GENERAL LAWS

OF THE

STATE OF IDAHO

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

Convened January 10, 2005
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Volume 1

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

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SECRETARY OF STATE

BEN YSURSA
Secretary of State
Boise, Idaho

CHAPTER 1
(H.B. No. 5)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE STATE CONTROLLER FOR FISCAL YEAR 2005; 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 140, Laws of 2004, there is hereby appropriated to the State Controller the following amount to be expended for the designated program according to the designated expense classes from the listed fund for the period July 1, 2004, through June 30, 2005:

COMPUTER CENTER:

FOR:	
Operating Expenditures	$650,000
Capital Outlay	30,000
TOTAL	$680,000
FROM:	
Data Processing Services Fund	$680,000

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 1, 2005.

CHAPTER 2
(S.B. No. 1024)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE MILITARY DIVISION FOR FISCAL YEAR 2005; 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 73, Laws of 2004, there is hereby appropriated to the Office of the Governor for the Military Division the following amount to be expended for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

BUREAU OF HOMELAND SECURITY:

FOR:	
Operating Expenditures	$35,000
FROM:	
Interoperability Fund	$35,000

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, 2005.

CHAPTER 3
(S.B. No. 1025)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE SOIL CONSERVATION COMMISSION FOR FISCAL YEAR 2005; 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 196, Laws of 2004, there is hereby appropriated to the Soil Conservation Commission in the Department of Agriculture the following amount to be expended according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

FOR:	
Operating Expenditures	$22,000
FROM:	
Resource Conservation and Rangeland Development Fund	$22,000

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, 2005.

CHAPTER 4
(S.B. No. 1027)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 2005; 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 68, Laws of 2004, there is hereby appropriated to the Industrial Commission the following amount to be expended for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

ADJUDICATION:	
FOR:	
Personnel Costs	$5,700
FROM:	
Industrial Administration Fund	$5,700

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, 2005.

CHAPTER 5
(H.B. No. 4)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 23-950, IDAHO CODE, TO RESTRICT THE TRANSFER OF A LIQUOR LICENSE AND TO PROVIDE FOR SEIZURE FOR AMOUNTS DUE; AMENDING SECTION 72-1316A, IDAHO CODE, TO EXEMPT CASUAL EMPLOYMENT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 72-1319B, IDAHO CODE, TO REVISE THE DEFINITION OF TAXABLE WAGE RATE; AMENDING SECTION 72-1337, IDAHO CODE, TO REQUIRE COVERED EMPLOYERS TO SUBMIT A BUSINESS REGISTRATION FORM; AMENDING SECTION 72-1347A, IDAHO CODE, TO PROVIDE AN EXCEPTION TO IMPOSITION OF THE RESERVE TAX, TO REVISE REQUIREMENTS FOR THE SPECIAL ADMINISTRATION FUND AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 72-1347B, IDAHO CODE, TO PROVIDE FOR DISBURSEMENT OF ANY UNENCUMBERED BALANCE IN THE WORKFORCE DEVELOPMENT TRAINING FUND EXCEEDING SIX MILLION DOLLARS; AMENDING SECTION 72-1349, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 72-1350, IDAHO CODE, TO REVISE THE METHOD FOR DETERMINING TAXABLE WAGE RATES AND TO DELETE OBSOLETE LANGUAGE; AMENDING SECTION 72-1351, IDAHO CODE, TO PROVIDE FOR FINALITY OF DETERMINATIONS OF CHARGEABILITY, TO PROVIDE LIABILITY FOR AMOUNTS DUE FROM TRANSFERRED EXPERIENCE RATING ACCOUNTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 72-1354, IDAHO CODE, TO REVISE THE PENALTY ON UNPAID AMOUNTS; AMENDING SECTION 72-1359, IDAHO CODE, TO PROVIDE FOR THE COLLECTION OF JEOPARDY ASSESSMENT AMOUNTS DUE; AMENDING SECTION 72-1360, IDAHO CODE, TO REVISE THE RATE OF INTEREST ON LIENS; AMENDING SECTION 72-1366, IDAHO CODE, TO REVISE THE PERSONAL ELIGIBILITY CONDITIONS FOR BENEFITS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 72-1367, IDAHO CODE, TO REVISE THE METHOD FOR DETERMINING THE MAXIMUM WEEKLY BENEFIT AMOUNT, TO REVISE THE NUMBER OF WEEKS OF BENEFIT ENTITLEMENT AND TO PROVIDE THAT SEVERANCE PAY IS DEDUCTIBLE INCOME; AMENDING SECTION 72-1369, IDAHO CODE, TO PROVIDE CIVIL PENALTIES ON OVERPAYMENTS RESULTING FROM FALSE STATEMENTS, MISREPRESENTATION OR FAILURE TO REPORT A MATERIAL FACT, TO REVISE THE METHODS OF COLLECTION AND TO REVISE THE CRITERIA FOR WAIVER OF OVERPAYMENTS; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1372, IDAHO CODE, TO PROVIDE CIVIL PENALTIES FOR EMPLOYERS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION FOR SECTIONS 3, 7, 8 AND 9 OF THIS ACT; AND PROVIDING AN EFFECTIVE DATE FOR SECTIONS 1, 2, 4, 5, 6, 10, 11, 12, 13, 14, 15 AND 16 OF THIS ACT.

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

SECTION 1. That Section 23-950, Idaho Code, be, and the same is hereby amended to read as follows:

23-950. RESTRICTION AGAINST TRANSFER OF LICENSE. (1) No license issued under the provisions of this chapter shall be renewed, transferred, assigned, leased or sold if:

(a) ~~T~~the state tax commission has notified the director and the licensee in writing that any tax imposed by chapters 30 and 36, title 63, Idaho Code, interest, penalty, and additional amount, which has accrued as a result of the operation of the licensed premises has been assessed as that term is defined in section 63-3045A, Idaho Code, against the licensee or any person operating the licensed premises with the permission of the licensee~~.~~; or

(b) The department of commerce and labor has notified the director and the licensee in writing that a lien has been filed against the licensee or any person operating the licensed premises with the permission of the licensee, as a result of the operation of the licensed premises securing amounts due pursuant to chapter 13, title 72, Idaho Code.

(2) At such time as the state tax commission or the department of commerce and labor has notified the director and licensee as herein provided, the license issued for the premises the operation of which has resulted in the accrual of the tax for which the warrant or lien is outstanding shall be subject to levy and distraint pursuant to chapter 30, title 63, Idaho Code, or seizure pursuant to section 72-1360A, Idaho Code.

SECTION 2. That Section 72-1316A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1316A. EXEMPT EMPLOYMENT. "Exempt employment" means service performed:

(1) By an individual in the employ of his spouse or child.

(2) By a person under the age of twenty-one (21) years in the employ of his father or mother.

(3) By an individual under the age of twenty-two (22) years who is enrolled as a student in a full-time program at an accredited nonprofit or public education institution for which credit at such institution is earned in a program which combines academic instruction with work experience. This ~~subparagraph~~ subsection shall not apply to service performed in a program established at the request of an employer or group of employers.

(4) In the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this chapter.

(5) In the employ of a governmental entity in the exercise of duties:

(a) As an elected official;

(b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof;

(c) As a member of the state national guard or air national guard;

(d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(e) In a position which, pursuant to the laws of this state, is designated as (i) a major nontenured ~~policy-making~~ policymaking or advisory position, or (ii) a ~~policy-making~~ policymaking or advisory position which ordinarily does not require more than eight (8) hours

per week.

(6) By an inmate of a correctional, custodial or penal institution, if such services are performed for or within such institution.

(7) In the employ of:

(a) A church or convention or association of churches; or

(b) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, or convention or association of churches; or

(c) In the employ of an institution of higher education, if it is devoted primarily to preparation of a student for the ministry or training candidates to become members of a religious order; or

(d) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(8) By a program participant in a facility that provides rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or provides remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed into the labor market.

(9) As part of an unemployment work relief program or as part of an unemployment work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

(10) Service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress other than the social security act.

(11) As a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending courses in a nurses' training school approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a course in a medical school approved pursuant to state law.

(12) By an individual under the age of eighteen (18) years of age in the delivery or distribution of newspapers or shopping news not including delivery or distribution to any point for subsequent delivery or distribution.

(13) By an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(14) 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.

(15) Service covered by an election approved by the agency charged with the administration of any other state or federal unemployment insurance law, in accordance with an arrangement pursuant to section 72-1344, Idaho Code.

(16) In the employ of a school or college by a student who is enrolled and regularly attending classes at such school or college.

(17) In the employ of a hospital by a resident patient of such hospital.

(18) By a member of an AmeriCorps program.

(19) By an individual who is paid less than fifty dollars ($50.00) per calendar quarter for performing work that is not in the course of the employer's trade or business, and who is not regularly employed by such employer to perform such service. For the purposes of this subsection, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(a) On each of some twenty-four (24) days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(b) Such individual was so employed by such employer in the performance of such service during the preceding calendar quarter.

SECTION 3. That Section 72-1319B, Idaho Code, be, and the same is hereby amended to read as follows:

72-1319B. TAXABLE WAGE RATE. "Taxable wage rate" means the numerical values ~~provided~~ calculated in accordance with section 72-1350~~(7)~~, Idaho Code, for the purpose of establishing contribution rates, training tax rates and reserve tax rates for covered employers.

SECTION 4. That Section 72-1337, Idaho Code, be, and the same is hereby amended to read as follows:

72-1337. RECORDS AND REPORTS. (1) Each employer that is a "covered employer," as defined in section 72-1315, Idaho Code, shall complete and submit to the director an Idaho business registration form within six (6) months of becoming a covered employer.

(2) Each employer shall keep accurate records, for such periods of time and containing such information as the director may prescribe. Such records shall be open to inspection and be subject to being copied by the director at any reasonable time. The director, a member of the commission or an appeals examiner may require from any employer any sworn or unsworn reports which are deemed necessary in the exercise of their duties.

SECTION 5. That Section 72-1347A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1347A. EMPLOYMENT SECURITY RESERVE FUND -- SPECIAL ADMINISTRATION FUND. (1) There is established in the state treasury a special trust fund, separate and apart from all other public funds of this state, to be known as the employment security reserve fund, hereinafter "reserve fund." Except as provided herein, all proceeds from the reserve tax defined in subsection (2) of this section shall be paid into the reserve fund. The moneys in the reserve fund may be used by the director for loans to the employment security fund, section 72-1346, Idaho Code, as security for loans from the federal unemployment insurance trust fund, and for the repayment of any interest bearing advances, including interest, made under title XII of the social security act, 42 USC 1321 through 1324, and shall be available to the director for expenditure in accordance with the provisions of this section. The state treasurer shall be the custodian of the reserve fund and shall invest said moneys in accordance with law. The state treasurer shall disburse the moneys from the reserve fund in accordance with the directions of the director.

(2) A reserve tax is imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code, except deficit employers who have been assigned a taxable wage rate from deficit rate class six pursuant to section 72-1350(8)(a), Idaho Code. The reserve tax shall be due and payable at the same time and in the same manner as contributions. If the reserve fund is less than one percent (1%) of state taxable wages in the penultimate year as of September 30 of the preceding calendar year, the reserve tax rate for all eligible, standard-rated and deficit employers shall be equal to the taxable wage rate then in effect less the assigned contribution rate and training tax rate. The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the reserve tax, including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section and the collection of the reserve tax, the director is granted all rights, authority, and prerogatives granted the director under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions and reserve taxes shall first be applied to pay any penalty and interest imposed pursuant to the provisions of this chapter and shall then be applied pro rata to pay delinquent contributions to the employment security fund, section 72-1346, Idaho Code, and delinquent reserve taxes to the reserve fund pursuant to this section. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Reserve taxes paid pursuant to this subsection may not be deducted in whole or in part by any employer from the wages of individuals in its employ. All reserve taxes collected pursuant to this subsection shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the reserve fund established in subsection (1) of this section. No reserve tax shall be imposed for any calendar year if, as of September 30 of the preceding calendar year, the balance of the reserve fund equals or exceeds one percent (1%) of the state taxable wages for the penultimate calendar year, or exceeds forty-nine percent (49%) of the actual balance of the employment security fund, section 72-1346, Idaho Code.

(3) The interest earned from investment of the reserve fund shall be deposited in a fund established in the state treasurer's office, to be known as the department of commerce and labor special administration fund, hereinafter "special administration fund." The moneys in the special administration fund shall be held separate and apart from all other public funds of this state. The state treasurer shall be the custodian of this fund and may invest said moneys in accordance with law. Any interest earned on said moneys shall be deposited in the special administration fund. In the absence of a specific appropriation, the moneys in the special administration fund are perpetually appropriated to the director and may be expended with the approval of the advisory council appointed pursuant to section 72-1336, Idaho Code, for costs related to ~~employment service~~ programs ~~and unemployment insurance programs~~ administered ~~under this chapter~~ by the department. The director shall report

annually to the joint finance-appropriations committee and the advisory council the expenditures and disbursements made from the fund during the preceding fiscal year, and the expenditures and disbursements and commitments made during the current fiscal year to date.

(4) Administrative costs related to the reserve fund and the special administration fund shall be paid from federal administrative grants received under title III of the social security act, to the extent permitted by federal law, and then from the special administration fund.

SECTION 6. That Section 72-1347B, Idaho Code, be, and the same is hereby amended to read as follows:

72-1347B. WORKFORCE DEVELOPMENT TRAINING FUND. (1) There is established in the state treasury a special trust fund, separate and apart from all other public funds of this state, to be known as the workforce development training fund, hereinafter "training fund." Except as provided herein, all proceeds from the training tax defined in subsection (4) of this section shall be paid into the training fund. The state treasurer shall be the custodian of the training fund and shall invest said moneys in accordance with law. Any interest earned on the moneys in the training fund shall be deposited in the training fund. Moneys in the training fund shall be disbursed in accordance with the directions of the director. In any month when the unencumbered balance in the training fund exceeds six million dollars ($6,000,000), the excess amount over six million dollars ($6,000,000) shall be transferred to the employment security reserve fund, section 72-1347A, Idaho Code. For the purposes of this subsection (1), the unencumbered balance in the training fund is the balance in such fund reduced by the sum of:

(a) The amounts that have been obligated pursuant to fully-executed workforce development training fund contracts;

(b) The amounts that have been obligated pursuant to letters of intent for proposed job training projects; and

(c) Any administrative costs related to the training fund that are due and payable.

(2) All moneys in the training fund are perpetually appropriated to the director for expenditure in accordance with the provisions of this section. The purpose of the training fund is to provide or expand training and retraining opportunities in an expeditious manner that would not otherwise exist for Idaho's workforce. The training fund is intended to supplement, but not to supplant or compete with, money available through existing training programs. The moneys in the training fund shall be used for the following purposes:

(a) To provide training for skills necessary for specific economic opportunities and industrial expansion initiatives;

(b) To provide training to upgrade the skills of currently employed workers at risk of being permanently laid off;

(c) For refunds of training taxes erroneously collected and deposited in the workforce training fund;

(d) For all administrative expenses incurred by the department associated with the collection of the training tax and any other administrative expenses associated with the training fund.

(3) Expenditures from the training fund for purposes authorized in paragraphs (a) and (b) of subsection (2) of this section shall be

approved by the director in consultation with the office of the governor, based on procedures, criteria and performance measures established by the council appointed pursuant to section 72-1336, Idaho Code. The activities funded by the training fund will be coordinated with similar activities funded by the state division of professional-technical education. Expenditures from the training fund for purposes authorized in paragraphs (c) and (d) of subsection (2) of this section shall be approved by the director. The director shall pay all approved expenditures as long as the training fund has a positive balance. The council shall report annually to the governor and the joint finance-appropriations committee the commitments and expenditures made from the training fund in the preceding fiscal year and the results of the activities funded by the training fund.

(4) A training tax is hereby imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code, with the exception of deficit employers who have been assigned a taxable wage rate from rate class six pursuant to section 72-1350, Idaho Code. The training tax rate shall be equal to three percent (3%) of the taxable wage rate then in effect for each eligible, standard-rated and deficit employer. The training tax shall be due and payable at the same time and in the same manner as contributions. This subsection is repealed effective January 1, 2007, unless, prior to that date, the Idaho legislature approves the continuation of this subsection by repeal of this sunset clause.

(5) The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the training tax, including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section, the director is granted all rights, authority, and prerogatives granted under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions, reserve taxes and the training tax shall first be applied to any penalty and interest imposed pursuant to the provisions of this chapter and shall then be applied pro rata to delinquent contributions to the employment security fund, section 72-1346, Idaho Code, delinquent reserve taxes to the reserve fund, section 72-1347A, Idaho Code, and delinquent training taxes to the training fund. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Training taxes paid pursuant to this section shall not be credited to the employer's experience rating account and may not be deducted by any employer from the wages of individuals in its employ. All training taxes shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the training fund established in subsection (1) of this section.

(6) Administrative costs related to the training fund shall be paid from the training fund in accordance with subsection (3) of this section.

SECTION 7. That Section 72-1349, Idaho Code, be, and the same is hereby amended to read as follows:

72-1349. PAYMENT OF CONTRIBUTIONS. (1) Contributions shall be paid on taxable wages for each calendar year equal to the amount determined in accordance with section 72-1350~~(1)~~, Idaho Code. Contributions on wages paid to an individual under another state unemployment insurance law, or paid by an employer's predecessor during the calendar year, shall be counted in complying with this provision.

(2) Contributions shall accrue and become payable by each covered employer for each calendar quarter with respect to wages for covered employment. Such contributions shall become due and be paid by each covered employer to the director for the employment security fund and shall not be deducted from the wages of individuals employed by such employer. All moneys required to be paid by a covered employer pursuant to this chapter shall immediately, upon becoming due and payable, become or be deemed money belonging to the state, and every covered employer shall hold or be deemed to hold said money separately, aside, or in trust from any other funds, moneys or accounts, for the state of Idaho for payment in the manner and at the times provided by law.

(3) The contributions payable by each covered employer, with respect to covered employment, accruing in each calendar quarter, shall be paid on or before the last day of the month following the close of said calendar quarter.

(4) The director may, for good cause shown by a covered employer, extend the time for payment of his contributions or any part thereof, but no such extension of time shall postpone the due date more than sixty (60) days. Contributions with respect to which an extension of time for payment has been granted shall be paid on or before the last day of the period of the extension.

(5) Whenever it appears to be essential to the proper administration of this chapter that collection of the contributions of a covered employer must be made more often than quarterly, the director shall have authority to demand payment of the contributions forthwith.

(6) In accordance with rules the director may prescribe, any person or persons entering into a formal contract with the state, any county, city, town, school or irrigation district, or any quasi public corporation of the state, for the construction, alteration, or repair of any public building or public work, the contract price of which exceeds the sum of one thousand dollars ($1,000) may be required before commencing such work, to execute a surety bond in an amount sufficient to cover contributions when due. If the director, who shall approve said bond, determines that said bond has become insufficient, he may require that a new bond be provided in the amount he directs. Failure on the part of the employer covered by the bond to pay the full amount of his contributions when due shall render the surety liable on said bond as though the surety was the employer and subject to the other provisions of this chapter.

(7) In the payment of any contributions a fractional part of a dollar shall be disregarded unless it amounts to fifty cents (50¢) or more, in which case it shall be increased to one dollar ($1.00).

SECTION 8. That Section 72-1350, Idaho Code, be, and the same is hereby amended to read as follows:

72-1350. TAXABLE WAGE BASE AND TAXABLE WAGE RATES. (1) All remuneration for personal services as defined in section 72-1328, Idaho Code, equal to the average annual wage in covered employment for the penultimate calendar year, rounded to the nearest multiple of one hundred dollars ($100), or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher, shall be the taxable wage base for purposes of this chapter. ~~Provided-however,-and-notwithstanding-any-other-provision-of-the-employment-security-law-to-the--contrary,--for--calendar-years-2003-and-2004-the-taxable-wage-base-shall-be twenty-seven-thousand-six-hundred-dollars-($27,600),-which-was-the--taxable-wage-base-in-effect-for-calendar-year-2002.~~

(2) Prior to December 31 of each year, the director shall determine the taxable wage rates for the following calendar year for a~~A~~ll covered employers, except ~~those-eligible-and--electing--the~~ cost reimbursement ~~payment--method,--shall--be--assigned-taxable-wage-rates-annually-by-the director~~ employers, in accordance with ~~the-following~~ this section, provided however, and notwithstanding any other provision of the employment security law to the contrary, for calendar years 2003~~5~~ and 2004~~6~~, the taxable wage rates for all covered ~~experience-rated~~ employers except cost reimbursement employers shall be determined ~~in-accordance-with schedule-II~~ as follows:

(a) For calendar year 2005, the taxable wage rate shall be determined using a base tax rate of one and fifty hundredths percent (1.50%);

(b) For calendar year 2006, the taxable wage rate shall be determined using a base tax rate of one and sixty-seven hundredths percent (1.67%) unless, at any time prior to September 30, 2005, the actual balance in the employment security fund, section 72-1346, Idaho Code, is fifty percent (50%) or less than the actual balance in the reserve fund, section 72-1347A, Idaho Code, in which case the taxable wage rate shall be determined using a base tax rate calculated in accordance with subsection (5) of this section.

(3) ~~A-desired-employment-security-fund-size~~ An average high cost ratio shall be determined ~~for-each-calendar-year~~ by calculating ~~from-the penultimate--year,~~ the ~~ten--(10)--year~~ average of ~~annual~~ the three (3) highest benefits~~-paid-to-wages-covered,-multiplied-by-one--and--one-half (1.5)~~ cost rates in the twenty (20) year period ending with the preceding year. For the purposes of this section, the "benefit cost rate" is the total annual benefits paid, including the state's share of extended benefits but excluding the federal share of extended benefits and cost reimbursable benefits, divided by the total annual covered wages excluding cost reimbursable wages. The resulting average high cost ratio~~, when applied-to-the-covered-wages-of-the-penultimate-year,-represents~~ is multiplied by the desired fund size~~.-This-calculation~~ multiplier of eight-tenths (0.8). and the result. for the purposes of this section, is ~~hereafter~~ referred to as the "average high cost multiple" (A~~H~~CM).

(4) The ~~ACM-shall-be-the-ratio-at-the--top--of--taxable--wage--rate schedule--V-as-provided-in-subsection-(7)-of-this-section,-and-all-other ratios-for-schedules-I-through-IX-are-adjusted-up-or-down-from--schedule V-in-equal-increments-of-.005.~~

~~(5)--The-taxable-wage-rate-schedule-for-each-calendar-year~~ fund balance ratio shall be determined by ~~comparing-the-ratio-of~~ dividing the actual balance of the employment security fund, section 72-1346, Idaho Code, and the reserve fund, section 72-1347A, Idaho Code, on September

30~~,-to~~ of the current calendar year by the wages ~~covered~~ paid by all covered employers in Idaho, except cost reimbursement employers, in the ~~penultimate~~ preceding calendar year. ~~against-the-taxable--wage--schedule ratios-as-provided-in-subsection-(4)-of-this-section.~~

(5) The base tax rate shall be determined as follows:

(a) Divide the fund balance ratio by the AHCM;

(b) Subtract the quotient obtained from the calculation in paragraph (5)(a) of this section from the number two (2);

(c) Multiply the remainder obtained from the calculation in paragraph (5)(b) of this section by two and one-tenth percent (2.1%). The product obtained from this calculation shall equal the base tax rate, provided however, that the base tax rate shall not be less than sixty-three hundredths percent (0.63%) and shall not exceed three and thirty-six hundredths percent (3.36%).

