<u>338,400</u>
TOTAL	\$9,943,200
FROM:	
State Lottery Fund	\$9,943,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Lottery Commission is authorized no more than forty-seven (47) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 amounts necessary to pay prizes, retailer commissions, advertising and promotional costs shall be continuously appropriated to the Lottery Commission under the provisions of Section 67-7428, Idaho Code.

Approved March 20, 1997.

CHAPTER 256
(H.B. No. 384)

AN ACT

APPROPRIATING MONEYS FOR THE DIVISION OF FINANCIAL MANAGEMENT FOR FISCAL YEAR 1998; 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 Division of Financial Management 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, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. DIVISION OF FINANCIAL MANAGEMENT:					
FROM:					
General Fund	\$1,129,100	\$241,200	\$32,100		\$1,402,400
Miscellaneous Revenue Fund	<u>39,200</u>	<u>8,800</u>			<u>48,000</u>
TOTAL	\$1,168,300	\$250,000	\$32,100		\$1,450,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. SILVER VALLEY TRUST FUND:					
FROM:					
Silver Valley Trust Fund	\$ 58,700	\$629,300		\$1,000,000	\$1,688,000
GRAND TOTAL	\$1,227,000	\$879,300	\$32,100	\$1,000,000	\$3,138,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Financial Management is authorized no more than nineteen (19) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 20, 1997.

CHAPTER 257
(H.B. No. 385)

AN ACT

APPROPRIATING MONEYS FOR THE HUMAN RIGHTS COMMISSION FOR FISCAL YEAR 1998; 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 Human Rights Commission the following amounts, to be expended according to the designated standard classifications from the listed funds, for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	\$321,700	\$108,100		\$429,800
Federal Grant Fund	111,100	73,700	\$300	185,100
Miscellaneous Revenue Fund		<u>6,500</u>		<u>6,500</u>
TOTAL	<u>\$432,800</u>	<u>\$188,300</u>	<u>\$300</u>	<u>\$621,400</u>

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, 1997, through June 30, 1998, 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 20, 1997.

CHAPTER 258
(S.B. No. 1018, As Amended)

AN ACT

RELATING TO JUVENILE COURTS; AMENDING SECTION 20-525, IDAHO CODE, TO PROVIDE THAT COURT PROCEEDINGS OF JUVENILES WHO HAVE BEEN PETITIONED OR CHARGED WITH AN OFFENSE WHICH WOULD BE A CRIMINAL OFFENSE IF COMMITTED BY AN ADULT SHALL BE OPEN TO THE PUBLIC UPON CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 9-340, IDAHO CODE, TO REVISE WHEN JUVENILE RECORDS SHALL BE OPEN FOR PUBLIC INSPECTION.

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

SECTION 1. That Section 20-525, Idaho Code, be, and the same is hereby amended to read as follows:

20-525. RECORDS -- PRIVILEGED INFORMATION. (1) The court shall maintain records of all cases brought before it. In proceedings under this act the following juvenile courtroom proceedings and records shall not be withheld from public inspection, except on court order, which order must be made in writing in each case: open to the public: all proceedings against a juvenile of the age of fourteen (14) years or older and who is petitioned or charged with an offense which would be a felony if committed by an adult including the court docket, petitions, complaints, information, arraignments, trials, sentencings, probation violation hearings and dispositions, motions and other papers filed in any case in any district; transcripts of testimony taken by the court; and findings, verdicts, judgments, orders, decrees and other papers filed in proceedings before the court of any district.

(2) Juvenile courtroom proceedings and records shall remain confidential when the court and the prosecutor agree extraordinary circumstances exist that justify records of a juvenile of the age of fourteen (14) years or older and who is petitioned or charged with an offense which would be a felony if committed by an adult should remain confidential because it is in the best interest of the juvenile.

(3) In proceedings under this act the following records and court proceedings of juveniles of the age of thirteen (13) years or younger shall not be withheld from public inspection, except on court order, which order must be made in writing in each case: the court docket, petitions, complaints, information, arraignments, trials, sentencings, probation violation hearings and dispositions, motions and other papers filed in any case in any district; transcripts of testimony taken by the court; and findings, verdicts, judgments, orders, decrees and other papers filed in proceedings before the court of any dis-

trict.