(6) The ~~ratios-computed-for-each-taxable-wage-rate-schedule-as-provided--in~~ base tax rate calculated in accordance with subsection (4~~5~~) of this section shall be ~~placed-with-their-appropriate-schedule-at-the--top of--the--columns~~ used to determine the taxable wage rate effective the following calendar year for all covered employers except cost reimbursement employers as provided in subsections (7) and (8) of this section~~, and--shall--represent--the--minimum-fund-level-required-for-the-specific schedule-to-be-in-effect.~~

(7) ~~Schedules of~~ Table of Rate Classes, Tax Factors and Minimum and Maximum Taxable Wage Rates

				~~SCHED. I~~	~~SCHED. II~~	~~SCHED. III~~	~~SCHED. IV~~	~~SCHED. V~~	~~SCHED. VI~~	~~SCHED. VII~~	~~SCHED. VIII~~	~~SCHED. IX~~
	~~Cumulative Taxable Payroll Limits~~			~~+.020~~	~~+.015~~	~~+.010~~	~~+.005~~	~~ACM~~	~~-.005~~	~~-.010~~	~~-.015~~	
	~~Rate Class~~	~~More Than (% of Total Taxable Payroll)~~	~~Equal to or Less Than (% of Total Taxable Payroll)~~	~~Taxable Wage Rates for Eligible Employers~~								
	~~1~~	~~--~~	~~12~~	~~0.1%~~	~~0.2%~~	~~0.4%~~	~~0.8%~~	~~1.2%~~	~~1.6%~~	~~2.0%~~	~~2.2%~~	~~2.4%~~
	~~2~~	~~12~~	~~24~~	~~0.2~~	~~0.4~~	~~0.6~~	~~1.0~~	~~1.4~~	~~1.8~~	~~2.2~~	~~2.4~~	~~2.6~~
	~~3~~	~~24~~	~~36~~	~~0.4~~	~~0.6~~	~~0.8~~	~~1.2~~	~~1.6~~	~~2.0~~	~~2.4~~	~~2.6~~	~~2.8~~
	~~4~~	~~36~~	~~48~~	~~0.6~~	~~0.8~~	~~1.0~~	~~1.4~~	~~1.8~~	~~2.2~~	~~2.6~~	~~2.8~~	~~3.0~~
	~~5~~	~~48~~	~~60~~	~~0.8~~	~~1.0~~	~~1.2~~	~~1.6~~	~~2.0~~	~~2.4~~	~~2.8~~	~~3.0~~	~~3.2~~
	~~6~~	~~60~~	~~72~~	~~1.0~~	~~1.2~~	~~1.4~~	~~1.8~~	~~2.2~~	~~2.6~~	~~3.0~~	~~3.2~~	~~3.4~~
	~~7~~	~~72~~	~~--~~	~~1.2~~	~~1.4~~	~~1.6~~	~~2.0~~	~~2.4~~	~~2.8~~	~~3.2~~	~~3.4~~	~~3.6~~
	~~Taxable Wage Rates for Standard-Rated Employers:~~			~~1.3%~~	~~1.5%~~	~~1.7%~~	~~2.1%~~	~~2.5%~~	~~2.9%~~	~~3.3%~~	~~3.5%~~	~~3.7%~~
	~~Cumulative Taxable Payroll Limits~~											
	~~Rate Class~~		~~More Than (% of Total Taxable Payroll)~~	~~Equal to or Less Than (% of Total Taxable Payroll)~~			~~Taxable Wage Rates for Deficit Employers~~					
~~1~~	~~--~~	~~30~~	~~2.4%~~	~~2.6%~~	~~2.8%~~	~~3.2%~~	~~3.6%~~	~~4.0%~~	~~4.4%~~	~~4.6%~~	~~4.8%~~	
~~2~~	~~30~~	~~50~~	~~2.8~~	~~3.0~~	~~3.2~~	~~3.6~~	~~4.0~~	~~4.4~~	~~4.8~~	~~5.0~~	~~5.2~~	
~~3~~	~~50~~	~~65~~	~~3.2~~	~~3.4~~	~~3.6~~	~~4.0~~	~~4.4~~	~~4.8~~	~~5.2~~	~~5.4~~	~~5.6~~	
~~4~~	~~65~~	~~80~~	~~3.6~~	~~3.8~~	~~4.0~~	~~4.4~~	~~4.8~~	~~5.2~~	~~5.6~~	~~5.8~~	~~6.0~~	
~~5~~	~~80~~	~~95~~	~~4.0~~	~~4.2~~	~~4.4~~	~~4.8~~	~~5.2~~	~~5.6~~	~~6.0~~	~~6.2~~	~~6.4~~	
~~6~~	~~95~~	~~--~~	~~5.4~~	~~5.4~~	~~5.4~~	~~5.4~~	~~5.6~~	~~6.0~~	~~6.4~~	~~6.6~~	~~6.8~~	

Rate Class	Cumulative Taxable Payroll Limits: More Than (% of Taxable Payroll)	Equal to or Less Than (% of Taxable Payroll)	Tax Factor	Eligible Employers: Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
1	--	12	0.2857	0.180%	0.960%
2	12	24	0.4762	0.300%	1.600%
3	24	36	0.5714	0.360%	1.920%
4	36	48	0.6667	0.420%	2.240%
5	48	60	0.7619	0.480%	2.560%
6	60	72	0.8571	0.540%	2.880%
7	72	--	0.9524	0.600%	3.200%

Tax Factor	Standard-Rated Employers: Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
1.000	1.000%	3.360%

Rate Class	Cumulative Taxable Payroll Limits: More Than (% of Taxable Payroll)	Equal to or Less Than (% of Taxable Payroll)	Tax Factor	Deficit Employers: Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
-1	--	30	1.7143	1.080%	4.800%
-2	30	50	1.9048	1.200%	5.200%
-3	50	65	2.0952	1.320%	5.600%
-4	65	80	2.2857	1.440%	6.000%
-5	80	95	2.6667	1.680%	6.400%
-6	95	--	2.6667	5.400%	6.800%

(8) Each covered employer, except cost reimbursement employers, will be assigned a taxable wage rate ~~from the effective taxable wage rate schedule for eligible, standard-rated and deficit employers, based upon the employer's experience as determined under the provisions of sections 72-1319, 72-1319A, 72-1319B and 72-1351, Idaho Code.~~ and a contribution rate as follows:

(a) Each employer, except standard-rated employers, will be assigned to one (1) of the rate classes for eligible and deficit employers provided in subsection (7) of this section based upon the employer's experience as determined under the provisions of sections 72-1319, 72-1319A, 72-1351 and 72-1351A, Idaho Code.

(b) For each rate class provided in subsection (7) of this section, the department will multiply the base tax rate determined in accordance with subsection (5) of this section by the tax factor listed for that rate class in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for employers assigned to that rate class, provided however, that the taxable wage rate shall not be less than the minimum taxable wage rate assigned to that rate class and shall not exceed the maximum taxable wage rate assigned to that rate class in the table provided in subsection (7) of this section.

(c) For standard-rated employers, the department will multiply the base tax rate determined in accordance with subsection (5) of this

section by the tax factor listed for standard-rated employers in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for standard-rated employers, provided however, that the taxable wage rate shall not be less than the minimum taxable wage rate assigned to standard-rated employers and shall not exceed the maximum taxable wage rate assigned to standard-rated employers in the table provided in subsection (7) of this section.

(d) Deficit employers who have been assigned a taxable wage rate from deficit rate class six will be assigned contribution rates equal to their taxable wage rate.

(~~b~~e) All other eligible, standard-rated and deficit employers will be assigned contribution rates equal to ninety-seven percent (97%) of their taxable wage rate. Provided however, that for each calendar year a reserve tax is imposed pursuant to section 72-1347A, Idaho Code, the contribution rates for employers assigned contribution rates pursuant to this paragraph shall be eighty percent (80%) of their taxable wage rate.

(9) Each employer shall be notified of his taxable wage rate as determined for any calendar year pursuant to this section and section 72-1351, Idaho Code. Such determination shall become conclusive and binding upon the employer, unless within fourteen (14) days after delivery or mailing of the notice thereof to his last known address, the employer files an application for redetermination, setting forth his reasons therefor. Reconsideration shall be limited to transactions occurring subsequent to any previous determination which has become final. The employer shall be promptly notified of the redetermination, which shall become final unless an appeal is filed within fourteen (14) days after delivery or mailing of notice to his last known address. Proceedings on the appeal shall be in accordance with the provisions of section 72-1361, Idaho Code.

SECTION 9. That Section 72-1351, Idaho Code, be, and the same is hereby amended to read as follows:

72-1351. EXPERIENCE RATING. (1) Subject to the other provisions of this chapter, each eligible and deficit employer's (except cost reimbursement employers) taxable wage rate shall be determined in the manner set forth below for each calendar year:

(a) (i) Each eligible employer shall be given an "experience factor" which shall be the ratio of excess of contributions over benefits paid on the employer's account since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for the four (4) fiscal years immediately preceding the computation date, except that when an employer first becomes eligible, his "experience factor" will be computed on his average annual taxable payroll for the two (2) fiscal years or more, but not to exceed four (4) fiscal years, immediately preceding the computation date. The computation of such "experience factor" shall be to six (6) decimal places.

(ii) Each deficit employer shall be given a "deficit experience factor" which shall be the ratio of excess of benefits paid on the employer's account over contributions since December 31, 1939, to his average annual taxable payroll rounded to

the next lower dollar amount for one (1) or more fiscal years, but not to exceed four (4) fiscal years, for which he had covered employment ending on the computation date; provided, however, that any employer who on any computation date has a "deficit experience factor" for the period immediately preceding such computation date but who has filed all reports, paid all contributions and penalties due on or before the cut-off date, and has during the last four (4) fiscal years paid contributions at a rate of not less than the standard rate applicable for each such year and in excess of benefits charged to his experience rating account during such years, shall have any balance of benefits charged to his account which on the computation date immediately preceding such four (4) fiscal years were in excess of contributions paid, deleted from his account, and the excess benefits so deleted shall not be considered in the computation of his taxable wage rate for the rate years following such four (4) fiscal years. For the rate year following such computation date, he shall be given the standard rate for that year.

(iii) In the event an employer's coverage has been terminated because he has ceased to do business or because he has not had covered employment for a period of four (4) years, and if said employer thereafter becomes a covered employer, he will be considered as though he were a new employer, and he shall not be credited with his previous experience under this chapter for the purpose of computing any future "experience factor."

(b) Schedules shall be prepared listing all eligible employers in inverse numerical order of their experience factors, and all deficit employers in numerical order of their deficit experience factors. There shall be listed on such schedules for each such employer in addition to the experience factor (i) the amount of his taxable payroll for the fiscal year ending on the computation date, and (ii) a cumulative total consisting of the sum of such employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on such schedules.

(c) The cumulative taxable payroll amounts listed on the schedules provided for in paragraph (b) of this subsection shall be segregated into groups whose limits shall be those set out in the table ~~of schedules--of--taxable--wage--rates,~~ provided in section 72-1350(7), Idaho Code. Each of such groups shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules shall be assigned ~~the~~ a taxable wage rate ~~opposite his rate class for the tax schedule--in--effect for the taxable year~~ in accordance with section 72-1350, Idaho Code.

(d) (i) If the grouping of rate classes requires the inclusion of exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the lower of the two (2) rates designated for the two (2) classes in which the halves of his taxable payroll are so required.

(ii) If the group of rate classes requires the inclusion of a portion other than exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the rate desig-

nated for the class in which the greater part of his taxable payroll is so required.

(iii) If one (1) or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers shall be included in and assigned the taxable wage rate specified for such class, notwithstanding the provisions of paragraph (c) of this subsection.

(e) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer shall be placed in that position on the schedules which he would have occupied had his taxable payroll amount and/or experience factor as changed been used in determining his position in the first instance, but such change shall not affect the position or rate classification of any other employer listed on the schedules and shall not affect the rate determination for previous years.

(2) For experience rating purposes, all previously accumulated benefit charges to covered employers' accounts, except cost reimbursement employers, shall not be changed except as provided by this chapter. Benefits paid prior to June 30 shall, as of June 30 of each year preceding the calendar year for which a covered employer's taxable wage rate is effective, be charged to the account of the covered employer, except cost reimbursement employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits, except that no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(a) If paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services;

(b) If paid in accordance with the provisions of section 72-1368(10), Idaho Code, and the decision to pay benefits is subsequently reversed; ~~or~~

(c) For that portion of benefits paid to multistate claimants pursuant to section 72-1344, Idaho Code, which exceeds the amount of benefits that would have been charged had only Idaho wages been used in paying the claim;

(d) If paid in accordance with the extended benefit program triggered by either national or state indicators;

(e) If paid to a worker who continues to perform services for such covered employer without a reduction in his customary work schedule, and who is eligible to receive benefits due to layoff or a reduction in earnings from another employer.

(3) A covered employer whose experience rating account is chargeable, as prescribed by this section, is an interested party as defined in section 72-1323, Idaho Code. A determination of chargeability shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules.

(4) An experience rating record shall be maintained for each covered employer. The record shall be credited with all contributions which the covered employer has paid for covered employment prior to the cutoff date, pursuant to the provisions of this and preceding acts, and

which covered employment occurred prior to the computation date. The record shall also be charged with the amount of benefits paid which are chargeable to the covered employer's account as provided by the appropriate provisions of the employment security law and regulations thereunder in effect at the time such benefits were paid. Nothing in this section shall be construed to grant any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by such covered employer into the employment security fund.

(~~4~~5) (a) Whenever any individual or type of organization (whether or not a covered employer within the meaning of section 72-1315, Idaho Code) in any manner succeeds to, or acquires all or substantially all, of the business of an employer who at the time of acquisition was a covered employer, and in respect to whom the director finds that the business of the predecessor is continued solely by the successor, the separate experience rating account of the predecessor shall, upon the joint application of the predecessor and the successor within the one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director. The transfer of the predecessor's experience rating account as of the last computation date to the successor shall be mandatory if the management or ownership or control is substantially the same for the successor as for the predecessor and there is a continuity of business activity by the successor.

(b) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, in any manner succeeds to, or acquires, part of the business of an employer who at the time of acquisition was a covered employer, and such portion of the business is continued by the successor, so much of the separate experience rating account of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four (4) completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director. The transfer of the predecessor's experience rating account as of the last computation date to the successor shall be mandatory if the management or ownership or control is substantially the same for the successor as for the predecessor and there is a continuity of business activity by the successor. Whenever such mandatory transfer involves only a portion of the experience rating record, and the predecessor or successor employers fail within ten

(10) days after notice to supply the required payroll information, the transfer shall be based on estimates of the allocable payrolls.

(c) (i) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business his taxable wage rate, effective the first day of the calendar quarter immediately following the date of acquisition, shall be a newly computed rate based on the combined experience of the predecessor and successor, the resulting rate remaining in effect the balance of the rate year.

(ii) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate shall be the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there were more than one (1) predecessor the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition, and shall remain in effect the balance of the rate year.

(d) For purposes of this section, an employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter. When a transferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.

SECTION 10. That Section 72-1354, Idaho Code, be, and the same is hereby amended to read as follows:

72-1354. PENALTY ON UNPAID AMOUNTS. If any amounts due under this chapter are not paid by any covered employer on or before the date on which they are due, such amounts shall bear penalty at the rate of ~~two~~ four percent (~~2~~4%) or ~~ten~~ twenty dollars ($~~1~~20.00), whichever is the larger, for each month or fraction thereof until paid; provided, that in no case shall the penalty exceed the actual amounts due. The date of payment shall be deemed the date of actual receipt by the director, or if mailed, the date of mailing. Penalties collected pursuant to this section shall be paid into the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code. At the discretion of the director, the department may compromise the amount of penalty collected pursuant to this section if the employer shows he had good cause for failing to timely pay contributions.

SECTION 11. That Section 72-1359, Idaho Code, be, and the same is hereby amended to read as follows:

72-1359. JEOPARDY ASSESSMENTS. If the director determines that the collection of any amounts due from any covered employer under the provisions of this chapter will be jeopardized by delay, he may, whether or not the time prescribed by this chapter or any rules issued pursuant thereto for making reports and payments has expired, determine, on the basis of available information, the wages paid by such employer for covered employment and declare the amount due thereon immediately payable, and shall give written notice of such declaration to such employer. Any

amounts, including penalty and interest, that are contained in such written declaration shall be subject to immediate seizure pursuant to section 72-1360A, Idaho Code, as well as through any other collection procedures allowed under law. Such jeopardy assessment shall become conclusive and binding upon the employer unless, ~~w~~within fourteen (14) days after the mailing of such declaration to the last known address of such employer or in the absence of such mailing, within fourteen (14) days after personal delivery ~~thereof~~ upon the employer, the employer ~~may~~ files an appeal to the department setting forth grounds for such appeal. In such cases, the right of appeal shall be conditioned upon the payment of the amount declared to be due, less any amount already collected, or upon giving appropriate security to the director for the payment thereof. Proceedings on such appeals shall be in accordance with the provisions of section 72-1361, Idaho Code.

SECTION 12. That Section 72-1360, Idaho Code, be, and the same is hereby amended to read as follows:

72-1360. LIENS. (1) Upon the failure of any person to pay any amount when due under this chapter, including the failure to repay overpayments as that term is defined in section 72-1369, Idaho Code, the director may file with the office of the secretary of state, as provided in chapter 19, title 45, Idaho Code, a 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 notice is duly filed, all amounts due shall constitute a lien upon the entire interest, legal or equitable, in any property of such person, real or personal, tangible or intangible, not exempt from execution, situated in the state. Such lien may be enforced by the director 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 shall bear interest at the rate of ~~the state--statutory--legal--limit--on--judgments~~ one and one-half (1 1/2) times the rate computed for judgments pursuant to section 28-22-104(2), Idaho Code, in effect on January 1 of the year in which the lien is filed, rounded up to the nearest one-eighth percent (1/8%). The foregoing remedy shall be in addition to all other remedies provided by law. 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.

(3) In any suit or action involving the title to real or personal property against which the state has a perfected lien, the state shall be made a party to such suit or action.

SECTION 13. That Section 72-1366, Idaho Code, be, and the same is hereby amended to read as follows:

72-1366. PERSONAL ELIGIBILITY CONDITIONS. The personal eligibility conditions of a benefit claimant are that:

(1) The claimant shall have made a claim for benefits and provided all necessary information pertinent to eligibility.

(2) The claimant shall have registered for work and thereafter reported to a job service office or other agency in a manner prescribed by the director.

(3) The claimant shall have met the minimum wage requirements in his base period as provided in section 72-1367, Idaho Code.

(4) During the whole of any week with respect to which he claims benefits or credit to his waiting period, the claimant was:

(a) A~~a~~ble to work, available for suitable work, and seeking work; provided, however, that no claimant shall be considered ineligible for failure to comply with the provisions of this subsection if: (i) such failure is due to ~~an~~ the claimant's illness or disability which occurs after he has filed a claim and during such illness or disability, the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; or (ii) ~~the claimant,--because--of~~ such failure is due to compelling personal circumstance, ~~is required to--be--absent-from-his-normal-labor-market-area,~~ provided that such ~~absence~~ failure does not exceed a minor portion of the claimant's workweek and during which time the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; and

(b) Living in a state, territory, or country that is included in the interstate benefit payment plan or that is a party to an agreement with the United States or the director with respect to unemployment insurance.

(5) The claimant's unemployment is not due to the fact that he left his employment ~~voluntar~~ily without good cause connected with his employment, or that he was discharged for misconduct in connection with his employment.

(6) The claimant's unemployment is not due to his failure without good cause to apply for available suitable work or to accept suitable work when offered to him. The longer a claimant has been unemployed, the more willing he must be to seek other types of work and accept work at a lower rate of pay.

(7) In determining whether or not work is suitable for an individual, the degree of risk involved to his health, safety, morals, physical fitness, experience, training, past earnings, length of unemployment and prospects for obtaining local employment in his customary occupation, the distance of the work from his residence, and other pertinent factors shall be considered. No employment shall be deemed suitable and benefits shall not be denied to any otherwise eligible individual for refusing to accept new work or to hold himself available for work under any of the following conditions:

(a) If the vacancy of the position offered is due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are below those prevailing for similar work in the locality of the work offered;

(c) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(8) No claimant who is otherwise eligible shall be denied benefits for any week due to an inability to comply with the requirements contained in subsections (4) and (6) of this section, if:

(a) The claimant is a participant in a program sponsored by title I of the workforce investment act and attends a job training course under that program; or

(b) The claimant attends a job training course authorized pursuant to the provisions of section 236(a)(1) of the trade act of 1974 or the North American free trade agreement implementation act.

(c) The claimant lacks skills to compete in the labor market and attends a job training course with the approval of the director. The director may approve job training courses that meet the following criteria:

(i) The purpose of the job training is to teach the claimant skills that will enhance the claimant's opportunities for employment; and

(ii) The job training can be completed within one (1) year, except that this requirement may be waived pursuant to rules that the director may prescribe.

This subsection shall apply only if the claimant submits with each claim report a written certification from the training facility that the claimant is attending and satisfactorily completing the job training course, or demonstrates good cause for failure to attend the job training.

(9) No claimant who is otherwise eligible shall be denied benefits under subsection (5) of this section for leaving employment to attend job training pursuant to subsection (8) of this section, provided that the claimant obtained the employment after enrollment in or during scheduled breaks in the job training course, or that the employment was not suitable. For purposes of this subsection, the term "suitable employment" means work of a substantially equal or higher skill level than the individual's past employment, and wages for such work are not less than eighty percent (80%) of the average weekly wage in the individual's past employment.

(10) A claimant shall not be eligible to receive benefits for any week with respect to which it is found that his unemployment is due to a labor dispute; provided, that this subsection shall not apply if it is shown that:

(a) The claimant is not participating, financing, aiding, abetting, or directly interested in the labor dispute; and

(b) The claimant does not belong to a grade or class of workers with members employed at the premises at which the labor dispute occurs, who are participating in or directly interested in the dispute.

(11) A claimant shall not be entitled to benefits for any week with respect to which or a part of which he has received or is seeking benefits under an unemployment insurance law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States shall finally determine that he is not entitled to such unemployment compensation or insurance benefits, he shall not by the provisions of this subsection be denied benefits. For purposes of this section, a law of the United States providing any payments of any type and in any amounts for periods of unemployment due to involuntary unemployment shall be considered an unemployment insurance law of the United States.

(12) A claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. The period of disqualification shall commence the week the determination is issued. The claimant shall also be ineligible

for waiting week credit and shall repay any sums received for a week in which the claimant willfully made a false statement or willfully failed to report a material fact. The claimant shall also be ineligible for waiting week credit or benefits for any week in which he owes the department an overpayment, civil penalty, or interest resulting from a determination that he willfully made a false statement or willfully failed to report a material fact.

(13) A claimant shall not be entitled to benefits if his principal occupation is self-employment.

(14) A claimant who has been found ineligible for benefits under the provisions of subsection (5), (6), (7) or (9) of this section shall reestablish his eligibility by having obtained bona fide work and received wages therefor in an amount of at least ~~twelve~~ fourteen (1~~2~~4) times his weekly benefit amount.

(15) Benefits based on service in employment defined in sections 72-1349A and 72-1352(3), Idaho Code, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this act.

(a) If the services performed during one-half (1/2) or more of any contract period by an individual for an educational institution as defined in section 72-1322B, Idaho Code, are in an instructional, research, or principal administrative capacity, all the services shall be deemed to be in such capacity.

(b) If the services performed during less than one-half (1/2) of any contract period by an individual for an educational institution are in an instructional, research, or principal administrative capacity, none of the service shall be deemed to be in such capacity.

(c) As used in this section, "contract period" means the entire period for which the individual contracts to perform services, pursuant to the terms of the contract.

(16) No claimant is eligible to receive benefits in two (2) successive benefit years unless, after the beginning of the first benefit year during which he received benefits, he performed service and earned an amount equal to not less than six (6) times the weekly benefit amount established during the first benefit year.

(17) (a) Benefits based on wages earned for services performed in an instructional, research, or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual who performs such services in the first academic year (or term) and has a contract to perform services in any such capacity for any educational institution in the second academic year or term, or has been given reasonable assurance that such a contract will be offered.

(b) Benefits based on wages earned for services performed in any other capacity for an educational institution shall not be paid to any individual for any week which commences during a period between two (2) successive school years or terms if the individual performs such services in the first school year or term, and there is a contract or reasonable assurance that the individual will perform such

services in the second school year or term. If benefits are denied to any individual under this ~~sub~~paragraph (b) and the individual was not offered an opportunity to perform such services for the educational institution for the second academic year or term, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this clause.

(c) With respect to any services described in paragraphs (a) and (b) of this subsection (17), benefits shall not be paid nor "waiting week" credit given to an individual for wages earned for services for any week which commences during an established and customary vacation period or holiday recess if the individual performed the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance the individual will perform such services in the period immediately following such vacation period or holiday recess.

(d) With respect to any services described in paragraphs (a) and (b) of this subsection (17), benefits shall not be payable on the basis of services in any capacities specified in paragraphs (a), (b) and (c) of this subsection (17) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this paragraph the term "educational service agency" means a governmental entity which is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

(18) Benefits shall not be payable on the basis of services which substantially consist of participating in sports or athletic events or training or preparing to participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such season (or similar period).

(19) (a) Benefits shall not be payable on the basis of services performed by an alien unless the alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time the services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of sections 207 and 208 or section 212(d)(5) of the immigration and nationality act).

(b) Any data or information required of individuals applying for benefits to determine eligibility under this subsection shall be uniformly required from all applicants for benefits.

(c) A decision to deny benefits under this subsection must be based on a preponderance of the evidence.

(20) An individual who has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the director must participate in those reemployment services unless:

(a) The individual has completed such services; or

(b) There is justifiable cause, as determined by the director, for the claimant's failure to participate in such services.

(21) (a) A claimant:

(i) Who has been assigned to work for one (1) or more customers of a staffing service; and

(ii) Who, at the time of hire by the staffing service, signed a written notice informing him that completion or termination of an assignment for a customer would not, of itself, terminate the employment relationship with the staffing service;

will not be considered unemployed upon completion or termination of an assignment until such time as he contacts the staffing service to determine if further suitable work is available. If the claimant:

(A) Contacts the staffing service and refuses a suitable work assignment that is offered to him at that time, he will be considered to have voluntarily quit that employment; or

(B) Contacts the staffing service and the service does not have a suitable work assignment for him, he will be considered unemployed due to a lack of work; or

(C) Accepts new employment without first contacting the staffing service for additional work, he will be considered to have voluntarily quit employment with the staffing service.

(b) For the purposes of this subsection, the term "staffing service" means any person who assigns individuals to work for its customers and includes, but is not limited to, professional employers, as defined in chapter 24, title 44, Idaho Code, and the employers of temporary employees as defined in section 44-2403(7), Idaho Code.

SECTION 14. That Section 72-1367, Idaho Code, be, and the same is hereby amended to read as follows:

72-1367. BENEFIT FORMULA. (1) To be eligible an individual shall have the minimum qualifying amount of wages in covered employment in at least one (1) calendar quarter of his base period, and shall have total base period wages of at least one and one-quarter (1 1/4) times his high quarter wages. The minimum qualifying amount of wages shall be determined each ~~July~~ January 1 and shall equal fifty percent (50%) of the product of the state minimum wage, as defined by section 44-1502, Idaho Code, multiplied by five hundred twenty (520) hours, rounded to the lowest multiple of twenty-six (26).

(2) The weekly benefit amount shall be one twenty-sixth (1/26) of highest quarter wages except that it shall not exceed the applicable maximum weekly benefit amount. The maximum weekly benefit amount shall be established as follows:

(a) For calendar year 2006 and the calendar years thereafter, pPrior to ~~June 30~~ December 31 of each year, the director shall ~~compute~~ determine the state average weekly wage paid by covered employers for the preceding calendar year and the maximum weekly benefit amount to be effective for new claims filed in the first full week of the following January and filed thereafter until a new maximum weekly benefit amount becomes effective under this subsection (2). The maximum weekly benefit amount shall be ~~sixty percent (60%)~~ determined based on the following table, using a percentage of the state average weekly wage paid by covered employers for the preced-

ing calendar year and the base tax rate that has been calculated for the following calendar year pursuant to section 72-1350, Idaho Code:

Maximum WBA Index

Base Tax Rate At Least	Less Than	Average Weekly Wage Percentage
0.630%	0.840%	60%
0.840%	1.155%	59%
1.155%	1.470%	58%
1.470%	1.785%	57%
1.785%	2.100%	56%
2.100%	2.415%	55%
2.415%	2.730%	54%
2.730%	3.045%	53%
3.045%	3.360%	52%

(b) Effective for new claims filed in the first full week of July 2005, and filed thereafter until the first full week of the following January, the maximum weekly benefit amount shall be fifty-seven percent (57%) of the state average weekly wage paid by covered employers for the preceding calendar year. Prior to December 31, 2005, the director shall determine, by using the table provided in subsection (2)(a) of this section, the maximum weekly benefit amount to be effective for new claims filed in the first full week of the following January and filed thereafter until a new maximum weekly benefit amount becomes effective under subsection (2)(a) of this section.

(3) Any eligible individual shall be entitled during any benefit year to a total amount of benefits equal to his weekly benefit amount times the number of full weeks of benefit entitlement appearing in the following table based on his ratio of total base period earnings to highest quarter base period earnings.

Ratio of Total Base Period Earnings to Highest Quarter Earnings At Least	Less Than	Full Weeks of Benefit Entitlement
1.25	1.50	10
1.50	1.75625	11
1.75625	2.001.750	12
2.001.750	2.251.875	13
2.251.875	2.502.00	14
2.502.00	2.752.125	15
2.75125	3.002.250	16
3.002.250	3.252.375	17
3.252.375	--2.500	18
2.500	2.625	19
2.625	2.750	20
2.750	2.875	21
2.875	3.000	22
3.000	3.125	23
3.125	3.250	24
3.250	3.500	25
3.500	--	26

(4) If the total wages payable to an individual for less than full-time work performed in a week claimed exceed one-half (1/2) of his weekly benefit amount, the amount of wages that exceed one-half (1/2) of the weekly benefit amount shall be deducted from the benefits payable to the claimant. For purposes of this subsection, severance pay shall be deemed wages, even if the claimant was required to sign a release of claims as a condition of receiving the pay from the employer. "Severance pay" means a payment or payments made to a claimant by an employer as a result of the severance of the employment relationship.

(5) Benefits payable to an individual shall be rounded to the next lower full dollar amount.

SECTION 15. That Section 72-1369, Idaho Code, be, and the same is hereby amended to read as follows:

72-1369. OVERPAYMENTS, CIVIL PENALTIES AND INTEREST -- COLLECTION AND WAIVER. (1) Any person who received benefits to which he was not entitled under the provisions of this chapter or under an unemployment insurance law of any state or of the federal government shall be liable to repay the benefits and the benefits shall, for the purpose of this chapter, be considered to be overpayments. ~~Overpayments shall be repaid as follows:~~

(2) Civil penalties. The director shall assess the following monetary penalties for each determination in which the claimant is found to have made a false statement, misrepresentation, or failed to report a material fact to the department:

(a) Twenty-five percent (25%) of any resulting overpayment for the first determination;

(b) Fifty percent (50%) of any resulting overpayment for the second determination; and

(c) One hundred percent (100%) of any resulting overpayment for the third and any subsequent determination.

(~~a~~3) Any overpayment, civil penalty and/or interest 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 with interest thereon at the ~~statutory~~ rate ~~by~~ prescribed in section 72-1360(2), Idaho Code. The director may also file a civil action ~~brought~~ in the name of the state of Idaho. In bringing such civil actions for the collection of overpayments, penalties and interest, the director shall have all the rights and remedies provided by the laws of this state, and any person adjudged liable in such civil action for any overpayments shall pay the costs 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~~ A civil action filed pursuant to this subsection (3) shall be commenced within five (5) years from the date of the final determination establishing liability to repay. 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.

(~~b~~4) Collection of overpayments.

(~~i~~a) 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, be deducted from any future benefits payable to the claimant under the provisions of this chapter~~;~~. Such overpayments not recovered within five (5) years from the date of the final determination establishing liability to repay may be deemed uncollectible.

(~~ii~~b) Overpayments resulting from a false statement, misrepresentation, or ~~concealment of~~ failure to report 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~~;~~.

~~(iii) A civil action, filed pursuant to paragraph (a) of this subsection, 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;~~

~~(c) 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 paragraph (a) of this subsection, to collect such overpayments must be commenced within the same five (5) year time period;~~

(d5) The director may waive the requirement to repay an overpayment, ~~described in paragraph (c) of this subsection~~ other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, and interest thereon, if:

(a) T~~t~~he benefit 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~~ could not reasonably have been expected to recognize the error; or ~~if~~

(b) S~~s~~uch 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. The director, in his sole discretion, may also compromise a civil penalty assessed under subsection (2) of this section and/or interest.

~~(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.~~

(~~2~~6) 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 chapter 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 16. 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 72-1372, Idaho Code, and to read as follows:

72-1372. CIVIL PENALTIES. (1) The following civil penalties shall be assessed by the director:

(a) If an employer willfully fails to file any report required by the director or files a false report, a penalty equal to one hundred percent (100%) of the amount that would be due if the employer had filed a correct report or two hundred fifty dollars ($250), whichever is greater, shall be added to the liability of the employer for each quarter for which the employer failed to file a report or filed a false report. For the purposes of this section, a false report includes, but is not limited to, a report for a period wherein an employer pays remuneration for personal services which meets the definition of "wages" under section 72-1328, Idaho Code, and the payment is concealed, hidden, or otherwise not reported to the department.

(b) If an employer, or any officer or agent or employee of the employer with the employer's knowledge, willfully makes a false statement or representation or willfully fails to report a material fact when submitting facts to the department concerning a claimant's separation from the employer, a penalty in an amount equal to ten (10) times the weekly benefit amount of such claimant shall be added to the liability of the employer.

(c) If an employer induces, solicits, or coerces an employee or former employee to file a false or fraudulent claim for benefits under this chapter, a penalty in an amount equal to ten (10) times the weekly benefit amount of such employee or former employee shall be added to the liability of the employer.

(d) If an employer fails to complete and submit an Idaho business registration form, as required by section 72-1337(1), Idaho Code, a penalty of five hundred dollars ($500) shall be assessed against the employer.

(e) For purposes of paragraphs (b) and (c) of this subsection (1), the term "weekly benefit amount" means the amount calculated pursuant to section 72-1367(2), Idaho Code.

(2) At the discretion of the director, the department may waive all or any part of the penalties imposed pursuant to this section if the employer shows to the satisfaction of the director that it had good cause for failing to comply with the requirements of this chapter and rules promulgated thereunder.

(3) Determinations imposing civil penalties pursuant to this section shall be served in accordance with section 72-1368(5), Idaho Code. Penalties imposed pursuant to this section shall be due and payable twenty (20) days after the date the determination was served unless an appeal is filed in accordance with section 72-1368, Idaho Code, and rules promulgated thereunder. Such appeals shall be conducted in accordance with section 72-1368, Idaho Code, and rules promulgated thereunder.

(4) Civil penalties imposed by this section shall be in addition to any other penalties authorized by this chapter. The provisions of this chapter that apply to the collection of contributions, and the rules promulgated thereunder, shall also apply to the collection of penalties

imposed pursuant to this section. Amounts collected pursuant to this section shall be paid into the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

SECTION 17. An emergency existing therefor, which emergency is hereby declared to exist, Sections 3, 7, 8 and 9 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2005.

SECTION 18. Sections 1, 2, 4, 5, 6, 10, 11, 12, 13, 14, 15 and 16 of this act shall be in full force and effect on and after July 1, 2005.

Approved February 7, 2005.

CHAPTER 6
(H.B. No. 6)

AN ACT

RELATING TO TRANSFERS OF FUNDS; PROVIDING A TRANSFER OF FUNDS TO THE FIRE SUPPRESSION DEFICIENCY FUND; PROVIDING A TRANSFER OF FUNDS TO THE PEST CONTROL DEFICIENCY FUND; PROVIDING A TRANSFER OF FUNDS TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. The State Controller shall transfer $1,274,200 from the General Fund to the Fire Suppression Deficiency Fund. Such moneys shall be used to reimburse costs incurred by the Forest and Range Fire Protection Program in the Department of Lands pursuant to Sections 38-131 and 38-131A, Idaho Code.

SECTION 2. The State Controller shall transfer $259,300 from the General Fund to the Pest Control Deficiency Fund. Such moneys shall be used to reimburse costs incurred by the Plant Industries Program in the Department of Agriculture pursuant to Section 22-2019, Idaho Code.

SECTION 3. The State Controller shall transfer $141,600 from the General Fund to the Hazardous Substance Emergency Response Fund. Such moneys shall be used to reimburse costs incurred by the Bureau of Homeland Security in the Military Division of the Office of the Governor pursuant to Section 39-7110, 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 February 7, 2005.

CHAPTER 7
(H.B. No. 7)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR THE BOARD OF EXAMINERS FOR FISCAL YEAR 2005; 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 2004, there is hereby appropriated to the Department of Self-Governing Agencies for the Board of Examiners the following amount to be expended for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

BOARD OF EXAMINERS:

FOR:	
Trustee and Benefit Payments	$11,500
FROM:	
General Fund	$11,500

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

Approved February 7, 2005.

CHAPTER 8
(H.B. No. 8)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL YEAR 2005; 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 40, Laws of 2004, there is hereby appropriated to the Public Utilities Commission the following amount to be expended according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

FOR:	
Personnel Costs	$5,900
FROM:	
Public Utilities Commission Fund	$5,900

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, 2005.

CHAPTER 9
(H.B. No. 9)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF WATER RESOURCES FROM THE MISCELLANEOUS REVENUE FUND FOR FISCAL YEAR 2005; REDUCING THE APPROPRIATION TO THE DEPARTMENT OF WATER RESOURCES FROM THE PETROLEUM PRICE VIOLATION FUND FOR FISCAL YEAR 2005; 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 150, Laws of 2004, there is hereby appropriated to the Department of Water Resources the following amount to be expended for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

ENERGY RESOURCES:

FOR:

Personnel Costs	$36,200

FROM:

Miscellaneous Revenue Fund	$36,200

SECTION 2. Notwithstanding any other provision of law to the contrary, the appropriation made in Section 1, Chapter 150, Laws of 2004, is hereby reduced by the following amount to be expended from the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

ENERGY RESOURCES:

FOR:

Personnel Costs	$36,200

FROM:

Petroleum Price Violation Fund	$36,200

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, 2005.

CHAPTER 10
(S.B. No. 1026)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR THE OUTFITTERS AND GUIDES BOARD FOR FISCAL YEAR 2005; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 3, Chapter 273, Laws of 2004, there is hereby appropriated to the Department of Self-Governing Agencies for the Outfitters and Guides Board the following amounts to be expended for the designated program according to the designated expense classes from the listed fund for the period July 1, 2004, through June 30, 2005:

OUTFITTERS AND GUIDES BOARD:

FOR:	
Operating Expenditures	$3,000
Capital Outlay	3,500
TOTAL	$6,500
FROM:	
State Regulatory Fund	$6,500

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

Approved February 14, 2005.

CHAPTER 11
(S.B. No. 1029)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR THE BOARD OF VETERINARY MEDICINE FOR FISCAL YEAR 2005; 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 273, Laws of 2004, there is hereby appropriated to the Department of Self-Governing Agencies for the Board of Veterinary Medicine the following amount to be expended for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

BOARD OF VETERINARY MEDICINE:

FOR:	
Operating Expenditures	$3,700
FROM:	
State Regulatory Fund	$3,700

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 14, 2005.

CHAPTER 12
(H.B. No. 2)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1351A, IDAHO CODE, TO PROVIDE FOR CONFORMITY TO FEDERAL REQUIREMENTS GOVERNING TRANSFERS OF EXPERIENCE AND ASSIGNMENT OF RATES, TO PROVIDE CIVIL PENALTIES FOR SPECIFIED VIOLATIONS, TO PROVIDE A FELONY PENALTY FOR SPECIFIED VIOLATIONS, TO PROVIDE DEFINITIONS, TO PROVIDE THAT THE DIRECTOR SHALL ESTABLISH PROCEDURES TO IDENTIFY THE TRANSFER OR ACQUISITION OF A BUSINESS AND TO PROVIDE FOR INTERPRETATION AND APPLICATION OF THE LAW IN ACCORDANCE WITH FEDERAL GUIDELINES AND REGULATIONS.

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

SECTION 1. 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 72-1351A, Idaho Code, and to read as follows:

72-1351A. FEDERAL CONFORMITY PROVISIONS REGARDING TRANSFERS OF EXPERIENCE AND ASSIGNMENT OF RATES. Notwithstanding any other provision of this chapter, the following shall apply regarding transfers of experience and assignment of rates:

(1) (a) If a covered employer transfers its trade or business, or a portion thereof, to another covered employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the experience rating account attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated using the methods provided in section 72-1351(5)(b) and (c)(i), Idaho Code.

(b) If, following a transfer of experience under paragraph (a) of this subsection (1), the director determines that a substantial purpose of the transfer of the trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate shall be assigned to such account.

(2) Whenever a person who is not a covered employer under this chapter at the time such person acquires the trade or business of a covered employer, the experience rating account of the acquired business shall not be transferred to such person if the director finds that such person acquired the business primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the standard rate for new employers under section 72-1350, Idaho Code. In determining whether the trade or business was acquired primarily for the purpose of obtaining a lower rate of contributions, the director shall use objective factors which may include, but are not limited to, the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(3) (a) It shall be a violation of this section if a person:

(i) Makes any false statement to the department when the maker knows the statement to be false or acts with deliberate ignorance of or reckless disregard for the truth of the matter or willfully fails to disclose a material fact to the department in connection with the transfer of a trade or business;

(ii) Prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true;

(iii) Knowingly violates or attempts to violate subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate; or

(iv) Knowingly advises another person in a way that results in a violation or an attempted violation of subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate.

(b) If a person commits any of the acts described in paragraph (a) of this subsection (3), the person shall be subject to the following penalties:

(i) If the person is a covered employer, a civil money penalty of ten percent (10%) of such person's taxable wages for the four (4) completed consecutive quarters preceding the violation shall be imposed for such year and said penalty shall be deposited in the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

(ii) If the person is not a covered employer, such person shall be subject to a civil money penalty of not more than five thousand dollars ($5,000) for each violation. Any such penalty shall be deposited in the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

(4) Every person who knowingly makes any false statement to the department or knowingly fails to disclose a material fact to the department in connection with the transfer of a trade or business, or knowingly prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true, or knowingly violates or attempts to violate subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, or knowingly advises another person to act in a way that results in a violation or an attempted violation of subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, shall be guilty of a felony punishable as provided in section 18-112, Idaho Code.

(5) For purposes of this section:

(a) An employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the

employer and any amounts due from the employer under this chapter. When a transferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.

(b) "Knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.

(c) "Person" has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 7701(a)(1)).

(d) A "transfer of a trade or business" occurs whenever a person in any manner succeeds to all or a portion of a trade or business.

(e) "Trade or business" includes, but is not limited to, the employer's workforce. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of a trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(f) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(6) The director shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(7) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States department of labor.

Approved February 18, 2005.

CHAPTER 13
(H.B. No. 3)

AN ACT

RELATING TO ADVISORY COUNCILS TO THE DEPARTMENT OF COMMERCE AND LABOR; AMENDING SECTION 67-4704, IDAHO CODE, TO RENAME THE ADVISORY COUNCIL, TO INCREASE MEMBERSHIP OF THE COUNCIL FROM SIX TO SEVEN PERSONS, TO PROVIDE THREE-YEAR TERMS FOR ALL MEMBERS AND TO PROVIDE THAT ONE MEMBER SHALL SERVE IN A STATEWIDE CAPACITY; AMENDING SECTION 67-4711, IDAHO CODE, TO DEFINE "ACT," TO PROVIDE CODE REFERENCES AND CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-4712, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE TO MEMBERSHIP OF THE COUNCIL, TO DELETE OBSOLETE LANGUAGE AND TO PROVIDE PROPER TERMINOLOGY; AMENDING SECTION 67-4715, IDAHO CODE, TO PROVIDE PROPER TERMINOLOGY; AND AMENDING SECTION 72-1336, IDAHO CODE, TO PROVIDE THAT A WORKFORCE DEVELOPMENT COUNCIL SHALL SERVE AS AN ADVISORY BODY TO THE DEPARTMENT AND TO PRESCRIBE THE DUTIES AND FUNCTIONS OF THE COUNCIL.