(4) These records shall be open to inspection according to chapter 3, title 9, Idaho Code. All information obtained and social records prepared in the discharge of official duty by an employee of the court shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(35) The victim of misconduct shall always be entitled to the name of the juvenile involved, the name of the juvenile's parents or guardian, and their addresses and telephone numbers, if available in the records of the court.

(46) Notwithstanding the other provisions of this act and notwithstanding any order entered pursuant hereto, nothing in this act shall prohibit the exchange of records created pursuant to this act between prosecuting attorneys or courts in this state.

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, finan-

cial 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 who is thirteen (13) years of age or younger. If the juvenile is ~~fourteen-(14)-years-or-older-and is adjudicated-guilty-of~~ petitioned or charged with an offense which would be a felony criminal offense if committed by an adult, the name, offense of which the juvenile was adjudicated petitioned or charged and disposition of the court shall be subject to disclosure as provided in section 20-525, Idaho Code. 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 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 or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations 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 mate-

rials, 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.

(44) 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.

(45) 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 20, 1997.

CHAPTER 259

(S.B. No. 1186, As Amended in the House)

AN ACT

RELATING TO LAND MANAGEMENT; AMENDING CHAPTER 27, TITLE 22, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 22-2701 AND 22-2702, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT AND TO DEFINE TERMS; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3024B, IDAHO CODE, TO PROVIDE AN INCOME TAX CREDIT FOR ELIGIBLE EXPENDITURES AND TO PROVIDE FOR REVIEW AND APPROVAL OF QUALIFIED EXPENDITURES BEFORE A TAX CREDIT SHALL BE APPROVED; PROVIDING AN EFFECTIVE DATE AND PROVIDING A SUNSET CLAUSE.

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

SECTION 1. That Chapter 27, 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 22-2701, Idaho Code, and to read as follows:

22-2701. LEGISLATIVE INTENT. The legislature of the state of Idaho finds and declares that:

(1) It is in the best interest of the state to maintain, preserve, conserve and rehabilitate forest, range and farm lands to assure the protection of the soil, water, fish and wildlife resources of the state for the economic and social well-being of the state and its citizens; and

(2) Forest, range and farm lands maintained in a healthy condition are a legitimate land use that contributes to erosion control, improved water quality and prolonged streamflow; and

(3) Managing forest, range and farm lands to assure healthy riparian areas and prevent their conversion to uses that may further contribute to declines in water quality or wildlife habitat is an important factor in meeting the requirements of both the federal clean water act and the endangered species act in Idaho; and

(4) It is in the best interest of the state to provide taxing policies and mechanisms which provide incentives for private landowners to manage forest, range and farm lands in a manner that protects or restores wildlife habitat and water quality.

SECTION 2. That Chapter 27, 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 22-2702, Idaho Code, and to read as follows:

22-2702. DEFINITIONS. As used in this chapter and section 63-3024B, Idaho Code:

(1) "Riparian land" means the beds of streams, the adjacent vegetation communities, and the land thereunder, which are predominantly influenced by their association with water and which are privately owned.

(2) "Habitat conservation agreement" means the agreement between individual landowners and appropriate federal agencies which sets forth the plan the landowner will follow in order to meet the requirements for recovery of a species listed as "endangered" or "threatened" pursuant to the federal endangered species act or to manage species considered to be "candidates" for listing pursuant to the federal endangered species act.

(3) "Owner" means the party or parties having the fee interest in real property except, where the real property is subject to a real estate sales contract, "owner" means the contract vendee under a recorded contract.

(4) "Soil conservation districts" are legal subdivisions of Idaho state government, responsible under chapter 27, title 22, Idaho Code, for soil, water, and related resource conservation work within their boundaries.

(5) "Total maximum daily load" is defined in section 39-3602, Idaho Code.