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

SECTION 1. That Section 67-4704, Idaho Code, be, and the same is hereby amended to read as follows:

67-4704. ECONOMIC ADVISORY COUNCIL -- APPOINTMENT OF MEMBERS -- QUALIFICATIONS. There shall be an economic advisory council to advise the department in the preparation and execution of plans, projects and programs in the furtherance of the power and duties conferred by section 67-4703, Idaho Code. The director shall consult, confer and advise with the advisory council in connection with all decisions concerning the administration and development of such plans, projects and programs. The approval of the advisory council shall be a condition precedent to the undertaking of action in the implementation of such plans, projects and programs by the department. The advisory council shall consist of ~~six~~ seven (~~6~~7) persons, who shall be appointed by the governor, and who shall serve for three (3) year terms~~, with two (2) members' terms expiring each year~~. They shall serve and shall be compensated as provided by section 59-509(b), Idaho Code. One (1) person shall be appointed to represent each of the six (6) planning regions of the state and one (1) member shall serve in a statewide capacity. Membership shall be divided between political parties.

SECTION 2. That Section 67-4711, Idaho Code, be, and the same is hereby amended to read as follows:

67-4711. DEFINITIONS. As used in ~~this act~~ sections 67-4710 through 67-4719, Idaho Code, unless the context requires otherwise:

(1) "Act" means sections 67-4710 through 67-4719, Idaho Code.

(2) "Campground" means any privately owned business which rents areas or places used for camping or parking campers, travel trailers, motorhomes or tents.

(~~2~~3) "Council" means the state of Idaho travel and convention industry council.

(~~3~~4) "Department" means the department of commerce and labor.

(~~4~~5) "Hotel/Motel" means an establishment which provides lodging to members of the public for a fee, and shall include condominiums, townhouses or any other establishment which makes a sale as herein defined.

(~~5~~6) "Planning regions" means those seven (7) districts which shall be designated by number and shall embrace the several counties as follows:

No. 1. The counties of Benewah, Bonner, Boundary, Kootenai and Shoshone.

No. 2. The counties of Clearwater, Idaho, Latah, Lewis and Nez Perce.

No. 3. The counties of Adams, Canyon, Gem, Payette, Washington, Ada, Owyhee, Elmore, Boise and Valley.

No. 4. The counties of Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls.

No. 5. The counties of Bannock, Caribou, Bear Lake, Franklin, Oneida, Power and Bingham.

No. 6. The counties of Clark, Jefferson, Fremont, Madison, Teton and Bonneville.

No. 7. The counties of Blaine, Camas, Lemhi, Custer and Butte.

(~~6~~7) "Sale" means the renting of a place to sleep, to an individual by a hotel, motel, or campground for a period of less than thirty-one (31) continuous days. "Sale" shall not include the renting of a place to sleep to an individual by the Idaho Ronald McDonald House.

SECTION 3. That Section 67-4712, Idaho Code, be, and the same is hereby amended to read as follows:

67-4712. IDAHO TRAVEL AND CONVENTION INDUSTRY COUNCIL -- CREATED -- APPOINTMENT OF MEMBERS. There is hereby created an advisory council to advise, as provided by this act, the department on matters related to the travel and convention industry. The council shall consist of ~~seven~~ eight (~~7~~8) persons, who shall be appointed by the governor. ~~Two--(2)--of the original members shall serve for one (1) year; two (2) of the original members shall serve for two (2) years; and three (3) of the original members--shall--serve for three (3) years.~~ The term of office of members of the ~~committee thereafter~~ council shall be three (3) years commencing on July 1.

SECTION 4. That Section 67-4715, Idaho Code, be, and the same is hereby amended to read as follows:

67-4715. DUTIES AND POWERS OF THE COUNCIL. (1) Consistent with the general purposes of this chapter, the council shall advise the department upon the establishment of policies to be followed in the accomplishments of the purposes of this act.

(2) In the administration of this act, the council shall have the following duties, authorities and powers:

(a) To review and recommend acceptance or denial of local grant requests submitted by nonprofit groups or organizations, for uses consistent with the purposes of this act. Such power shall include the right to approve disbursal of the department moneys to such nonprofit groups under the grant program created by section 67-4717, Idaho Code.

(b) To counsel and advise the department on matters concerning the promotion and marketing of Idaho tourism, including, but not limited to the following: (1) the type of promotion, (2) the media source of promotion, (3) market areas for promotion and (4) areas for travel and industry emphasis.

(c) To encourage and assist in the coordination of the activities of persons, firms, associations, corporations, civic groups and governmental agencies engaged in publicizing, developing and promoting the scenic attractions and tourist advantages of the state.

(d) To recommend such action as the council deems necessary and advisable in order to stabilize and promote the travel industry of the state so as to benefit the health and welfare of the public.

(e) To cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or by federal legislation, engaged in activities similar to the work of the council. The council may, through the department, enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity.

(f) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of duties.

(g) To keep books, records and accounts of all its activities, which books, records and accounts shall be open to inspection and audit. Such books shall also be open to the public.

(h) To report annually its activities and expenditures to the ~~development--and--publicity~~ economic advisory council ~~as~~ created by section 67-4704, Idaho Code.

SECTION 5. That Section 72-1336, Idaho Code, be, and the same is hereby amended to read as follows:

72-1336. ADVISORY BODY AND SPECIAL COMMITTEES. (1) The governor shall appoint ~~an-advisory-body-for-the-department.--The--governor--shall prescribe--the--duties-and-functions-of-the-body-which-shall-comply-with federal-requirements,-if-any~~ a workforce development council in accordance with section 111 of the federal workforce investment act of 1998, as amended (29 U.S.C. 2821) and federal regulations promulgated thereunder. Members of the body shall serve at the pleasure of the governor and ~~shall-be-compensated-at-a-rate-fixed-by-the-governor,--and--in--addition~~ shall be reimbursed for ordinary and actual expenses. The governor shall prescribe the duties and functions of the workforce development council which shall include, but not be limited to, the following:

(a) To serve as an advisory body to the department on matters related to workforce development policy and programs;

(b) To approve and provide oversight of department expenditures from the employment security special administration fund established under section 72-1347A, Idaho Code;

(c) To develop and provide oversight of procedures, criteria and performance measures for the workforce development training fund established under section 72-1347B, Idaho Code; and

(d) To serve as the state workforce investment board in accordance with section 111 of the federal workforce investment act of 1998, as amended. and federal regulations promulgated thereunder.

(2) The director may appoint special committees in connection with the administration of this chapter.

Approved February 18, 2005.

CHAPTER 14
(H.B. No. 10)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO UPDATE REFERENCES TO THE INTERNAL REVENUE CODE; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE THAT THE AMOUNT OF GENERAL SALES TAX INCLUDED IN FEDERAL ITEMIZED DEDUCTIONS BE ADDED BACK WHEN CALCULATING STATE DEDUCTIONS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE EFFECTIVE DATES.

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, 2004~~5~~.

(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. 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 63-3022Q, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code and, measured by net income, paid or accrued during the taxable year adjusted for state or local tax refunds used in arriving at taxable income.

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

(c) (1) A net operating loss for any taxable year commencing on and after January 1, 2000, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars ($100,000) to the two (2) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the two (2) preceding years may be subtracted in the next twenty (20) 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 two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) 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 (c) 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 or was not included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, may not be subtracted. However, if at least one (1) corporation within a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred, then the net operating loss may be subtracted. Net operating losses incurred by a person, other than a corporation, in activities not taxable by Idaho may not be subtracted.

(d) 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.

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

(f) 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.

(g) For the purpose of determining the Idaho taxable income of the beneficiary of a trust or of an estate:

(1) Distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section.

(2) Net operating losses attributable to a beneficiary of a trust or estate under section 642 of the Internal Revenue Code shall be a deduction for the beneficiary to the extent that income from the trust or estate would be attributable to this state under the provisions of this chapter.

(h) 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.

(i) In the case of a corporation, including any corporation included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, add any capital loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. However, do not add any capital loss deducted if a corporation, including any corporation in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. In the case of persons, other than corporations, add any capital loss deducted which was incurred in activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to 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 (c) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(j) 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) The standard deduction as defined in section 63, Internal Revenue Code.

(2) Itemized deductions as defined in section 63 of the Internal Revenue Code except state or local taxes measured by net income and general sales taxes as either is defined in section 164 of the Internal Revenue Code.

(k) Add the taxable amount of any lump sum distribution excluded from gross income for federal income tax purposes under the ten (10) year averaging method. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(l) 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.

(m) 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.

(n) In the case of an individual, deduct the amount contributed to a college savings program pursuant to chapter 54, title 33, Idaho Code, but not more than four thousand dollars ($4,000) per tax year. If the contribution is made on or before April 15, 2001, it may be deducted for tax year 2000 and an individual can make another contribution and claim the deduction according to the limits provided in this subsection during 2001 for tax year 2001, as long as the contribution is made on or before December 31, 2001.

(o) In the case of an individual, add the amount of a nonqualified withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, less any amount of such nonqualified withdrawal included in the individual's federal gross income pursuant to section 529 of the Internal Revenue Code.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2005, except to the extent that Section 1 may apply to Public Law 109-001 for which purpose the effective date of this act shall be January 7, 2005.

Approved February 18, 2005.

CHAPTER 15
(H.B. No. 12)

AN ACT

RELATING TO SALES AND USE TAXES; AMENDING SECTION 63-3622K, IDAHO CODE, TO PROVIDE THAT THE DEFINITION OF "OCCASIONAL SALES" DOES NOT APPLY TO USE TAX ON TANGIBLE PERSONAL PROPERTY USED TO IMPROVE REAL PROPERTY WHEN THE PROPERTY IS OBTAINED DIRECTLY OR INDIRECTLY FROM A PERSON IN THE BUSINESS OF MAKING LIKE OR SIMILAR IMPROVEMENTS TO REAL PROPERTY.

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

SECTION 1. That Section 63-3622K, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622K. OCCASIONAL SALES. (a) There are exempted from the taxes imposed by this chapter occasional sales of tangible personal property.

(b) As used in this section, the term "occasional sale" means:

(1) A sale of property not held or used by a person in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in

number or of such a nature as to constitute the seller a "retailer" under section 63-3610(c), Idaho Code. The definition of "occasional sales" provided in this subsection does not apply to use tax in regard to tangible personal property used to improve real property when such property is obtained, directly or indirectly, from a person in the business of making like or similar improvements to real property.

(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 percent (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 percent (80%) by the parent corporation to a parent corporation or another subsidiary which is owned at least eighty percent (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 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 subsection (b)(1), (b)(4), (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.

Approved February 18, 2005.

CHAPTER 16
(H.B. No. 13)

AN ACT

RELATING TO INCOME TAXES; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3022F, IDAHO CODE, TO PROVIDE A DEDUCTION FOR TAXPAYERS WHO RESTORE TO INCOME SUBSTANTIAL AMOUNTS HELD UNDER CLAIM OF RIGHT NOT DEDUCTIBLE ON THE TAXPAYER'S FEDERAL RETURN; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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 63-3022F, Idaho Code, and to read as follows:

63-3022F. COMPUTATION OF TAX WHERE TAXPAYER RESTORES SUBSTANTIAL AMOUNT HELD UNDER THE CLAIM OF RIGHT. In the case of a taxpayer who is entitled to a reduction in federal tax due to the restoration of an item of gross income under section 1341 of the Internal Revenue Code (relating to the computation of tax where the taxpayer restores a substantial amount held under claim of right), there shall be allowed a deduction in determining Idaho taxable income as provided in section 1341(a)(4) of the Internal Revenue Code, if not otherwise deducted by the taxpayer for Idaho income tax purposes. In computing the deduction allowable under this section, no deduction shall be allowed if the item of gross income for a prior taxable year was not included in Idaho taxable income.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2005.

Approved February 18, 2005.

CHAPTER 17
(H.B. No. 14)

AN ACT

RELATING TO JUDICIAL REVIEW OF DECISIONS OF THE STATE TAX COMMISSION; AMENDING SECTION 63-3049, IDAHO CODE, TO REVISE JURISDICTIONAL PROVISIONS FOR APPEALS TO THE BOARD OF TAX APPEALS AND THE DISTRICT COURT, TO DEFINE A TERM AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. That Section 63-3049, Idaho Code, be, and the same is hereby amended to read as follows:

63-3049. JUDICIAL REVIEW. (a) Redetermination by the state tax commission may be reviewed in the district court for Ada county or the county in which the taxpayer resides or has his principal office or place of business by a complaint filed by the taxpayer against the state tax commission within ninety-one (91) days after the receipt of notice of the decision of the state tax commission denying, in whole or in part, any protest of the taxpayer or, within the same period, by filing an appeal with the board of tax appeals. Upon the serving of summons upon the state tax commission the case shall proceed as other civil cases but may be heard by the judge in chambers. If the case is appealed to the board of tax appeals, the hearing before that body shall proceed as set forth in the act creating such board. If the court finds that any tax is due, it shall enter judgment for such tax, including any interest or penalties that may also be due and owing, against the taxpayer. Any taxes, penalties or interest paid, found by the court to be in excess of

that which can be legally assessed, shall be ordered refunded to the taxpayer with interest from the time of payment. In the case of sales or use tax and corporate income tax decisions by the state tax commission, when the amount ~~in--dispute--at--the--time--the--notice-of-deficiency determination/overassessment--is--issued~~ asserted exceeds twenty-five thousand dollars ($25,000), no appeal to the board of tax appeals shall be allowed.

(b) Before a taxpayer may seek review by the district court or the board of tax appeals, the taxpayer shall secure the payment of the tax or deficiency as assessed by depositing cash with the tax commission in an amount equal to twenty percent (20%) of the ~~tax,--penalty-and-interest~~ amount asserted. In lieu of the cash deposit, the taxpayer may deposit any other type of security acceptable to the tax commission.

No act, order or proceeding of the tax commission shall be valid until after the time allowed for taking such court action has expired or such court action is finally determined. As used in this section, the term "amount asserted" shall mean the total amount due, as set forth in the decision of the state tax commission.

(c) Any party to the proceedings may appeal to the ~~S~~supreme ~~C~~court from the judgment of the district court under the rules and regulations prescribed for appeals. If the appeal be taken by the state tax commission, it shall not be required to give any undertaking or to make any deposits to secure the cost of such appeal or to secure the payment of any amounts ordered refunded by the court.

(d) Whenever it appears to the court that:

(1) Proceedings before it have been instituted or maintained by a party primarily for delay; or

(2) A party's position in such proceeding is frivolous or groundless; or

(3) A party unreasonably failed to pursue available administrative remedies;

the court, in its discretion, may require the party which did not prevail to pay to the prevailing party costs, expenses and attorney's fees.

Approved February 18, 2005.

CHAPTER 18
(H.B. No. 15)

AN ACT

RELATING TO THE DISTRIBUTION OF SALES TAX REVENUES; AMENDING SECTION 63-3638, IDAHO CODE, AS AMENDED BY SECTION 2, CHAPTER 104, LAWS OF 2004, TO EXCLUDE DISTRIBUTION OF REVENUES DISTRIBUTED UNDER SECTION 63-3709, IDAHO CODE; AMENDING SECTION 63-3638, IDAHO CODE, AS AMENDED BY SECTION 3, CHAPTER 104, LAWS OF 2004, TO EXCLUDE DISTRIBUTION OF REVENUES DISTRIBUTED UNDER SECTION 63-3709, IDAHO CODE; AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Section 63-3638, Idaho Code, as amended by Section 2, Chapter 104, Laws of 2004, 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 sections 63-3203 and 63-3709, Idaho Code, shall be distributed by the tax commission as follows:

(1) 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.

(2) Five million dollars ($5,000,000) per year is continuously appropriated and shall be distributed to the permanent building fund, provided by section 57-1108, Idaho Code.

(3) 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.

(4) 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.

(5) 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.

(6) An amount required by the provisions of chapter 53, title 33, Idaho Code.

(7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

(8) One dollar ($1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, all-terrain vehicle or other vehicle 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.

(9) Eleven and five-tenths percent (11.5%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be paid in installments each calendar quarter by the tax commission as follows:

(a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as follows:

(i) Fifty percent (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 percent (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.

(b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as follows:

(i) One million three hundred twenty thousand dollars ($1,320,000) annually 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;

(c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to the cities and counties as follows:

(i) Each city and county which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(c) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each city's and county's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each city and county shall be entitled to a proportionately increased payment, but such increase shall not exceed one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999.

(iv) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999, any amount over and above such one hundred five percent (105%) shall be paid fifty percent (50%) to the various cities in the proportion that the population of the city bears to the population of all cities within the state, and fifty percent (50%) to the various counties in the proportion that the population of a county bears to the population of the state; and

(d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to special purpose taxing districts as follows:

(i) Each such district which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(d) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this sub-

section (9)(d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (9)(d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1)(e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the tax commission shall determine the portion attributable to the special purpose taxing district from each county in which it is situated.

(iv) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(v) If a special purpose taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (9)(d).

(vii) For purposes of this subsection (9)(d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(10) Amounts calculated in accordance with section 2, chapter 356, Laws of 2001, for annual distribution to counties and other taxing districts beginning in October 2001 for replacement of property tax on farm machinery and equipment exempted pursuant to section 63-602EE, Idaho Code. For nonschool districts, the state tax commission shall distribute one-fourth (1/4) of this amount certified quarterly to each county. For school districts, the state tax commission shall distribute one-fourth (1/4) of the amount certified quarterly to each school district. For nonschool districts, the county auditor shall distribute to each district within thirty (30) calendar days from receipt of moneys from the tax commission. Moneys received by each taxing district for replacement shall be utilized in the same manner and in the same proportions as revenues from property taxation. The moneys remitted to the county treasurer for replacement of property exempt from taxation pursuant to section 63-602EE, Idaho Code, may be considered by the counties and other taxing districts and budgeted at the same time, in the same manner and in the same year as revenues from taxation on personal property which these moneys replace. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts which were received in the last calendar quarter by each district pursuant to this subsection prior to the consolidation. If a taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any

redistribution of moneys so received. If a taxing district annexes territory, the distribution of moneys received pursuant to this subsection shall be unaffected. Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection. School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy plus .001 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code. For school districts, beginning January 1, 2002, only the portion of property tax replacement received to replace property exempt from taxation pursuant to section 63-602EE, Idaho Code, based on the tax year 2000 tax charges for maintenance and operation as limited by sections 33-802 2. and 33-1002D, Idaho Code, shall not be subtracted from the maximum school district maintenance and operation property taxes permitted in accordance with section 33-802 2., Idaho Code. For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues.

(11) 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 fund.

SECTION 2. That Section 63-3638, Idaho Code, as amended by Section 3, Chapter 104, Laws of 2004, 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 sections 63-3203 and 63-3709, Idaho Code, shall be distributed by the tax commission as follows:

(1) 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.

(2) Five million dollars ($5,000,000) per year is continuously appropriated and shall be distributed to the permanent building fund, provided by section 57-1108, Idaho Code.

(3) 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.

(4) 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.

(5) 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.

(6) An amount required by the provisions of chapter 53, title 33, Idaho Code.

(7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

(8) One dollar ($1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, all-terrain vehicle or other vehicle 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.

(9) Thirteen and three-quarters percent (13.75%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be paid in installments each calendar quarter by the tax commission as follows:

(a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as follows:

(i) Fifty percent (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 percent (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.

(b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as follows:

(i) One million three hundred twenty thousand dollars ($1,320,000) annually 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;

(c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to the cities and counties as follows:

(i) Each city and county which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(c) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each city's and county's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each city and county

shall be entitled to a proportionately increased payment, but such increase shall not exceed one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999.

(iv) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999, any amount over and above such one hundred five percent (105%) shall be paid fifty percent (50%) to the various cities in the proportion that the population of the city bears to the population of all cities within the state, and fifty percent (50%) to the various counties in the proportion that the population of a county bears to the population of the state; and

(d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to special purpose taxing districts as follows:

(i) Each such district which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(d) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (9)(d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1)(e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the tax commission shall determine the portion attributable to the special purpose taxing district from each county in which it is situated.

(iv) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(v) If a special purpose taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (9)(d).

(vii) For purposes of this subsection (9)(d), a special purpose taxing district is any taxing district which is not a city, a

county or a school district.

(10) Amounts calculated in accordance with section 2, chapter 356, Laws of 2001, for annual distribution to counties and other taxing districts beginning in October 2001 for replacement of property tax on farm machinery and equipment exempted pursuant to section 63-602EE, Idaho Code. For nonschool districts, the state tax commission shall distribute one-fourth (1/4) of this amount certified quarterly to each county. For school districts, the state tax commission shall distribute one-fourth (1/4) of the amount certified quarterly to each school district. For nonschool districts, the county auditor shall distribute to each district within thirty (30) calendar days from receipt of moneys from the tax commission. Moneys received by each taxing district for replacement shall be utilized in the same manner and in the same proportions as revenues from property taxation. The moneys remitted to the county treasurer for replacement of property exempt from taxation pursuant to section 63-602EE, Idaho Code, may be considered by the counties and other taxing districts and budgeted at the same time, in the same manner and in the same year as revenues from taxation on personal property which these moneys replace. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts which were received in the last calendar quarter by each district pursuant to this subsection prior to the consolidation. If a taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received. If a taxing district annexes territory, the distribution of moneys received pursuant to this subsection shall be unaffected. Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection. School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy plus .001 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code. For school districts, beginning January 1, 2002, only the portion of property tax replacement received to replace property exempt from taxation pursuant to section 63-602EE, Idaho Code, based on the tax year 2000 tax charges for maintenance and operation as limited by sections 33-802 2. and 33-1002D, Idaho Code, shall not be subtracted from the maximum school district maintenance and operation property taxes permitted in accordance with section 33-802 2., Idaho Code. For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues.

(11) 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 fund.

SECTION 3. Section 1 of this act shall be in full force and effect on and after July 1, 2005. Section 2 of this act shall be in full force and effect on and after August 1, 2005.

Approved February 18, 2005.

CHAPTER 19
(S.B. No. 1003)

AN ACT

RELATING TO THE IDAHO DAIRY PRODUCTS COMMISSION; AMENDING SECTION 25-3102, IDAHO CODE, TO REVISE MEMBERSHIP REQUIREMENTS FOR THE COMPOSITION OF THE IDAHO DAIRY PRODUCTS COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 25-3104, IDAHO CODE, TO REVISE THE NUMBER OF COMMISSION MEMBERS REQUIRED TO REPRESENT CERTAIN DESIGNATED DISTRICTS AND TO REVISE DESIGNATED REPRESENTATIVE DISTRICTS.

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

SECTION 1. That Section 25-3102, Idaho Code, be, and the same is hereby amended to read as follows:

25-3102. DAIRY PRODUCTS COMMISSION -- ESTABLISHMENT -- MEMBERS. (1) There is hereby created and established in the department of self-governing agencies the "Idaho dairy products commission" to be composed of nine (9) producer members, ~~one~~ three (~~1~~3) from each of the ~~nine~~ three (~~9~~3) commission districts referred to in section 25-3104, Idaho Code, who shall be elected by the producers of said districts as hereinafter set forth, and they shall hold office for a term of three (3) years.

(2) The dean of the college of agriculture, ~~U~~university of Idaho, or his duly authorized representative, and a duly authorized representative of the Idaho milk processors association, shall be ex officio members without vote of the commission.

SECTION 2. That Section 25-3104, Idaho Code, be, and the same is hereby amended to read as follows:

25-3104. REPRESENTATIVE DISTRICTS. ~~Each~~ Three (3) elected commission members shall represent one (1) of the following districts:

(1) District I, which shall include the counties of Ada, Adams, Benewah, Boise, Bonner, Boundary, Canyon, Clearwater, Elmore, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, Owyhee, Payette, Shoshone, Valley and Washington;

(2) District II, which shall include the counties of ~~Adams,--Boise, Gem,--Payette,--Valley,--Washington~~ Blaine, Camas, Gooding, Jerome, Lincoln, Cassia, Minidoka and Twin Falls;

(3) District III, which shall include the counties of ~~Canyon,--Owyhee~~ Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power and Teton;

~~(4)--District-IV,-which-shall-include-the-counties-of-Ada,-Elmore;~~

~~(5)--District-V,-which-shall-include-the-counties-of-Blaine,--Camas, Gooding,-Jerome,-Lincoln;~~

~~(6)--District--VI,-which-shall-include-the-counties-of-Cassia,-Minidoka,-Twin-Falls;~~

~~(7)--District-VII,-which-shall-include-the-counties-of-Butte,-Clark, Fremont,-Jefferson,-Madison,-Teton,-Custer,-Lemhi;~~

~~(8)--District-VIII,-which-shall-include--the--counties--of--Bannock, Bingham,-Bonneville;~~

~~(9)--District--IX,--which--shall--include-the-counties-of-Bear-Lake,-Caribou,-Franklin,-Oneida,-Power.~~

Approved February 22, 2005.

CHAPTER 20
(H.B. No. 21)

AN ACT
RELATING TO FISH AND GAME; AMENDING SECTION 36-1403, IDAHO CODE, TO REQUIRE MAGISTRATES TO SUBMIT RECORDS OF ALL REVOCATIONS OF TRAPPING PRIVILEGES TO THE IDAHO DEPARTMENT OF FISH AND GAME.

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

SECTION 1. That Section 36-1403, Idaho Code, be, and the same is hereby amended to read as follows:

36-1403. MAGISTRATE TO REPORT REVOCATIONS. Records of all revocations of fishing, trapping, and/or hunting privileges shall be submitted to the department by the magistrates concerned.

Approved February 22, 2005.

CHAPTER 21
(H.B. No. 25)

AN ACT
RELATING TO STATE INCOME TAX; AMENDING SECTION 63-3026A, IDAHO CODE, TO INCLUDE IN INCOME DERIVED FROM OR RELATING TO SOURCES WITHIN IDAHO, GAINS OR LOSSES REALIZED FROM THE SALE OR OTHER DISPOSITION OF A PARTNERSHIP INTEREST OR STOCK IN AN S CORPORATION TO THE EXTENT OF THE PARTNERSHIP'S OR S CORPORATION'S IDAHO APPORTIONMENT FACTOR IN THE YEAR PRECEDING THE YEAR OF SALE; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3026A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3026A. COMPUTING IDAHO TAXABLE INCOME OF PART-YEAR OR NONRESIDENT INDIVIDUALS, TRUSTS AND ESTATES. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(2) For part-year resident individuals, trusts or estates the term

"Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

(ii) The ownership or disposition of any interest in real or tangible personal property located in this state;

(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

(iv) A resident estate or trust;

(v) A nonresident estate or trust to the extent the income and deductions of the nonresident estate or trust were derived from or related to sources within this state;

(vi) The conduct of pari-mutuel wagering, charitable gaming or any other form of gambling taking place within this state, except as expressly limited in section 67-7439, Idaho Code;

(vii) Gains or losses realized from the sale or other disposition of a partnership interest or stock in an S corporation to the extent of the partnership's or S corporation's Idaho apportionment factor in the taxable year immediately preceding the year of sale.

(b) Notwithstanding the provisions of subsection (3)(a) of this section, transactions and investments made, placed or directed by Idaho resident registered broker-dealers and investment advisers or institutions exempt from registration under the Idaho securities act in securities listed with or through the New York Stock Exchange, the American Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director of the department of finance which generate dividends, interest, capital gains or similar profits or returns for nonresidents not otherwise subject to Idaho income taxation shall not result in the intangible property being deemed to have a situs

outside the domicile of the owner.

(c) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or related to sources within this state.

(d) The income of nonresident or part-year resident individuals, trusts or estates which is derived from or related to sources both within and without this state shall be attributable to this state in the manner prescribed in the rules of the state tax commission.

(4) In computing the Idaho taxable income of a part-year or nonresident individual, trust or estate, the standard deduction or itemized deductions, as defined in section 63-3022(j), Idaho Code, if applicable, and the exemptions, as defined in section 151 of the Internal Revenue Code or any allowance in lieu of such deduction, shall be allowed in the proportion that paragraph (a) of this subsection bears to paragraph (b) of this subsection:

(a) The Idaho taxable income of the taxpayer modified as follows:

(i) No allowance shall be made for either the standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction.

(b) The Idaho taxable income as would be calculated for a resident of Idaho modified as follows:

(i) No allowance shall be made for either a standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction;

(iii) Compensation for active military service in the armed forces shall not be deducted;

(iv) Income earned within the original exterior boundaries of any federally created Indian reservation by an enrolled Indian in a federally recognized Indian tribe on a federally recognized Indian reservation shall be added if not otherwise included.

(5) An adjustment may be made to eliminate distortions in the amount of net income attributable to a taxpayer's activities within the state of Idaho. Such deductions shall be limited to circumstances involving itemized deductions as referred to in subsection (4) of this section and which reflect:

(a) A failure to reflect the net income or deduction after reimbursements have been received; or

(b) A failure to reflect the net amount of mortgage interest income or expense from activities within Idaho.

(6) For the purposes of subsections (1) and (2) of this section, deductions and adjustments allowed in computing the Idaho taxable income of nonresident and part-year resident individuals, trusts and estates shall be prescribed in the rules of the state tax commission. Such rules shall be based upon:

(a) Whether or not the deduction or adjustment is related to the production of income reportable to Idaho;

(b) Whether or not the deduction or adjustment is related to income received, expenses paid, or events of tax consequence which occurred during a portion of a taxable year that the taxpayer was domiciled in or residing in Idaho; or

(c) Any other appropriate basis for making the adjustment. An "appropriate basis" is one which the state tax commission finds is needed to insure that the amount of Idaho taxable income is fairly and reasonably related to a taxpayer's activities in this state.

SECTION 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, 2005.

Approved February 22, 2005.

CHAPTER 22
(H.B. No. 27)

AN ACT

RELATING TO COLLECTION OF TAXES; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3061A, IDAHO CODE, TO PROVIDE THE MANNER OF SERVICE OF A NOTICE OF LEVY AND DISTRAINT BY THE STATE TAX COMMISSION.

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 63-3061A, Idaho Code, and to read as follows:

63-3061A. NOTICE OF LEVY AND DISTRAINT. (1) The state tax commission shall, at the time of levy, provide to the taxpayer and to any person in possession of the property subject to distraint, written notice of levy and distraint. The written notice of levy and distraint may be:

(a) Given in person;

(b) Left at the dwelling place or usual place of business of such person; or

(c) Sent by certified mail to such person's last known address.

(2) Service may be made by other means, including electronic means as provided in chapter 50, title 28, Idaho Code, the uniform electronic transactions act, when agreed upon by the state tax commission and the party served.

Approved February 22, 2005.

CHAPTER 23
(H.B. No. 28)

AN ACT

RELATING TO TECHNICAL CORRECTIONS TO THE IDAHO INCOME TAX ACT; AMENDING SECTION 63-3029B, IDAHO CODE, TO PROVIDE THAT PURCHASE OF EQUIPMENT FOR WHICH A DEDUCTION IS ALLOWED UNDER SECTION 179 OF THE INTERNAL REVENUE CODE IS NOT A QUALIFIED INVESTMENT; AMENDING SECTION

63-3029E, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 63-3029F, IDAHO CODE, TO CLARIFY THE NEW JOBS CREDIT IN RELATION TO A REVENUE PRODUCING ENTERPRISE AND A TRADE OR BUSINESS; AMENDING SECTION 63-3029I, IDAHO CODE, TO PROVIDE PROPER CITATIONS; AMENDING SECTION 63-3033, IDAHO CODE, TO CONFORM INDIVIDUAL INCOME TAX FILING DATES TO THE DATES PROVIDED IN THE INTERNAL REVENUE CODE FOR CERTAIN PERSONS IN COMBAT ZONES; AMENDING SECTION 63-3036, IDAHO CODE, TO PROVIDE ANNUAL WITHHOLDING TAX RETURNS FOR CERTAIN FARMER-EMPLOYERS; AMENDING SECTION 63-3068, IDAHO CODE, TO PROVIDE THAT IN ALL CASES THAT THE STATUTE OF LIMITATIONS ON COLLECTION OF ASSESSED TAX BEGINS ON THE DATE OF ENTRY OF THE RECORD OF ASSESSMENT; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3029B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029B. INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) At the election of the taxpayer there shall be allowed, subject to the applicable limitations provided herein as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to the sum of:

(a) The tax credit carryovers; and

(b) The tax credit for the taxable year.

(2) The maximum allowable amount of the credit for the current taxable year shall be three percent (3%) of the amount of qualified investments made during the taxable year.

(3) As used in this section "qualified investment" means certain ~~depreciable~~ property which:

(a) (i) Is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the Internal Revenue Code subject to the limitations provided for certain regulated companies in section 46(f) of the Internal Revenue Code and is not a motor vehicle under eight thousand (8,000) pounds gross weight; or

(ii) Is qualified broadband equipment as defined in section 63-3029I, Idaho Code; and

(b) Is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and

(c) Has a situs in Idaho.

(4) (a) For qualified investments placed in service in 2003 and thereafter, a taxpayer, other than a person whose rate of charge or rate of return, or both, is regulated or limited according to federal or state law, may elect, in lieu of the credit provided by this section, a two (2) year exemption from all taxes on personal property on the qualified investment. The exemption from personal property tax shall apply to the year the election is filed as provided in this section and the immediately following year. The election provided by this paragraph is available only to a taxpayer whose Idaho taxable income, before application of net operating losses carried back or forward, in the second preceding taxable year in which the investment is placed in service is negative.

(b) The election shall be made in the form prescribed by the state

tax commission and shall include a specific description and location of all qualified investments placed into service and located in the jurisdiction of the assessing authority, a designation of the specific assets for which the exemption is claimed, and such other information as the state tax commission may require. The election must be made by including the election form with the listing of personal property required by section 63-302, Idaho Code, or, in the case of operating property assessed under chapter 4, title 63, Idaho Code, with the operator's statement required by section 63-404, Idaho Code. Once made the election is irrevocable. If no election is made, the election is not otherwise available. A copy of the election form must also be attached to the original income tax return due for the taxable year in which the claim was made.

(c) The state tax commission and the various county assessors are authorized to exchange information as necessary to properly coordinate the exemption provided in this subsection. Information disclosed to county officials under this subsection may be used only to determine the validity or amount of a taxpayer's entitlement to the exemption provided in this section, and is not otherwise subject to public disclosure as provided in section 9-340D, Idaho Code.

(d) In the event that an investment in regard to which the election under this subsection was made is determined by the state tax commission:

(i) To not be a qualified investment, or

(ii) To have ceased to qualify during the recapture period, or

(iii) To be otherwise not qualified for the election,

the taxpayer shall be subject to recapture of the property tax benefit.

(e) The benefit to be recaptured in subsection (4)(d) of this section shall be computed in the manner required in subsection (7) of this section and such recapture amount shall be subject to assessment in the same manner as a deficiency in tax under this chapter. For purposes of calculating the recapture, the property tax benefit shall be:

(i) In the case of locally assessed property located in a single county or nonapportioned centrally assessed property, the market value of exempted property times the average property tax levy for that county in the year or years for which the exemption was claimed.

(ii) In the case of other centrally assessed property and property located in more than one (1) county, the market value of exempted property times the average urban property tax levy of the state as determined by the state tax commission in each of the years for which the exemption was claimed.

(f) All moneys collected by the state tax commission pursuant to this subsection, which amounts are continuously appropriated for this purpose, shall be deposited with the state treasurer and placed in the state refund account, as provided by section 63-3067, Idaho Code, to be remitted to the county within which the property was located that was not a qualified investment or ceased to qualify during the recapture period. The county shall distribute this remittance to all appropriate taxing districts based on the proportion each appropriate taxing district's levy is to the total of all the levies of the taxing districts for the tax code area where the prop-

erty was located for each year the exemption was granted. If any taxing district is dissolved or disincorporated, the proportionate share of the remittance to be distributed to that taxing district shall be deposited in the county current expense fund.

(g) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection shall be treated as property tax revenue by taxing districts.

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, the amount of the credit allowed shall not exceed fifty percent (50%) of the tax liability of the taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(6) If the sum of credit carryovers from the credit allowed by subsection (2) of this section and the amount of credit for the taxable year from the credit allowed by subsection (2) of this section exceed the limitation imposed by subsection (5) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be an investment credit carryover to the fourteen (14) succeeding taxable years. In the case of a group of corporations filing a combined report under section 63-3027, Idaho Code, or sections 63-3027B through 63-3027E, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (5) of this section, instead of carried over. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, so long as the qualified investment property for which the unused credit was granted still maintains Idaho situs. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) Any recapture of the credit allowed by subsection (2) of this section on property disposed of or ceasing to qualify, prior to the close of the recapture period, shall be determined according to the applicable recapture provisions of the Internal Revenue Code. In the case of a unitary group of corporations, the increase in tax due to the recapture of investment tax credit must be reported by the member of the group who earned the credit regardless of which member claimed the credit against tax.

(8) For the purpose of determining whether property placed in service is a "qualified investment" as defined in subsection (3) of this section, the provisions of section 49 of the Internal Revenue Code shall be disregarded. "Qualified investment" shall not include any amount for which a deduction is allowed under section 179 of the Internal Revenue Code in computing taxable income.

(9) For purposes of this section, property has a situs in Idaho during a taxable year if it is used in Idaho at any time during the taxable year. Property not used in Idaho during a taxable year does not have a situs in Idaho in the taxable year during which the property is not used in Idaho or in any subsequent taxable year. No credit or carryover of credit is permitted under this section if the credit or carryover relates to property that does not have a situs in Idaho during the taxable year for which the credit or carryover is claimed. The Idaho situs of property must be established by records maintained by the taxpayer which are created reasonably contemporaneously with the use of the

property.

(10) In the case of property used both in and outside Idaho, the taxpayer, electing to claim the credit provided in this section, must elect to compute the qualified investment in property with a situs in Idaho for all such investments first qualifying during that year in one (1), but only one (1), of the following ways:

(a) The amount of each qualified investment in a specific asset shall be separately computed based on the percentage of the actual use of the property in Idaho by using a measure of the use, such as total miles or total machine hours, that most accurately reflects the beneficial use during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service; provided, that the asset is placed in service more than ninety (90) days before the end of the taxable year. In the case of assets acquired, constructed, reconstructed, erected or placed into service within ninety (90) days prior to the end of the taxable year in which the investment first qualifies, the measure of the use of that asset within Idaho for that year shall be based upon the percentage of use in Idaho during the first ninety (90) days of use of the asset;

(b) The investment in qualified property used both inside and outside Idaho during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service shall be multiplied by the percent of the investment that would be included in the numerator of the Idaho property factor determined pursuant to section 63-3027, Idaho Code, for the same year.

(11) Only for the purposes of subsections (3)(a) and (8) of this section, references to sections of the "Internal Revenue Code" mean the sections referred to as they existed in the Internal Revenue Code of 1986 prior to November 5, 1990.

SECTION 2. That Section 63-3029E, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029E. DEFINITIONS -- CONSTRUCTION OF TERMS. As used in this section and in section 63-3029F, Idaho Code:

(1) (a) "New employee" means a person subject to Idaho income tax withholding whether or not any amounts are required to be withheld, employed by the taxpayer in a ~~revenue-producing-enterprise--creating value-added-natural-resource-products~~ trade or business, and covered for unemployment insurance purposes under chapter 13, title 72, Idaho Code, during the taxable year for which the credit allowed by section 63-3029F, Idaho Code, is claimed. A person shall be deemed to be so engaged if such person performs duties on:

(i) A regular full-time basis; or

(ii) A part-time basis if such person is customarily performing such duties at least twenty (20) hours per week.

No credit shall be earned unless the new employee shall have performed such duties for the taxpayer for a minimum of nine (9) months during the taxable year for which the credit is claimed.

(b) The provisions of paragraph (a) of this subsection notwithstanding, no credit shall be allowed for employment of persons by a taxpayer who acquires a ~~revenue-producing-enterprise~~ trade or business from another taxpayer or who operates in a place of business

the same or a substantially identical ~~revenue-producing--value-added natural--resource--products-enterprise~~ trade or business as operated by another taxpayer within the prior twelve (12) months, except as the prior taxpayer would have qualified under the provisions of paragraph (c) of this subsection. Employees transferred from a related taxpayer shall not be included in the computation of the credit.

(c) The number of employees during any taxable year for any taxpayer shall be the mathematical average of the number of employees reported to the Idaho department of labor for employment security purposes during the twelve (12) months of the taxable year which qualified under paragraph (a) of this subsection. In the event the business is in operation for less than the entire taxable year, the number of employees of the business for the year shall be the average number actually employed during the months of operation, providing that the qualifications of paragraph (a) of this subsection are met.

(2) "Revenue-producing enterprise" means the production, assembly, fabrication, manufacture or processing of any natural resource product.

(3) "Same or a substantially identical ~~revenue-producing-enterprise~~ trade or business" means a ~~revenue-producing-enterprise~~ trade or business in which the products produced or sold, or the activities conducted are the same in character and use and are produced, sold or conducted in the same manner as, or for the same types of customers as, the products or activities produced, sold or conducted in another ~~revenue-producing enterprise~~ trade or business.

SECTION 3. That Section 63-3029F, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029F. SPECIAL CREDIT AVAILABLE -- NEW EMPLOYEES. (1) Any taxpayer shall be allowed a credit, in an amount determined under subsection (2) of this section, against the tax imposed by this chapter, other than the tax imposed by section 63-3082, Idaho Code, for any taxable year during which the taxpayer's employment of new employees, as defined under section 63-3029E(1), Idaho Code, increases above the taxpayer's average employment for either: (a) the prior taxable year, or (b) the average of three (3) prior taxable years, whichever is higher. No credit shall be allowed under this section unless the number of new employees equals or exceeds one (1) person.

(2) (a) The credit authorized in subsection (1) of this section shall be:

(i) Five hundred dollars ($500) per new employee described in subsection (2)(d) of this section; or

(ii) One thousand dollars ($1,000) per new employee described in subsection (2)(c) of this section, but not both.

(b) The total credit allowed by this section shall not exceed three and one-quarter percent (3.25%) of net income from the taxpayer's corporate, proprietorship, partnership, small business corporation or limited liability company ~~revenue-producing-enterprise~~ trade or business in which the employment occurred. Additionally, the total amount of this and all other credits allowed under this chapter except for the credits allowed under section 63-3029, Idaho Code, shall not exceed fifty percent (50%) of the tax liability of the

taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(c) The one thousand dollar ($1,000) credit ~~allowed for new employees described in this paragraph~~ shall apply to an employee who, in the calendar year ending during the taxable year for which the credit is claimed, received annual earnings at an average rate of fifteen dollars and fifty cents ($15.50) or more per hour worked and who, during such calendar year, was eligible to receive employer provided coverage under an accident or health plan described in section 105 of the Internal Revenue Code.

(d) The five hundred dollar ($500) credit ~~allowed for new employees described in this paragraph~~ shall apply to an employee not described in subsection (2)(c) of this section and who is employed in a revenue-producing enterprise as defined in section 63-3029E, Idaho Code.

(3) If the sum of the credit carryovers from the credit allowed by subsection (2) of this section and the amount of credit for the taxable year from the credit allowed by subsection (2) of this section exceed the limitation imposed by subsection (2) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be a credit carryover to the three (3) succeeding taxable years. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, so long as the employment level for which the credit was granted is still maintained.

SECTION 4. That Section 63-3029I, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029I. INCOME TAX CREDIT FOR INVESTMENT IN BROADBAND EQUIPMENT. (1) Subject to the limitations of this section, for taxable years beginning after January 1, 2001, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, for qualified expenditures in qualified broadband equipment in Idaho.

(2) The credit permitted in subsection (1) of this section shall be three percent (3%) of the qualified investment in qualified broadband equipment in Idaho and shall be in addition to the credit for capital investment permitted by section 63-3029B, Idaho Code.

(3) As used in this section the term:

(a) "Qualified investment" shall be as defined in section 63-3029B, Idaho Code.

(b) "Qualified broadband equipment" means equipment that qualifies for the credit for capital investment permitted by section 63-3029B, Idaho Code, and is capable of transmitting signals at a rate of at least two hundred thousand (200,000) bits per second to a subscriber and at least one hundred twenty-five thousand (125,000) bits per second from a subscriber, and

(i) In the case of a telecommunications carrier, such qualifying equipment shall be necessary to the provision of broadband service and an integral part of a broadband network. "Telecommunications carrier" has the meaning given such term by section 3(44) of the communications act of 1934, as amended, but does not include a commercial mobile service provider.

(ii) In the case of a commercial mobile service carrier, such qualifying equipment shall extend from the subscriber side of the mobile telecommunications switching office to a transmitting/receiving antenna, including such antenna, on the outside of the structure in which the subscriber is located. "Commercial mobile service carrier" means any person authorized to provide commercial mobile radio service to subscribers as defined in section 20.3 of title 47, Code of Federal Regulations (10-1-99 ed.), as amended.

(iii) In the case of a cable or open video system operator, such qualifying equipment shall extend from the subscriber's side of the headend to the outside of the structure in which the subscriber is located. The terms "cable operator" and "open video system operator" have the meanings given such terms by sections 602(5) and 653, respectively, of the communications act of 1934, as amended.

(iv) In the case of a satellite carrier or a wireless carrier other than listed above, such qualifying equipment is only that equipment that extends from a transmitting/receiving antenna, including such antenna, which transmits and receives signals to or from multiple subscribers to a transmitting/receiving antenna on the outside of the structure in which the subscriber is located. "Satellite carrier" means any person using the facilities of a satellite or satellite services licensed by the federal communications commission and operating a fixed-satellite service or direct broadcast satellite services to provide point-to-multipoint distribution of signals. "Other wireless carrier" means any person, other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video operator, or satellite carrier, providing broadband services to subscribers through the radio transmission of energy.

(v) In the case of packet switching equipment, such packet equipment installed in connection with other qualifying equipment listed in subsections (~~2~~3)(b)(i) through (~~2~~3)(b)(iv) of this section, provided it is the last in a series of equipment that transmits signals to a subscriber or the first in a series of equipment that transmits signals from a subscriber. "Packet switching" means controlling or routing the path of a digital transmission signal which is assembled into packets or cells.