SECTION 3. That Chapter 30, 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 63-3024B, Idaho Code, and to read as follows:

63-3024B. INCOME TAX CREDITS. (1) Eligibility for income tax credits. Any owner of real property who undertakes actions approved pursuant to:

- (a) A total maximum daily load process or equivalent processes as set forth in chapter 36, title 39, Idaho Code; or
- (b) A habitat conservation plan for the management of a species listed as "endangered," "threatened," or a candidate for such listing as set forth in the federal endangered species act and approved as provided in the regulations adopted pursuant to the federal endangered species act; or
- (c) A plan to recover a species listed as "threatened" or "endangered" pursuant to the federal endangered species act; or
- (d) A plan for fencing recommended for approval by the local soil conservation district that will enhance riparian habitat and water quality shall be eligible for income tax credits against individual or corporate income taxes as set forth in this section.

(2) Expenditures qualifying for income tax credits. Expenditures which are eligible for income tax credits as set forth in this section shall include, but not be limited to, those in the following categories:

- (a) Fencing of riparian areas as defined in this chapter to manage livestock grazing;
- (b) Control of erosion from natural or human caused sources of sediment which exist and are not otherwise regulated under the provisions of Idaho's water quality management plan;
- (c) Removal of barriers to fish passage and installation of devices to prevent fish from entering into areas where their ability to survive is limited;
- (d) Gates and fences to control access and which are installed specifically to aid in the management of "endangered," "threatened" or "candidate" species;
- (e) Establishment of vegetation designed to improve habitat or food sources for "endangered," "threatened," or "candidate" species;
- (f) The mechanical construction or placement of structures to create or improve habitat for "endangered," "threatened," or "candidate" species; or
- (g) Other improvements or modifications made in order to comply with any action required as defined in subsection (1) of this section.

The state tax commission, in cooperation with the department of fish and game and other appropriate federal or state agencies, shall develop rules to describe the specific expenditures eligible for the income tax credits for each of the categories described in this section.

(3) Calculation and application of income tax credits. For those expenditures eligible for income tax credits as described in this section, the credit shall be equal to one-half (1/2) of the eligible expenditures made during the course of the taxable year. This amount may be applied as a credit to each person's total income tax liability. In no case shall the sum of these credits exceed two thousand dollars (\$2,000) for a single taxable year per person and in no event shall labor be included in determining the amount of the tax credit.

In the event of transfer of title to lands where income tax credits have been taken, the application of the annual credits from previous expenditures shall cease, and the new owner of the land shall not be eligible to receive any income tax credits that are based upon the expenditures made by any previous landowner. In no case shall the credit allowed under this section exceed the income tax liability of the claimant. For purposes of this section, a husband and wife filing a single return shall be deemed a single person.

(4) Review and approval of qualified expenditures. All projects and expenditures which may be eligible for tax credits as set forth in this section shall be reviewed by the designated agency as defined in chapter 36, title 39, Idaho Code, and which are appropriate to the nature of the project and expenditures for which approval is sought for the income tax credit provided in this section. That agency will recommend approval or disapproval of the tax credits described in this section to a committee which shall include one (1) representative each from the department of agriculture, the department of fish and game, the soil conservation commission, and the division of environmental quality, appointed by the administrator or the director of those agencies or entities, and one (1) representative from private industry to be appointed by the governor. This committee, in consultation with the basin advisory groups established in chapter 36, title 39, Idaho Code, shall have the authority, by majority vote, to approve or disapprove all applications for tax credits as described in this section. In approving an application for a tax credit, the committee shall strive to assure a reasonable distribution of approved credits throughout the state and among the parties that are eligible for the tax credits described in this section. In no case shall the committee described in this section approve, during a year, tax credits which exceed two hundred fifty thousand dollars (\$250,000) in total. The committee shall transmit its minutes and approvals to the state tax commission. The committee shall notify each owner of real property in writing whether the owner has been approved, or disapproved for an income tax credit pursuant to this section.

SECTION 4. This act shall be in full force and effect on and after January 1, 1998, and shall be null, void and of no force and effect on and after January 1, 2003.

Approved March 20, 1997.

CHAPTER 260
(H.B. No. 140)

AN ACT

RELATING TO THE IDAHO FOREST PRODUCTS COMMISSION; AMENDING SECTION 38-1502, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 38-1515, IDAHO CODE, TO REVISE PROCEDURES REGARDING THE IMPOSITION OF ASSESSMENTS AND PROVISIONS FOR LATE FEES AND TO PROVIDE AN EXEMPTION.