(vi) In the case of multiplexing and demultiplexing equipment, such equipment only to the extent that it is deployed in connection with providing broadband services in locations between packet switching equipment and the structure in which the subscriber is located. "Multiplexing" means the transmission of two (2) or more signals over a communications circuit without regard to the communications technology.

(vii) Any property not primarily used to provide services in Idaho to public subscribers is not qualified broadband equipment.

(4) No equipment described in subsections (~~2~~3)(b)(i) through (~~2~~3)(b)(vi) of this section shall qualify for the credit provided in subsection (1) of this section until the taxpayer applies to and obtains from the Idaho public utilities commission an order confirming that the

installed equipment is qualified broadband equipment. Applications submitted to the commission shall be governed by the commission's rules of procedure. The commission may issue procedural orders necessary to implement this section.

(5) The credit allowed by subsection (1) of this section together with any credits carried forward under subsection (7) of this section shall not, in any one (1) taxable year, exceed the lesser of:

(a) The amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter; or

(b) Seven hundred fifty thousand dollars ($750,000).

When credits earned in more than one (1) taxable year are available, the oldest credits shall be applied first.

(6) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (7) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) If the credit allowed by subsection (1) of this section exceeds the limitation under subsection (5) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(8) In the event that qualified broadband equipment upon which the credit allowed by this section has been used ceases to qualify for the credit allowed by section 63-3029B, Idaho Code, or is subject to recapture of that credit, the recapture of credit under this section shall be in the same proportion and subject to the same provisions as the amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(9) (a) Subject to the requirements of this subsection, a taxpayer who earns and is entitled to the credit or to an unused portion of the credit allowed by this section may transfer all or a portion of the unused credit to:

(i) Another taxpayer required to file a return under this chapter; or

(ii) To an intermediary for its use or for resale to a taxpayer required to file a return under this chapter.

In the event of either such a transfer, the transferee may claim the credit on the transferee's income tax return originally filed during the calendar year in which the transfer takes place and, in the case of carryover of the credit, on the transferee's returns for the number of years of carryover available to the transferor at the time of the transfer unless earlier exhausted.

(b) Before completing a transfer under this subsection, the transferor shall notify the state tax commission of its intention to transfer the credit and the identity of the transferee. The state tax commission shall provide the transferor with a written statement of the amount of credit available under this section as then appearing in the commission's records and the number of years the credit may be carried over. The transferee shall attach a copy of the statement to any return in regard to which the transferred credit is claimed.

(c) In the event that after the transfer the state tax commission determines that the amount of credit properly available under this section is less than the amount claimed by the transferor of the credit or that the credit is subject to recapture, the commission shall assess the amount of overstated or recaptured credit as taxes due from the transferor and not the transferee. The assessment shall be made in the manner provided for a deficiency in taxes under this chapter.

(10) In addition to other needed rules, the state tax commission may promulgate rules prescribing, in the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate.

SECTION 5. That Section 63-3033, Idaho Code, be, and the same is hereby amended to read as follows:

63-3033. EXTENSION OF TIME. (a) Taxpayers shall have an automatic extension of time for filing any return, declaration, statement or other document, or payment required by this chapter for a period of six (6) months if on or before the unextended due date the taxpayer has paid at least eighty percent (80%) of the total tax due on the income tax return when it is filed, or the total tax due on the income tax return for the prior year if a return was filed for the prior year.

(b) If, on the unextended due date, the payment required to meet the provisions of subsection (a) of this section, after consideration of any previous credits or payments applicable to the return, is fifty dollars ($50.00) or less, such payment shall not be required in order to qualify for the extension. However, interest shall accrue as provided in subsection (f) of this section.

(c) 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.

(d) ~~Taxpayers~~ Individuals 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, 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.

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

(f) If the amount of payment made under subsection (a) of this section is less than eighty percent (80%) of the total tax due under the provisions of this chapter and is less than the amount of the total tax due on the income tax return for the prior year, except as permitted by subsection (b) of this section, a penalty may be applied to the total of the balance due unless reasonable cause can be established. The penalty shall be:

(1) If the taxes for the taxable year are paid on or before the

extended due date, two percent (2%) per month from the original due date to the date of payment.

(2) If the taxes for the taxable year are not paid on or before the extended due date, the penalty provided in section 63-3046(c), Idaho Code, from the original due date.

(g) In all cases of 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 6. That Section 63-3036, Idaho Code, be, and the same is hereby amended to read as follows:

63-3036. STATE WITHHOLDING TAX FOR FARMERS. (1) Every farmer who is an employer required by the provisions of the Internal Revenue Code to withhold, collect, and pay income tax on wages paid by such employer to any employee shall at the time of the payment of wages, salaries, bonuses or other emoluments to an employee, deduct and retain therefrom an amount determined in accordance with section 63-3035, Idaho Code, and the amount so withheld and deducted shall be held by said farmer-employer in trust for the state of Idaho and for the payment thereof to the state tax commission. Provided, that no tax need be withheld from an employee whose wages, salaries, bonuses and other emoluments total less than one thousand dollars ($1,000) for the tax year.

(2) The tax so withheld by a farmer-employer subject to this section shall be paid to the state tax commission~~:~~

~~(a)--Except-as-provided-in-paragraph-(b)-of-this-subsection,--on--or before--the--last--day-of-February-of-the-year-following-the-year-in which-such-deduction-was-made;~~

~~(b)--In-the-case-of-an-employer-who-is-a-"covered--employer"--paying wages--for--"agricultural--labor,"-as-those-terms-are-defined-in-the employment-security-law-in-chapter-13,-title-72,-Idaho-Code,--on--or before--the-date-on-which-contributions-are-due-from-the-employer-to the-department-of-labor-under-the--employment--security--law~~ on or before the date required by subsection (b)(1) of section 63-3035, Idaho Code.

(3) The farmer-employer shall deliver to the state tax commission a return upon such form as shall be prescribed by said state tax commission showing the amounts of wages, salaries, bonuses or other emoluments paid to his employee, the amount deducted therefrom in accordance with this section, and such other pertinent and necessary information as the state tax commission may require on or before the date payments required by this section are due.

(4) The farmer-employer making such a deduction as provided for in this section shall furnish to the employee annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of the tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and at the same time every employer shall file a copy thereof with the state tax commission. The provisions of subsections (d), (e), (f), (g) and (h) of section 63-3035, Idaho Code, shall be applicable to the tax withheld by the farmer-employer under this section.

SECTION 7. 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 entry of the record of assessment required by section 63-3044, Idaho Code, 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 twelve (12) 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 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 (m) 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 (m) 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 (m) 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 (m) of this section, then only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended federal return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(j) Notwithstanding any other provisions of this section, a notice of deficiency, related to items on the return of any pass-through entity, as defined in this section, which other taxpayers are required by law to report, shall be issued to such other taxpayers within the later of three (3) years from the due date of the other taxpayers' return, without regard to extensions, three (3) years from the date the other taxpayers' returns were filed, or three (3) years from the date of filing of the pass-through entity's return. If the pass-through entity files an amended return, notices of deficiency may be issued to the other taxpayers within three (3) years from the date the amended return for the pass-through entity was filed with the state tax commission. If the pass-through entity files an amended return with the internal revenue service, or the internal revenue service issues a final determination to the pass-through entity, then the period of limitations for issuing a notice of deficiency to the other taxpayers shall be reopened and shall not expire until three (3) years from the date of delivery to the tax commission by the pass-through entity of the amended federal return or the later of one (1) year from the date of delivery to the state tax commission by the pass-through entity of the final federal determination, three (3) years from the due date of the pass-through entity's return, without regard to extensions, or three (3) years from the date the pass-through entity's return was filed.

(k) For purposes of this section, "pass-through entity" means a partnership, S-corporation, trust, limited liability company or any other entity whose items of income, deductions, gains, losses and credits must be reported by other taxpayer(s). For further purposes of this

section, the term "other taxpayer" shall include, by way of unlimiting example, such taxpayers as partners, shareholders, beneficiaries, joint venturers or investors.

(l) In the case of a duplicate return filed under section 63-217(1)(b), Idaho Code, the limitation under this section shall be the later of one (1) year from the filing of the duplicate return or the date otherwise applicable under this section.

(m) 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.

(n) 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.

(o) 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 8. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2005.

Approved February 22, 2005.

CHAPTER 24
(H.B. No. 126)

AN ACT

RELATING TO TAXATION OF FOREST LANDS AND FOREST PRODUCTS; AMENDING SECTION 63-1701, IDAHO CODE, TO REVISE A DEFINITION AND TO DEFINE TERMS; AND AMENDING SECTION 63-1705, IDAHO CODE, TO PROVIDE FOR TAXATION OF FOREST LANDS UNDER THE PRODUCTIVITY OPTION, TO PROVIDE A PROCESS, TO AUTHORIZE AND DIRECT THE STATE TAX COMMISSION TO TAKE CERTAIN ACTION AND TO PROVIDE FOR THE COMMITTEE ON FOREST LAND TAXATION METHODOLOGIES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-1701, Idaho Code, be, and the same is hereby amended to read as follows:

63-1701. DEFINITIONS. As used in this chapter, unless the context requires otherwise:

(1) "Average annual net wood production" means the average net usable volume of wood one (1) acre of forest land will grow in one (1) year under average current and actual forest conditions and under current and reasonable management practices for each forest value zone.

(2) "Designation period" means any one (1) ten (10) year period in a sequence of ten (10) year periods which begin January 1, 1983.

(3) "Forest" means forest land and the timber thereon.

(4) "Forest land" means privately owned land being held and used primarily for the continuous purpose of growing and harvesting trees of a marketable species. Having met the above criteria, forest land may be further identified by the consideration of any of the following criteria:

(a) Forest land is land evidenced by present use and silvicultural treatment.

(b) Forest land is land which has a dedicated use that is further evidenced by a forest land management plan that includes eventual harvest of the forest crop.

(c) Forest land is land bearing forest growth or land which has not been converted to another use.

(d) Forest land is land which has had the trees removed by man through harvest, including clear-cuts or by natural disaster, such as but not limited to fire, and which within five (5) years after harvest or initial assessment will be reforested as specified in the forest practices act (chapter 13, title 38, Idaho Code).

(5) "Forest landowner" means the legal entity which holds the property rights under law to the forest land surface.

(6) "Forest products" means any forest crop harvested from forest land.

(7) "Forest products yield tax" means a tax levied on the value of forest products harvested from a parcel as prescribed in sections 63-1703 and 63-1706, Idaho Code.

(8) "Forest value" means the market value for assessment purposes as determined only on the basis of its ability to produce timber, other forest products, and associated agricultural products through ~~an income approach~~ the timber productivity valuation process as prescribed by section 63-1705, Idaho Code.

(9) "Stumpage value" means the value of timber, whether standing or downed by other than an intentional act of severance, expressed in terms of dollars per unit of measure.

(10) "Timber" means wood growth, of any species and of any size, standing or down on privately owned lands.

(11) "Bare land value" means the value of forest land exclusive of the value of timber and other products growing or being thereon.

(12) "Stumpage owner" means the legal entity which holds the property rights under law to the timber growing on private lands.

(13) "A substantial change of use" means any use other than as forest land as defined in subsection (4) of this section.

(14) "Deferred taxes" as used in section 63-1703, Idaho Code, means a tax levied to recapture the difference between taxes that were collected on a parcel designated under section 63-1706, Idaho Code, and what would have been collected on the parcel, had it been designated under section 63-1702 or 63-1705, Idaho Code.

(15) "Custodial expense" shall mean those expenses incurred in the maintenance of the forest land and limited to the following:

(a) Reforestation;
(b) Road maintenance;
(c) Managing public use;
(d) Forest inventory;
(e) Forest management planning;
(f) Facility operations and maintenance;
(g) Environmental analysis and documentation;
(h) Appeals and litigation;
(i) Land survey;
(j) Forest fire suppression;
(k) Other management expenses; and
(l) Labor associated with items (a) through (k) of this subsection, but shall not include the salaries or expenses, or any portion thereof, of any person or officer not directly engaged in the management of the forest land.

(16) "CFTM" means the committee on forest land taxation methodologies as provided in section 63-1705, Idaho Code.

SECTION 2. That Section 63-1705, Idaho Code, be, and the same is hereby amended to read as follows:

63-1705. TAXATION OF ~~LARGE-SIZE~~ FOREST ~~TRACTS~~ LANDS UNDER THE PRODUCTIVITY OPTION. (1) In order to encourage private forest landowners to retain and improve their holdings of forest lands and to promote better forest management, ~~large-size~~ forest ~~tracts~~ lands subject to this option shall be appraised, assessed and taxed as real property under the provisions of this section.

(2) ~~The--inventory--of--timber-and-other-forest-products-growing-on large-size-forest-tracts-shall-not-be-included-as-a-part--of--the--total forest--asset.~~ The forest land value shall be determined by ~~an-income approach~~ the timber productivity valuation process, as provided for in the committee on forest land taxation methodologies, User's Guide to the Timber Productivity Option's Valuation Method - 2005 (Schlosser. January 1, 2005, Moscow, Idaho), referred to in this chapter as the "user's guide," on file with the Idaho state tax commission, available on the website of the Idaho state tax commission, and which shall be made available in the office of each county assessor, which ~~capitalizes--the~~ values ~~of~~ the ~~average-annual~~ net wood production over a reasonable rotation period plus other agricultural-related income, if any, less annualized custodial expenses ~~including,-but-not-limited-to,-the-establishment,-protection,-maintenance,-improvement-and-management--of--the--crop over-the-rotation-period~~ as defined in section 63-1701, Idaho Code. Pursuant to the provisions of this section, the inventory of forest products shall not be included as part of the valuation of the forest land as provided in section 63-602W, Idaho Code. The state tax commission shall promulgate rules relating to the timber productivity valuation process, including custodial expenses, as provided for in the user's guide and the provisions of this chapter.

(3) Effective January 1, 2005, ~~through-January-1,-2006,~~ the market value for assessment purposes shall be determined annually by the county assessor ~~either-under-rules-prescribed-by-the-state--tax--commission--or the-market-values-contained-in-subsection-(5)-of-this-section,-whichever~~

~~is less. In prescribing such rules,~~ using the timber productivity valuation process developed by the CFTM, and as further prescribed in rule. Notwithstanding any other provision of law, the state tax commission is authorized to cite the user's guide in its rules and shall:

(a) Divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; ~~and~~

(b) Establish a uniform system of forest land classification which considers the productive capacity of the soil to grow forest products and furnish other associated agricultural uses~~.~~;

(c) Provide for the annual input to the timber productivity valuation process including the stumpage value, rotation length, mean annual increment, guiding discount rate, annualized custodial expenses, appropriate property tax rates, and real price appreciation rate of stumpage according to the user's guide. The guiding discount rate and the real price appreciation rate for timber products shall remain constant at four percent (4%) and one and one-quarter percent (1.25%) respectively, until January 1, 2012;

(d) Conduct a forest management cost study every five (5) years to determine the annualized custodial expenses to be used in the timber productivity valuation process as provided in the user's guide. The first study shall be conducted in 2005 and evaluated by the CFTM, with the results incorporated into the user's guide timber productivity valuation process on January 1, 2007. The forest management cost study shall be funded by the state tax commission, subject to appropriation by the legislature; and

(e) Provide for any additional data as needed.

(4) The state tax commission shall by March 1 of each year, furnish all input for the timber productivity valuation process to the county assessor. ~~for each value zone the capitalization rate, stumpage value, agricultural related income, if any, and expense component to be used in determining the forest value. From January 1, 1999, until January 1, 2006, the capitalization rate shall be the interest rate for the farm credit bank district serving Idaho, as set forth in the most current revenue ruling made pursuant to section 2032A(e)(7)(A) of the Internal Revenue Code and 26 CFR 20.2032A-4(e), plus eighty five one hundredths percent (.85%), plus a component for the local tax rate.~~

(5) Stumpage values shall be based upon the preceding five (5) year rolling average value of timber harvested within the forest value zone from state timber sales and/or the best available data for the same five (5) year period. Average agricultural-related income and the average expense component for each forest value zone shall be determined for the same time period as the period used to determine average stumpage values.

~~(5) The following are the alternative market values for assessment purposes for the period January 1, 2000, until January 1, 2006. The rules prescribed by the state tax commission in effect on January 1, 2000, are applicable to these alternative market values.~~

~~Alternative Forest Land Values~~
~~($/Acre)~~

~~2000~~	~~Productivity Class~~			~~2003~~	~~Productivity Class~~		
~~Zone~~	~~Good~~	~~Medium~~	~~Poor~~	~~Zone~~	~~Good~~	~~Medium~~	~~Poor~~
~~I~~	~~733~~	~~470~~	~~207~~	~~I~~	~~564~~	~~361~~	~~159~~
~~II~~	~~700~~	~~449~~	~~198~~	~~II~~	~~539~~	~~346~~	~~152~~
~~III~~	~~553~~	~~368~~	~~172~~	~~III~~	~~426~~	~~283~~	~~132~~
~~IV~~	~~379~~	~~252~~	~~117~~	~~IV~~	~~291~~	~~194~~	~~90~~

~~2001~~	~~Productivity Class~~			~~2004~~	~~Productivity Class~~		
~~Zone~~	~~Good~~	~~Medium~~	~~Poor~~	~~Zone~~	~~Good~~	~~Medium~~	~~Poor~~
~~I~~	~~676~~	~~434~~	~~191~~	~~I~~	~~507~~	~~325~~	~~143~~
~~II~~	~~646~~	~~415~~	~~183~~	~~II~~	~~485~~	~~311~~	~~137~~
~~III~~	~~511~~	~~339~~	~~159~~	~~III~~	~~383~~	~~255~~	~~119~~
~~IV~~	~~350~~	~~232~~	~~108~~	~~IV~~	~~262~~	~~174~~	~~81~~

~~2002~~	~~Productivity Class~~			~~2005~~	~~Productivity Class~~		
~~Zone~~	~~Good~~	~~Medium~~	~~Poor~~	~~Zone~~	~~Good~~	~~Medium~~	~~Poor~~
~~I~~	~~620~~	~~398~~	~~175~~	~~I~~	~~451~~	~~289~~	~~127~~
~~II~~	~~592~~	~~380~~	~~167~~	~~II~~	~~431~~	~~277~~	~~122~~
~~III~~	~~468~~	~~311~~	~~145~~	~~III~~	~~341~~	~~226~~	~~106~~
~~IV~~	~~321~~	~~213~~	~~99~~	~~IV~~	~~233~~	~~155~~	~~72~~

(6) Forest lands upon which, at any time after January 1, 1982, the trees are destroyed by fire, disease, insect infestation or other natural disaster such that the lands affected will not meet minimum stocking requirements under rules adopted pursuant to chapter 13, title 38, Idaho Code, shall be eligible for a reduction in value for the first ten (10) property tax years following the loss. The amount of reduction shall be determined by dividing the average age of the trees destroyed by the rotation age for the specific forest ~~value zone in which the property is located~~ productivity class appropriate for the affected acres. In no instance shall the annual reduction exceed eighty percent (80%) of the original forest value per year. In order to obtain a reduction, the landowner shall, on or before January 1, following the destruction, make written application to the assessor indicating the legal description of the lands in question and stating all pertinent facts. The assessor may investigate the facts and may request assistance from the state tax commission in performing such investigations. If the requirements are met, such forest lands shall be assessed and taxed on the reduced basis herein provided.

(7) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by applicable laws and rules.

(8) Effective January 1, 2004, there is created within the Idaho state tax commission the ~~committee on forest land taxation methodologies~~ CFTM. The membership of the ~~committee~~ CFTM shall be:

(a) A nonvoting chairman who shall be the member of the Idaho state tax commission assigned to property tax matters;

(b) Four (4) members selected from the membership of the intermountain forest association;

(c) One (1) member selected from the membership of the Idaho forest owners' association;

(d) Five (5) members selected from the membership of the Idaho association of counties; and

(e) The state superintendent of public instruction or his/her designee, in a nonvoting capacity.

The ~~committee--shall~~ CFTM may retain a forest economist selected by a majority of its members to advise the ~~committee~~ CFTM.

The costs of each ~~committee~~ CFTM member shall be borne by the respective member. The fees and costs of the forest economist shall be borne as determined by the ~~committee~~ CFTM.

~~The committee shall review forest land valuation in Idaho--and--consider--replacement--of the current income methodology found in this section by reviewing all--income--and--soil--expectation--methodologies--to determine forest land values.~~

The ~~committee shall~~ CFTM may prepare and deliver written reports to the house of representatives revenue and taxation and senate local government and taxation committees of its findings and recommendations for legislation ~~by no later than January 15, 2005~~ as the need may arise. The CFTM may meet periodically as determined by its chairman or the CFTM.

~~During the first regular session of the fifty-eighth Idaho--legislature--the house of representatives revenue and taxation and senate local government and taxation committees, shall review the values and--formula used--to compute forest land values to determine if modification to this section is appropriate and necessary.~~

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2005.

Approved March 1, 2005.