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

SECTION 1. That Section 38-1502, Idaho Code, be, and the same is hereby amended to read as follows:

38-1502. DEFINITIONS. As used in this chapter:

(1) "Business entity" means a person, firm, partnership, corporation, association, trust or other recognized legal entity.

(2) "Financial supporter" means entities who have paid assessments pursuant to this chapter.

(3) "Forest lands" means federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked, but it does not include land affirmatively converted to uses other than the growing of forest tree species.

(4) "Forest product manufacturer" means a business entity that engages in the processing, cutting, fabricating or other process which converts timber, chips, sawdust or shavings into lumber, paper, plywood, particle board or other usable products for sale in commerce, provided, however, as used in this chapter, forest products manufacturers shall not include the following business entities engaged in:

(a) The production of fence or corral posts or rails;

(b) Producing shingles or shakes;

(c) Producing firewood or pellets for energy; or

(d) Producing logs which have been shaped or scribed and used in the construction of log structures.

(5) "Private forest lands" means forest lands not owned by the federal government, state government, an Indian tribe or a political subdivision of the state.

(6) "Hog fuel" means wood or wood scraps that have been shredded or pulverized and used by forest product manufacturers to generate energy.

SECTION 2. That Section 38-1515, Idaho Code, be, and the same is hereby amended to read as follows:

38-1515. IMPOSITION OF ASSESSMENTS AND PROVISION FOR LATE FEES.

(1) From and after the first day of July, 1995, there is hereby authorized the following fees and assessments:

(a) For all forest products manufacturers, an amount no greater than fifty cents (50¢) per thousand board feet or the equivalent thereof for all logs either harvested in Idaho or measured or processed by a manufacturing entity located in the state of Idaho, regardless of the state in which the logs might have been cut. For purposes of this chapter, "forest products manufacturers" shall include those business entities which buy timber in Idaho and then sell it to other persons outside the state for manufacture into finished products. Such business entities shall be liable for the assessments described in this paragraph for all timber cut within Idaho and then distributed to other persons outside the state.

(b) For all business entities engaged in the harvest or transport of timber, logs, unfinished lumber, chips, or other forest products sawdust, shavings or hog fuel in Idaho, a sum no greater than twenty-five dollars (\$25.00) per employee, including single, self-employers and the individuals involved in partnerships, as measured by the records of the department of employment during the month of July of the preceding year, or as provided in subsection (2) of this section, provided, however, those business entities engaged solely in the harvest or transport of those exclusions to forest products manufacturers as set forth in subsection (4)(a), (b), (c) and (d) of section 38-1502, Idaho Code, shall owe no duty or assessment under this chapter, nor shall any assessment be levied upon forest products transported by railroad.

(c) For business entities or persons owning more than fifty thousand (50,000) acres of private forest land within the state of Idaho but with no facilities for manufacturing forest products within the state, a sum no greater than sixteen and sixty-six one hundredths cents (16.66¢) per each acre of forest land, provided, however, that this assessment shall be reduced by an amount equal to the assessment described in paragraph (a) of this subsection for all logs harvested from that land in the preceding calendar year and assessed in this section. Persons owning less than a total of fifty thousand (50,000) acres of forest land in the state shall bear no assessment or fee pursuant to the provisions of this subsection.

(d) No firm or business entity shall be liable for assessments under this chapter in more than one (1) of the categories described in this section. In the event that a person, firm or business entity qualifies to pay more than one (1) assessment as described herein, then the greater of the assessments shall be assessed, due and payable.

(2) In collecting assessments and other financial obligations due the commission, the commission is authorized to cooperate with and coordinate its actions to collect assessments with the various efforts of Idaho board of scaling practices, the tax commission, the department of employment, the transportation department and the department of lands to either collect assessments or taxes due under the provisions of this chapter or to identify those who may owe assessments under the provisions of this chapter.

(3) Any person or firm who makes payment to the commission at a date later than that prescribed in rules set forth by the commission under this section may be subject to a late payment penalty as set forth by the commission by rule. Such penalty shall not exceed fifteen percent (15%) per annum on the amount due. In addition to the above penalty, the commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in this section.

(4) All assessments due under this chapter shall be based upon the data for the year immediately preceding and payments due the commission shall be made quarterly according to such rules as may be adopted by the commission.