CHAPTER 25
(H.B. No. 22)

AN ACT

RELATING TO CODIFIER'S CORRECTIONS IN STATUTES; AMENDING SECTION 5-247, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 150, LAWS OF 2000, TO REDESIGNATE THE SECTION; AMENDING THE HEADING FOR CHAPTER 13, TITLE 6, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 6-1301, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 6-1302, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 6-1303, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 6-1304, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 6-1305, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 6-1306, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 6-1307, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION;

AMENDING SECTION 6-1308, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 6-1309, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 225, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 9-340D, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 9-350, IDAHO CODE, AS AMENDED AND REDESIGNATED BY SECTION 2, CHAPTER 122, LAWS OF 1996, TO REDESIGNATE THE SECTION; AMENDING SECTION 19-2719A, IDAHO CODE, AS ADDED BY SECTION 4, CHAPTER 140, LAWS OF 1995, TO REDESIGNATE THE SECTION; AMENDING THE HEADING FOR CHAPTER 11, TITLE 22, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 22-1101, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-1102, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-1105, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-1106, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-1107, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-1110, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-1111, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO REDESIGNATE THE SECTION; AMENDING THE HEADING FOR CHAPTER 35, TITLE 25, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 72, LAWS OF 1994, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 25-3501, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 72, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3502, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 72, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3503, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 72, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3504, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 72, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3505, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 72, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3506, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 72, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3507, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 72, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3508, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 72, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3502, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3503, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3505, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3507, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 25-3509, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 28-50-101, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 422, LAWS OF 2000, TO REDESIGNATE THE SECTION AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 28-50-102, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 422, LAWS OF 2000, TO REDESIGNATE THE SECTION; AMENDING SECTION 31-868, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 312, LAWS OF 1979, TO REDESIGNATE THE SECTION; AMENDING SECTION 31-A3501, IDAHO CODE, AS ADDED BY SECTION

1, CHAPTER 189, LAWS OF 1982, TO REDESIGNATE THE SECTION; AMENDING SECTION 31-A3502, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 189, LAWS OF 1982, AND AMENDED BY SECTION 28, CHAPTER 213, LAWS OF 1990, TO REDESIGNATE THE SECTION; AMENDING SECTION 31-A3503, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 189, LAWS OF 1982, TO REDESIGNATE THE SECTION; AMENDING SECTION 31-A3504, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 189, LAWS OF 1982, AND AMENDED BY SECTION 3, CHAPTER 300, LAWS OF 2004, TO REDESIGNATE THE SECTION; AMENDING SECTION 31-A3505, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 189, LAWS OF 1982, TO REDESIGNATE THE SECTION; AMENDING SECTION 31-A3506, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 189, LAWS OF 1982, TO REDESIGNATE THE SECTION; AMENDING SECTION 31-A3507, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 189, LAWS OF 1982, TO REDESIGNATE THE SECTION; AMENDING SECTION 31-A3508, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 189, LAWS OF 1982, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-1003A, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 321, LAWS OF 1995, TO REDESIGNATE THE SECTION; AMENDING SECTION 33-1513, IDAHO CODE, AS ADDED BY SECTION 3, CHAPTER 388, LAWS OF 2004, TO REDESIGNATE THE SECTION; AMENDING THE HEADING FOR CHAPTER 48, TITLE 33, IDAHO CODE, AS ADDED BY SECTION 10, CHAPTER 234, LAWS OF 1994, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 33-4801, IDAHO CODE, AS ADDED BY SECTION 10, CHAPTER 234, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 33-4802, IDAHO CODE, AS ADDED BY SECTION 10, CHAPTER 234, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 33-4803, IDAHO CODE, AS ADDED BY SECTION 10, CHAPTER 234, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 33-4805, IDAHO CODE, AS ADDED BY SECTION 10, CHAPTER 234, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 33-4806, IDAHO CODE, AS ADDED BY SECTION 10, CHAPTER 234, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 49-304, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; REPEALING SECTION 33-5202A, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 370, LAWS OF 2004; AMENDING SECTION 34-440, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-1459B, IDAHO CODE, AS ADDED BY SECTION 11, CHAPTER 183, LAWS OF 1976, TO REDESIGNATE THE SECTION AND TO CORRECT A CODIFIER'S ERROR; AMENDING THE HEADING FOR CHAPTER 49, TITLE 39, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 333, LAWS OF 1980, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 39-4901, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 333, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-4904, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 333, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-4905, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 333, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-4906, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 333, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-4907, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 333, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-4908, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 333, LAWS OF 1980, TO REDESIGNATE THE SECTION; AMENDING THE HEADING FOR CHAPTER 81, TITLE 39, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 357, LAWS OF 2001, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 39-8101, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 357, LAWS OF 2001, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-8102, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 357, LAWS OF 2001, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-8103, IDAHO

CODE, AS ADDED BY SECTION 1, CHAPTER 357, LAWS OF 2001, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-8104, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 357, LAWS OF 2001, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-8105, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 357, LAWS OF 2001, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-8106, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 357, LAWS OF 2001, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-8107, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 357, LAWS OF 2001, TO REDESIGNATE THE SECTION; AMENDING SECTION 16-1513, IDAHO CODE, TO PROVIDE CORRECT STATUTORY CITATIONS; AMENDING SECTION 16-1612, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY CITATION; AMENDING SECTION 16-1613, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY CITATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1623, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY CITATION; AMENDING SECTION 16-1632, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY CITATION; AMENDING SECTION 16-2007, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY CITATION; AMENDING THE HEADING FOR CHAPTER 21, TITLE 40, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 40-2101, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2102, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2103, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2104, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2105, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2106, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2107, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2108, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2109, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2110, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2111, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2112, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 40-2113, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 331, LAWS OF 1994, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-286, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 322, LAWS OF 1994, TO REDESIGNATE THE SECTION; AMENDING SECTION 41-5501, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-2030, IDAHO CODE, AS ADDED BY SECTION 5, CHAPTER 259, LAWS OF 1987, TO REDESIGNATE THE SECTION AND TO PROVIDE A CATCHLINE; AMENDING SECTION 54-2607, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING THE HEADING FOR CHAPTER 39, TITLE 54, IDAHO CODE, AS ADDED BY SECTION 3, CHAPTER 138, LAWS OF 1989, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 54-3901, IDAHO CODE, AS ADDED BY SECTION 3, CHAPTER 138, LAWS OF 1989, TO REDESIGNATE THE SECTION; AMENDING SECTION 54-3902, IDAHO CODE, AS ADDED BY SECTION 3, CHAPTER 138, LAWS OF 1989, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-3903, IDAHO CODE, AS ADDED BY SEC-

TION 3, CHAPTER 138, LAWS OF 1989, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-3904, IDAHO CODE, AS ADDED BY SECTION 3, CHAPTER 138, LAWS OF 1989, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-3905, IDAHO CODE, AS ADDED BY SECTION 3, CHAPTER 138, LAWS OF 1989, AND AMENDED BY SECTION 91, CHAPTER 216, LAWS OF 1993, TO REDESIGNATE THE SECTION AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING THE HEADING FOR CHAPTER 45, TITLE 54, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 33, LAWS OF 1998, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 54-4501, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 33, LAWS OF 1998, TO REDESIGNATE THE SECTION; AMENDING SECTION 54-4504, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 33, LAWS OF 1998, TO REDESIGNATE THE SECTION; AMENDING THE HEADING FOR CHAPTER 27, TITLE 55, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 335, LAWS OF 1998, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 55-2701, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 335, LAWS OF 1998, TO REDESIGNATE THE SECTION; AMENDING SECTION 55-2702, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 335, LAWS OF 1998, TO REDESIGNATE THE SECTION; AMENDING SECTION 55-2703, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 335, LAWS OF 1998, TO REDESIGNATE THE SECTION; AMENDING THE HEADING FOR CHAPTER 12, TITLE 56, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 261, LAWS OF 2004, TO REDESIGNATE THE CHAPTER; AMENDING SECTION 56-1201, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 261, LAWS OF 2004, TO REDESIGNATE THE SECTION; AMENDING SECTION 56-1202, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 261, LAWS OF 2004, TO REDESIGNATE THE SECTION; AMENDING SECTION 56-1203, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 261, LAWS OF 2004, TO REDESIGNATE THE SECTION; AMENDING SECTION 56-1204, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 261, LAWS OF 2004, TO REDESIGNATE THE SECTION AND TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 56-1205, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 261, LAWS OF 2004, TO REDESIGNATE THE SECTION; AMENDING SECTION 56-1206, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 261, LAWS OF 2004, TO REDESIGNATE THE SECTION; AMENDING SECTION 57-232, IDAHO CODE, AS ADDED BY SECTION 30, CHAPTER 208, LAWS OF 2001, TO REDESIGNATE THE SECTION; AMENDING SECTION 63-3622Y, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 435, LAWS OF 1990, TO REDESIGNATE THE SECTION; AMENDING SECTION 67-818, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 273, LAWS OF 2000, TO REDESIGNATE THE SECTION; AND AMENDING THE HEADING FOR CHAPTER 62, TITLE 67, IDAHO CODE.

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

SECTION 1. That Section 5-247, Idaho Code, as added by Section 1, Chapter 150, Laws of 2000, be, and the same is hereby amended to read as follows:

5-247~~8~~. VICTIMS OF CRIMES. (1) For the purpose of any civil action or proceeding brought by a victim of a crime against an offender who committed the crime, for any losses incurred by the victim, which loss was proximately caused by the crime, the limitation periods prescribed by this chapter shall be tolled until one (1) year after the offender has been released from any sentence of incarceration served for that crime and in full satisfaction of the sentence imposed.

(2) For purposes of this section "full satisfaction of the sentence

imposed" means the full-term release date from incarceration for the crime committed against the victim or the full-term release date from incarceration for any other crime for which the offender is serving time concurrently with, or consecutively to, time served for the crime against the victim, whichever is later.

SECTION 2. That the Heading for Chapter 13, Title 6, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

CHAPTER 1~~3~~4
PRODUCT LIABILITY

SECTION 3. That Section 6-1301, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

6-~~1301~~1401. SCOPE. The previous existing applicable law of this state on product liability is modified only to the extent set forth in this act.

SECTION 4. That Section 6-1302, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

6-~~1302~~1402. DEFINITIONS. (1) "Product seller" means any person or entity that is engaged in the business of selling products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant product. The term also includes a party who is in the business of leasing or bailing such products. The term "product seller" does not include:

(a) A provider of professional services who utilizes or sells products within the legally authorized scope of its professional practice. A nonprofessional provider of services is not included unless the sale or use of a product is the principal part of the transaction, and the essence of the relationship between the seller and purchaser is not the furnishing of judgment, skill, or services;

(b) A commercial seller of used products who resells a product after use by a consumer or other product user, provided the used product is in essentially the same condition as when it was acquired for resale; and

(c) A finance lessor who is not otherwise a product seller. A "finance lessor" is one who acts in a financial capacity, who is not a manufacturer, wholesaler, distributor, or retailer, and who leases a product without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(2) "Manufacturer" includes a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer. It includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer. A product seller acting primarily as a wholesaler, distributor, or retailer of a product may be a

"manufacturer" but only to the extent that it designs, produces, makes, fabricates, constructs, or remanufactures the product before its sale.

(3) "Product" means any object possessing intrinsic value, capable of delivery either as an assembled whole or as a component part or parts, and produced for introduction into trade or commerce. Human tissue and organs, including human blood and its components, are excluded from this term. The "relevant product" under this chapter is that product, or its component part or parts, which gave rise to the product liability claim.

(4) "Claimant" means a person or entity asserting a product liability claim, including a wrongful death action, and, if the claim is asserted through or on behalf of an estate, the term includes claimant's decedent. "Claimant" includes any person or entity that suffers harm.

(5) "Reasonably anticipated conduct" means the conduct which would be expected of an ordinary reasonably prudent person who is likely to use the product in the same or similar circumstances.

SECTION 5. That Section 6-1303, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

~~6-1303~~1403. LENGTH OF TIME PRODUCT SELLERS ARE SUBJECT TO LIABILITY. (1) Useful safe life.

(a) Except as provided in subsection (1)(b) hereof, a product seller shall not be subject to liability to a claimant for harm under this chapter if the product seller proves by a preponderance of the evidence that the harm was caused after the product's "useful safe life" had expired.

"Useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored in a safe manner. For the purposes of this chapter, "time of delivery" means the time of delivery of a product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold.

(b) A product seller may be subject to liability for harm caused by a product used beyond its useful safe life to the extent that the product seller has expressly warranted the product for a longer period.

(2) Statute of repose.

(a) Generally. In claims that involve harm caused more than ten (10) years after time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by clear and convincing evidence.

(b) Limitations on statute of repose.

1. If a product seller expressly warrants that its product can be utilized safely for a period longer than ten (10) years, the period of repose, after which the presumption created in subsection (2)(a) hereof arises, shall be extended according to that warranty or promise.

2. The ten (10) year period of repose established in subsection (2)(a) hereof does not apply if the product seller intentionally misrepresents facts about its product, or fraudulently conceals information about it, and that conduct was a substan-

tial cause of the claimant's harm.

3. Nothing contained in subsection (2) of this section shall affect the right of any person found liable under this chapter to seek and obtain contribution or indemnity from any other person who is responsible for harm under this chapter.

4. The ten (10) year period of repose established in subsection (2)(a) hereof shall not apply if the harm was caused by prolonged exposure to a defective product, or if the injury-causing aspect of the product that existed at the time of delivery was not discoverable by an ordinary reasonably prudent person until more than ten (10) years after the time of delivery, or if the harm, caused within ten (10) years after the time of delivery, did not manifest itself until after that time.

(3) Statute of limitation. No claim under this chapter may be brought more than two (2) years from the time the cause of action accrued as defined in section 5-219, Idaho Code.

SECTION 6. That Section 6-1304, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

6-~~1304~~1404. COMPARATIVE RESPONSIBILITY. Comparative responsibility shall not bar recovery in an action by any person or his legal representative to recover damages for product liability resulting in death or injury to person or property, if such responsibility was not as great as the responsibility of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of responsibility attributable to the person recovering.

SECTION 7. That Section 6-1305, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

6-~~1305~~1405. CONDUCT AFFECTING COMPARATIVE RESPONSIBILITY. (1) Failure to discover a defective condition.

(a) Claimant's failure to inspect. A claimant is not required to have inspected the product for a defective condition. Failure to have done so does not render the claimant responsible for the harm caused or reduce the claimant's damages.

(b) Claimant's failure to observe an obvious defective condition. When the product seller proves by a preponderance of the evidence that the claimant, while using the product, was injured by a defective condition that would have been obvious to an ordinary reasonably prudent person, the claimant's damages shall be subject to reduction.

(c) A nonclaimant's failure to inspect for defects or to observe an obvious defective condition. A nonclaimant's failure to inspect for a defective condition or to observe a defective condition that would have been obvious to an ordinary reasonably prudent person, shall not reduce claimant's damages.

(2) Use of a product with a known defective condition.

(a) By a claimant. When the product seller proves, by a preponderance of the evidence, that the claimant knew about the product's

defective condition, and voluntarily used the product or voluntarily assumed the risk of harm from the product, the claimant's damages shall be subject to reduction to the extent that the claimant did not act as an ordinary reasonably prudent person under the circumstances.

(b) By a nonclaimant product user. If the product seller proves by a preponderance of the evidence that a product user, other than the claimant, knew about a product's defective condition, but voluntarily and unreasonably used or stored the product and thereby proximately caused claimant's harm, the claimant's damages shall be subject to apportionment.

(3) Misuse of a product.

(a) "Misuse" occurs when the product user does not act in a manner that would be expected of an ordinary reasonably prudent person who is likely to use the product in the same or similar circumstances.

(b) When the product seller proves, by a preponderance of the evidence, that product misuse by a claimant, or by a party other than the claimant or the product seller has proximately caused the claimant's harm, the claimant's damages shall be subject to reduction or apportionment to the extent that the misuse was a proximate cause of the harm.

(4) Alteration or modification of a product.

(a) "Alteration or modification" occurs when a person or entity other than the product seller changes the design, construction, or formula of the product, or changes or removes warnings or instructions that accompanied or were displayed on the product. "Alteration or modification" of a product includes the failure to observe routine care and maintenance, but does not include ordinary wear and tear.

(b) When the product seller proves, by a preponderance of the evidence, that an alteration or modification of the product by the claimant, or by a party other than the claimant or the product seller has proximately caused the claimant's harm, the claimant's damages shall be subject to reduction or apportionment to the extent that the alteration or modification was a proximate cause of the harm.

This subsection shall not be applicable if:

1. The alteration or modification was in accord with the product seller's instructions or specifications;
2. The alteration or modification was made with the express or implied consent of the product seller; or
3. The alteration or modification was reasonably anticipated conduct, and the product was defective because of the product seller's failure to provide adequate warnings or instructions with respect to the alteration or modification.

SECTION 8. That Section 6-1306, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

6-~~1306~~1406. RELEVANCE OF INDUSTRY CUSTOM, SAFETY OR PERFORMANCE STANDARDS, AND TECHNOLOGICAL FEASIBILITY. (1) Evidence of changes in (a) a product's design, (b) warnings or instructions concerning the product, (c) technological feasibility, (d) "state of the art," or (e) the custom

of the product seller's industry or business, occurring after the product was manufactured and delivered to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold, is not admissible for the purpose of proving that the product was defective in design or that a warning or instruction should have accompanied the product at the time of manufacture. The provisions of this section shall not relieve the product seller of any duty to warn of known defects discovered after the product was designed and manufactured.

(2) If the court finds outside the presence of a jury that the probative value of such evidence substantially outweighs its prejudicial effect and that there is no other proof available, this evidence may be admitted for other relevant purposes, including but not limited to proving ownership or control, or impeachment.

(3) For purposes of this section, "custom" refers to the practices followed by an ordinary product seller in the product seller's industry or business.

(4) For purposes of this section, "technological feasibility" means the technological, mechanical and scientific knowledge relating to product safety that was reasonably feasible for use, in light of economic practicality, at the time of manufacture.

SECTION 9. That Section 6-1307, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

6-~~1307~~1407. INDIVIDUAL RIGHTS AND RESPONSIBILITIES OF PRODUCT SELLERS OTHER THAN MANUFACTURERS. (1) In the absence of express warranties to the contrary, product sellers other than manufacturers shall not be subject to liability in circumstances where they do not have a reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, reveal the existence of the defective condition which is in issue; or where the product seller acquires the product in a sealed package or container and sells the product in the same sealed package or container. The liability limitation of this subsection shall not apply if:

(a) The product seller had knowledge or reason to know of the defect in the product;

(b) The product seller altered, modified, or installed the product, and such alteration, modification or installation was a substantial proximate cause of the incident giving rise to the action, was not authorized or requested by the manufacturer and was not performed in compliance with the directions or specifications of the manufacturer;

(c) The product seller provided the plans or specifications for the ~~manufacturer~~ manufacture or preparation of the product and such plans or specifications were a substantial cause of the product's alleged defect.

(d) The product seller is a wholly-owned subsidiary of the manufacturer, or the manufacturer is a wholly-owned subsidiary of the product seller.

(e) The product seller sold the product after the expiration date placed on the product or its package by the manufacturer.

(2) In an action where the liability limitation of subsection (1)

applies, any manufacturer who refuses to accept a tender of defense from the product seller, shall indemnify the product seller for reasonable attorney's fees and costs incurred by the product seller in defending such action.

(3) In any product liability action, the manufacturer of the product shall be indemnified by the product seller of the product for any judgment rendered against the manufacturer and shall also be reimbursed for reasonable attorney's fees and costs incurred in defending such action:

(a) If the product seller provided the plans or specifications for the manufacture or preparation of the product;

(b) If such plans or specifications were a substantial cause of the product's alleged defect; and

(c) If the product was manufactured in compliance with and according to the plans or specifications of the seller.

The provisions of this subsection shall not apply if the manufacturer had knowledge or with the exercise of reasonable and diligent care should have had knowledge of the defect in the product.

(4) A product seller, other than a manufacturer, is also subject to the liability of manufacturer if:

(a) The manufacturer is not subject to service of process under the laws of the claimant's domicile; or

(b) The manufacturer has been judicially declared insolvent in that the manufacturer is unable to pay its debts as they become due in the ordinary course of business; or

(c) The court outside the presence of a jury determines that it is highly probable that the claimant would be unable to enforce a judgment against the product manufacturer.

SECTION 10. That Section 6-1308, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

6-~~1308~~1408. CONTENTS OF COMPLAINT -- AMOUNT OF RECOVERY. In any product liability action no dollar amount or figure shall be included in the complaint. The complaint shall pray for such damages as are reasonable in the premises. The complaint shall include a statement reciting that the jurisdictional amount established for filing the action is satisfied.

SECTION 11. That Section 6-1309, Idaho Code, as added by Section 1, Chapter 225, Laws of 1980, be, and the same is hereby amended to read as follows:

6-~~1309~~1409. SHORT TITLE. This act shall be known and may be cited as the "Idaho Product Liability Reform Act."

SECTION 12. That Section 9-340D, Idaho Code, be, and the same is hereby amended to read as follows:

9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public

agency or independent public body corporate and politic 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.

(2) Production records, housing production, rental and financing 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 or submitted to or otherwise obtained by an independent public body corporate and politic. 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.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic 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.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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 or independent public body corporate and politic.

(12) Records of laboratory test results provided by or retained by the Idaho food 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.

(13) 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.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic 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.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal pro-

ceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 9-335, Idaho Code. 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.

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

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

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

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

(18~~9~~) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, Idaho Code.

SECTION 13. That Section 9-350, Idaho Code, as amended and redesignated by Section 2, Chapter 122, Laws of 1996, be, and the same is hereby amended to read as follows:

9-~~350~~349A. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SECTION 14. That Section 19-2719A, Idaho Code, as added by Section 4, Chapter 140, Laws of 1995, be, and the same is hereby amended to read as follows:

19-~~2719A~~2720. INQUIRY INTO NEED FOR NEW COUNSEL. After the imposition of a sentence of death, the trial judge should advise the defendant that, upon a particularized showing that there is a reasonable basis to litigate a claim of ineffective assistance of trial counsel, new counsel may be appointed to represent the defendant to pursue such a claim in a post-conviction proceeding. If no such request is made, the trial judge shall certify of record that there are no facts that have come to the court's attention upon which such a claim could reasonably be based or, alternatively, the court may appoint new counsel. No deficiency in the application of the procedure described herein shall be grounds for relief from a judgment of conviction or from a sentence.

SECTION 15. That the Heading for Chapter 11, Title 22, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

CHAPTER 1~~1~~5
SEED AND PLANT CERTIFICATION

SECTION 16. That Section 22-1101, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

22-~~1101~~1501. CERTIFICATION OF SEEDS AND PLANTS -- REGULATION OF CERTIFICATION TO BE IN PUBLIC INTEREST. Certification of varieties or strains of seeds, tubers, plants and plant parts raised in the state of Idaho and offered or intended to be offered for sale is in the public interest and a proper subject of regulation by the state of Idaho.

SECTION 17. That Section 22-1102, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

22-~~1102~~1502. COMPLIANCE WITH REGULATIONS REQUIRED WHERE CERTAIN PHRASES USED. Every person, firm, association or corporation who shall issue, use or circulate, any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, written or printed representation or description, of or pertaining to lots of seeds, tubers, plants or plant parts intended for propagation or sale, or sold or offered for sale wherein the words "Idaho State Certified," "State Certified," "Idaho Certified," or similar words or phrases are used or employed, or wherein are used or employed signs, symbols, maps, diagrams, picture words or phrases expressly or impliedly stating or representing that such seed, tubers, plants or plant parts comply with or conform to the standards or requirements approved by the Idaho agricultural experiment station in the college of agriculture of the university of Idaho shall be subject to the provisions of this chapter.

SECTION 18. That Section 22-1105, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

22-~~1105~~1505. RULES AND REGULATIONS -- PREPARATION AND PROMULGATION. Every person, firm, association or corporation that intends to offer for sale, offers or sells seeds, tubers, plants or plant parts as certified shall comply with the provisions of this chapter and such rules and regulations as are promulgated by the Idaho agricultural experiment station in the college of agriculture of the university of Idaho as provided herein, such rules and regulations to contain, among other things, a designation of the crops grown or to be grown in Idaho eligible for certification with standards, requirements and procedure necessary for certification with designation of the agency authorized to provide certification.

Upon the passage of this chapter the Idaho agricultural experiment station in the college of agriculture of the university of Idaho shall prepare and issue such rules and regulations as are required by this chapter in compliance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 19. That Section 22-1106, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

22-~~1106~~1506. FEES CHARGED BY CERTIFYING AGENCY. Fees may be charged by the certifying agency, under schedules set forth in rules and regulations for certification of seeds, tubers, plants and plant parts under this chapter, but these fees shall have a reasonable relation to the cost, and may be used only for expenses in connection with certification and improvement of certification services.

SECTION 20. That Section 22-1107, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

22-~~1107~~1507. MAINTENANCE OF SEED STOCKS. The Idaho agricultural experiment station or an agent of the university of Idaho appointed, in writing, shall be responsible to obtain and maintain sources of basic seed stocks which include breeder class and foundation class seed of public varieties or strains of crops deemed appropriate by the director of the Idaho agricultural experiment station. Basic seed stocks, limited generation certified seed tubers, plant or plant parts shall first be made available for production in Idaho. This shall be accomplished through a system of equitable allocation to any person, firm, partnership, association, corporation or entity located in this state unless a contract or agreement entered into with another public research entity or institution provides otherwise. Price established for the basic seed stocks of seed, tubers, plants or plant parts shall be in reasonable relation to the cost of production, maintenance, handling, storage and processing necessary to meet standards set forth in the rules and regulations.

SECTION 21. That Section 22-1110, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

22-~~1110~~1510. REVIEW OF ACTION TAKEN UNDER PROVISIONS OF LAW. Any person, firm, partnership, association or corporation aggrieved by any act or action taken under the provisions of this chapter law may, within thirty (30) days of such act or action, appeal to the district court within and for the district in which said act or action was committed for appropriate relief. It is further provided that any order or judgment of the district court pertaining to such appeal may be appealed to the Supreme Court of the state of Idaho in the manner in which appeals are made under the present code and procedure, provided, however, that on the appeal to the Supreme Court, the Supreme Court shall consider only questions of law.

SECTION 22. That Section 22-1111, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

22-~~1111~~1511. TITLE. This chapter shall be known as, and may be cited as, the "Seed and Plant Certification Act."

SECTION 23. That the Heading for Chapter 35, Title 25, Idaho Code, as added by Section 1, Chapter 72, Laws of 1994, be, and the same is hereby amended to read as follows:

CHAPTER ~~35~~36
RATITES

SECTION 24. That Section 25-3501, Idaho Code, as added by Section 1, Chapter 72, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3501~~3601. RATITES DESIGNATED LIVESTOCK. It shall be lawful for any person, persons, association or corporation to engage in the business of propagating, breeding, owning or controlling domestic ratites, which are defined as cassowary, ostrich, emu and rhea. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing or marketing of such animals or their products by the producer shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, ratite farmers, ratite breeders or ratite ranchers; the premises within which such a pursuit is conducted shall be deemed farms, ratite farms, or ratite ranches.

SECTION 25. That Section 25-3502, Idaho Code, as added by Section 1, Chapter 72, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3502~~3602. RATITE FARMS PLACED UNDER JURISDICTION OF DEPARTMENT OF AGRICULTURE. The department of agriculture and the administrator of the division of animal industries shall have administrative authority for all functions which affect the breeding, raising, producing, marketing or any other phase of the production or distribution of domestic ratites, or the products thereof.

SECTION 26. That Section 25-3503, Idaho Code, as added by Section 1, Chapter 72, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3503~~3603. APPLICATION OF LAWS RELATING TO LIVESTOCK AND DOMESTIC ANIMALS. All of the provisions of chapter 2, title 25, Idaho Code, applicable to livestock and domestic animals, except those provisions which by their terms are restricted to swine, bovine animals, dairy or breeding cattle, or range cattle, or other particular kind or kinds of livestock and domestic animals to the exclusion of livestock or domestic animals generally, are applicable to domestic ratite animals.

SECTION 27. That Section 25-3504, Idaho Code, as added by Section 1, Chapter 72, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3504~~3604. RULES FOR DISEASE PREVENTION. The administrator of the division of animal industries is hereby authorized and empowered to

make, promulgate, and enforce general and reasonable rules not inconsistent with law, for the prevention of the introduction or dissemination of diseases among domestic ratite animals of this state, and to otherwise effectuate enforcement of the provisions of chapter 2, title 25, Idaho Code, applicable to domestic ratite animals.

SECTION 28. That Section 25-3505, Idaho Code, as added by Section 1, Chapter 72, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3505~~3605. INSPECTION OF RATITE FARMS. The division of animal industries and any of its officers shall have the right at any time to inspect any ratite farm, and may go upon such farms or any part thereof to inspect and examine the same and any animals therein.

SECTION 29. That Section 25-3506, Idaho Code, as added by Section 1, Chapter 72, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3506~~3606. PENALTY FOR VIOLATIONS. Any person, firm or corporation violating any of the provisions of chapter 2, title 25, Idaho Code, applicable to domestic ratite animals, or of the rules promulgated by the division of animal industries for the enforcement thereof, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

SECTION 30. That Section 25-3507, Idaho Code, as added by Section 1, Chapter 72, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3507~~3607. PROPERTY RIGHTS IN RATITE ANIMALS. Domestic ratite animals shall be, together with their offspring and increases, the subject of ownership, lien and absolute property rights, in whatever situation, location or condition such animals may thereafter become, or be, and regardless of their remaining in, or escaping from such restraint or captivity.

SECTION 31. That Section 25-3508, Idaho Code, as added by Section 1, Chapter 72, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3508~~3608. 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 32. That Section 25-3502, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3502~~3702. TRANSFER OF FUNCTIONS FROM FISH AND GAME COMMISSION TO DEPARTMENT OF AGRICULTURE. All the functions of the fish and game commission and the department of fish and game, which affect the breeding, raising, producing, marketing, or any other phase of the production or distribution, of domestic cervidae, or the products thereof, are hereby transferred to and vested in the department of agriculture and the administrator of the division of animal industries; provided, that this act shall not limit or affect the powers or duties of the department of fish and game relating to nondomestic cervidae or the management and taking thereof, and provided further that the department of agriculture shall address the reasonable concerns of the department of fish and game respecting the domestic farming of cervidae as provided in section 36-106(e)(9), Idaho Code.

SECTION 33. That Section 25-3503, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3503~~3703. APPLICATION OF LAWS RELATING TO LIVESTOCK AND DOMESTIC ANIMALS. All of the provisions of chapters 2, 3, 4 and 6, title 25, Idaho Code, applicable to livestock and domestic animals, except those provisions which by their terms are restricted to swine, bovine animals, dairy or breeding cattle, or range cattle, or other particular kind or kinds of livestock and domestic animals to the exclusion of livestock or domestic animals generally, are applicable to domestic cervidae.

SECTION 34. That Section 25-3505, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3505~~3705. INSPECTION OF CERVIDAE FARMS. The division of animal industries and any of its officers shall have the right, at any reasonable time, to inspect any domestic cervidae farm, and may go upon such farms or any part thereof where such animals are contained to inspect and examine the same and any animals therein.

SECTION 35. That Section 25-3507, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3507~~3707. PROPERTY RIGHTS IN DOMESTIC CERVIDAE. Domestic cervidae shall be, together with their offspring and increases the subject of ownership, lien and absolute property rights, (the same as purely domestic animals) in whatever situation, location, or condition such animals may thereafter become, or be, and regardless of their remaining in, or escaping from such restraint or captivity.

SECTION 36. That Section 25-3509, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3509~~3709. SEVERABILITY. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 37. That Section 28-50-101, Idaho Code, as added by Section 1, Chapter 422, Laws of 2000, be, and the same is hereby amended to read as follows:

28-5~~0~~1-101. DEFINITIONS. As used in this section and section 28-5~~0~~1-10~~2~~2, Idaho Code, the following terms have the following meanings:

(~~1~~1) "Consumer credit report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity, character, general reputation, personal characteristics, or mode of living which is used or is expected to be used, or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance for personal, family or household purposes, employment purposes or other purposes authorized under sections 603 and 604 of the fair credit reporting act, 15 USC sections 1681a and 1681b, as amended. The term does not include:

(a) Any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(b) Any communication of that information among persons related by common ownership or affiliated by corporate control;

(c) Any communication of other information among persons related by common ownership or affiliated by corporate control;

(d) Any authorization or approval of a specific extension of credit directly or indirectly by the issuers of a credit card or similar device;

(e) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer required under section 615 of the fair credit reporting act, 15 USC section 1681m, as amended.

(2) "Consumer reporting agency" means a person that, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(3) "Person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency or other entity.

SECTION 38. That Section 28-50-102, Idaho Code, as added by Section 1, Chapter 422, Laws of 2000, be, and the same is hereby amended to read as follows:

28-5~~0~~1-102. BLOCK OF INFORMATION APPEARING AS A RESULT OF A VIOLATION OF CRIMINAL CODE PROVISION PROHIBITING MISAPPROPRIATION OF PERSONAL INFORMATION. (1) If a consumer submits to a consumer reporting agency a certified copy of a police report setting forth facts establishing probable cause of a violation of section 18-3126, Idaho Code, the consumer reporting agency shall, within thirty (30) days of the receipt of the police report, permanently block or decline to block reporting any information that the consumer identifies on his or her credit report is the result of a violation of section 18-3126, Idaho Code, so that the information cannot be reported. The consumer reporting agency shall promptly notify the furnisher of the information that a police report has been filed, that a block has been requested and the effective date of the block.

(2) Furnishers of information and consumer reporting agencies may decline to block or may rescind any block of credit information if:

(a) The information was blocked due to a material misrepresentation of fact by the consumer;

(b) The consumer agrees that the blocked information, or portions of the blocked information, were blocked in error; or

(c) The consumer knowingly obtained possession of goods, services or moneys as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services or moneys as a result of the blocked transaction or transactions.

(3) If the block of information is declined or rescinded pursuant to this section, the consumer shall be promptly notified in the same manner as consumers are notified of the reinsertion of information pursuant to section 611 of the fair credit reporting act, 15 USC section 1681i, as amended. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services or moneys.

(4) A consumer harmed by a violation of this section may maintain an action for legal damages and injunctive relief against the consumer reporting agency or the furnisher of the information or both. A judgment in favor of the consumer shall include an award of attorney's fees in addition to other appropriate relief as granted by the court.

SECTION 39. That Section 31-868, Idaho Code, as added by Section 1, Chapter 312, Laws of 1979, be, and the same is hereby amended to read as follows:

31-86~~8~~9. DEVELOPMENT OF ENERGY SYSTEMS. The boards of County Commissioners of their respective counties are empowered to establish, create, develop, maintain and operate geothermal energy systems for heating for the benefit of the county and the residents of the county.

SECTION 40. That Section 31-A3501, Idaho Code, as added by Section 1, Chapter 189, Laws of 1982, be, and the same is hereby amended to read as follows:

31-~~A3501~~3550. DECLARATION OF PUBLIC POLICY. It is the declaration of the legislature to be in the public interest to encourage nonlitigation resolution of claims between the counties and health

providers of the state of Idaho by providing for prelitigation screening of such claims contesting indigent resource eligibility by a hearing panel as provided in this chapter.

SECTION 41. That Section 31-A3502, Idaho Code, as added by Section 1, Chapter 189, Laws of 1982, and amended by Section 28, Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

31-~~A3502~~3551. ADVISORY PANEL FOR PRELITIGATION CONSIDERATION OF INDIGENT RESOURCE ELIGIBILITY CLAIMS -- PROCEDURE. The counties in the state of Idaho and the health providers furnishing care to eligible medically indigent persons, as defined in section 31-3502, Idaho Code, are directed to cooperate in providing an advisory panel in the nature of a special civil grand jury and procedure for prelitigation consideration of claims arising out of contested resource availability of persons applying for indigent relief under the provisions of chapter 35, title 31, Idaho Code, which proceedings shall be informal and nonbinding, but nevertheless compulsory as a condition precedent to litigation. Proceedings conducted or maintained under the authority of this chapter shall be subject to disclosure according to chapter 3, title 9, Idaho Code. Formal rules of evidence shall not apply and all such proceedings shall be expeditious and informal. The panel, thus created, will render opinions where the resource eligibility of applicants, as herein described, has been contested.

SECTION 42. That Section 31-A3503, Idaho Code, as added by Section 1, Chapter 189, Laws of 1982, be, and the same is hereby amended to read as follows:

31-~~A3503~~3552. APPOINTMENT AND COMPOSITION OF ADVISORY PANEL. The panel will consist of three (3) members to be designated as follows: the chairman of the panel shall be an appointed designee by and of the director of the department of health and welfare of the state of Idaho, and must be without bias or conflict of interest; one (1) member will be appointed by and represent the Idaho association of counties; and one (1) member will be appointed by and represent the Idaho hospital association. All panelists shall serve under oath that they are without bias or conflict of interest as respects any matter under consideration.

SECTION 43. That Section 31-A3504, Idaho Code, as added by Section 1, Chapter 189, Laws of 1982, and amended by Section 3, Chapter 300, Laws of 2004, be, and the same is hereby amended to read as follows:

31-~~A3504~~3553. ADVISORY DECISIONS OF PANEL. The general responsibility of the advisory panel will be to consider the eligibility of applicants on claims referred to them and render written opinions regarding such eligibility of applicants as based upon review of analysis of the resources available to the applicant, as defined in section 31-3502(17), Idaho Code. Following proceedings on each claim, the advisory panel shall provide the affected parties with its comments and observations with respect to the claim. They shall indicate in such comments whether the applicant appears to have resources available to him or her sufficient to pay for necessary medical services; does not have adequate resources; or any comments or observations which may be relevant and

appropriate. The findings of the advisory panel may be used by affected parties in resolving contested claims in a manner consistent with the findings presented. However, such findings will be advisory in nature only and not binding on any of the affected parties.

SECTION 44. That Section 31-A3505, Idaho Code, as added by Section 1, Chapter 189, Laws of 1982, be, and the same is hereby amended to read as follows:

31-~~A3505~~3554. TOLLING OF LIMITATION PERIODS DURING PENDENCY OF PROCEEDINGS. There shall be no judicial or other review or appeal of such matters. No party shall be obligated to comply with or otherwise be affected or prejudiced by the proposals, conclusions or suggestions of the panel or any member or segment thereof; however, in the interest of due consideration being given to such proceedings and in the interest of encouraging consideration of claims informally and without the necessity of litigation, the applicable statute of limitations shall be tolled and not deemed to run during the time that such a claim is pending before the panel and for thirty (30) days thereafter.

SECTION 45. That Section 31-A3506, Idaho Code, as added by Section 1, Chapter 189, Laws of 1982, be, and the same is hereby amended to read as follows:

31-~~A3506~~3555. STAY OF COURT PROCEEDINGS IN INTEREST OF HEARING BEFORE PANEL. During said thirty (30) day period neither party shall commence or prosecute litigation involving the issues submitted to the panel and the district or other courts having jurisdiction of any such pending claims shall stay proceedings in the interest of the conduct of such proceedings before the panel.

SECTION 46. That Section 31-A3507, Idaho Code, as added by Section 1, Chapter 189, Laws of 1982, be, and the same is hereby amended to read as follows:

31-~~A3507~~3556. EXPENSES FOR ADVISORY PANEL MEMBERS. Expenses incurred by the members of the advisory panel in the performance of their duties will be borne by the respective organizations making the appointment.

SECTION 47. That Section 31-A3508, Idaho Code, as added by Section 1, Chapter 189, Laws of 1982, be, and the same is hereby amended to read as follows:

31-~~A3508~~3557. FREQUENCY OF AND AGENDA FOR MEETINGS. Frequency of ~~an~~ and agenda for meetings of the advisory panel will be subject to the discretion of the chair, based upon criteria to be established by the members of the panel. However, there shall be no more than four (4) meetings of the panel per year.

SECTION 48. That Section 33-1003A, Idaho Code, as added by Section 1, Chapter 321, Laws of 1995, be, and the same is hereby amended to read as follows:

33-1003~~A~~B. SPECIAL APPLICATION -- MINIMUM SUPPORT. In the application of the provisions of the education support program, no district's distribution shall be less in any year than ninety percent (90%) of the distribution of state educational dollars less the special program allocations in sections 33-1002, 33-1007A and 33-2006, Idaho Code, received by that district in the immediately preceding year.

SECTION 49. That Section 33-1513, Idaho Code, as added by Section 3, Chapter 388, Laws of 2004, be, and the same is hereby amended to read as follows:

33-151~~3~~4. FEE -- REIMBURSEMENT FOR PUPIL TRANSPORTATION COSTS. The state department of education shall assess an annual fee based on past reimbursement to school districts, to be paid by all school districts claiming reimbursement for pupil transportation costs, to defray the department's actual cost of providing financial reviews of school district pupil transportation records. Such fees shall be treated, and may be claimed as reimbursable pupil transportation costs, pursuant to the provisions of section 33-1006, Idaho Code.

SECTION 50. That the Heading for Chapter 48, Title 33, Idaho Code, as added by Section 10, Chapter 234, Laws of 1994, be, and the same is hereby amended to read as follows:

CHAPTER 4~~8~~9
MOTORCYCLE SAFETY PROGRAM

SECTION 51. That Section 33-4801, Idaho Code, as added by Section 10, Chapter 234, Laws of 1994, be, and the same is hereby amended to read as follows:

33-~~4801~~4901. COOPERATION BETWEEN DEPARTMENTS. In conjunction with its supervision of traffic on public highways, the Idaho transportation department is directed to cooperate with the department of education in its establishment of a motorcycle rider safety program for the state of Idaho.

SECTION 52. That Section 33-4802, Idaho Code, as added by Section 10, Chapter 234, Laws of 1994, be, and the same is hereby amended to read as follows:

33-~~4802~~4902. MOTORCYCLE SAFETY PROGRAM. (1) The department of education shall develop standards for, establish and administer the Idaho motorcycle safety program.

(2) The department of education shall establish standards for the motorcycle rider training course, including standards for course curriculum and student evaluation and testing, and shall meet or exceed established national standards for motorcycle rider training courses in effect as of September 1, 1994.

(3) The program shall include activities to increase motorcyclists' alcohol and drug effects awareness, motorcycle rider improvement efforts, program promotion activities, and other efforts to enhance motorcycle safety through education, including enhancement of public awareness of motorcycles.

(4) The superintendent of public instruction shall appoint a program coordinator to oversee and direct the program.

(5) The department of education shall establish standards for the training and approval of motorcycle rider training instructors and skills examiners which shall meet or exceed established national standards for such instructors and skills examiners in effect as of September 1, 1994.

SECTION 53. That Section 33-4803, Idaho Code, as added by Section 10, Chapter 234, Laws of 1994, be, and the same is hereby amended to read as follows:

33-~~4803~~4903. IMPLEMENTING AUTHORITY. (1) The department of education shall adopt rules which are necessary to carry out the motorcycle safety program.

(2) The department of education may enter into contracts with public or private entities for course delivery and for the provision of services or materials necessary for administration and implementation of the program.

(3) The department of education may offer motorcycle rider training courses directly and may approve courses offered by public or private entities as authorized program courses if they are administered and taught in full compliance with standards established for the state program.

(4) The department of education may establish reasonable enrollment fees to be charged for persons who participate in a motorcycle rider training course.

(5) The department of education may utilize available program funds to defray expenses in offering motorcycle rider training courses and may reimburse entities which offer approved courses for the expenses incurred in offering the courses in order to minimize any course enrollment fee charged to the students.

SECTION 54. That Section 33-4805, Idaho Code, as added by Section 10, Chapter 234, Laws of 1994, be, and the same is hereby amended to read as follows:

33-~~4805~~4905. ADVISORY COMMITTEE. The superintendent of public instruction shall establish a program advisory committee consisting of five (5) persons representing various interests in motorcycle safety including, but not limited to, motorcycle riding enthusiasts, dealers and law enforcement personnel. Committee members shall advise the program coordinator in developing, establishing and maintaining the program. The committee shall monitor program implementation and report to the superintendent as necessary with recommendations. Members of the committee shall serve without compensation but may be reimbursed for their reasonable expenses while engaged in committee business.

SECTION 55. That Section 33-4806, Idaho Code, as added by Section 10, Chapter 234, Laws of 1994, be, and the same is hereby amended to read as follows:

33-~~4806~~4906. ANNUAL REPORT ON THE PROGRAM. The department of education shall prepare a public report annually. The report shall be com-

pleted with the assistance of the program coordinator and the program advisory committee. The report shall include the number and location of various courses offered, the number of instructors approved, the number of students trained in various courses, other information about program implementation as deemed appropriate, and an assessment of the overall impact of the program on motorcycle safety in the state. The report shall also provide a complete accounting of revenue receipts of the motorcycle safety program fund and of all moneys expended under the program.

SECTION 56. That Section 49-304, Idaho Code, be, and the same is hereby amended to read as follows:

49-304. MOTORCYCLE ENDORSEMENT. The department shall issue a motorcycle "M" endorsement on a driver's license to applicants who complete the requirements to operate a motorcycle.

(1) Any person who holds a valid Idaho driver's license on September 1, 1994, may operate a motorcycle without a motorcycle "M" endorsement until that driver's license expires or September 1, 1998, whichever occurs first.

(2) Any person who applies for a driver's license or renewal of a license after September 1, 1994, may also apply for a motorcycle "M" endorsement. Until September 1, 1998, the requirements for obtaining a motorcycle "M" endorsement are:

(a) The applicant shall be tested by written examination for his knowledge of safe motorcycle operating practices and traffic laws specific to the operation of motorcycles upon payment of the fee specified in section 49-306, Idaho Code.

(b) Upon successful completion of the knowledge test and upon payment of the fee required for an "M" endorsement, the applicant shall obtain a motorcycle "M" endorsement on his driver's license.

(3) No person under the age of twenty-one (21) years may apply for or obtain a motorcycle "M" endorsement on his driver's license unless he has successfully completed a motorcycle rider training course approved under the provisions of chapter 489, title 33, Idaho Code, in addition to satisfying the requirements specified in subsection (2) of this section. The provisions of this subsection shall not be effective unless and until the motorcycle rider training course is fully implemented by the department of education.

(4) Any person who applies for a motorcycle endorsement on a driver's license after September 1, 1998, in addition to the requirements specified in subsection (2) of this section, may also be required to pass the motorcycle "M" skills test before he can obtain the motorcycle "M" endorsement.

(5) The operation of a motorcycle upon a highway by any person who has failed to obtain a motorcycle "M" endorsement as provided in this section shall constitute an infraction.

SECTION 57. That Section 33-5202A, Idaho Code, as added by Section 2, Chapter 370, Laws of 2004, be, and the same is hereby repealed.

SECTION 58. That Section 34-440, Idaho Code, be, and the same is hereby amended to read as follows:

34-44~~0~~39. DISCLOSURES IN ELECTIONS TO AUTHORIZE BONDED INDEBTEDNESS. Notwithstanding any other provision of law, any taxing district which proposes to submit any question to the electors of the district that would authorize any bonded indebtedness shall provide a brief official statement setting forth in simple, understandable language, information on the proposal substantially as follows:

(1) The total existing indebtedness, including interest accrued, of the taxing district;

(2) The interest rate which is anticipated on the proposed bond issue, the range of anticipated rates, and the maximum rate if a maximum is specified in the submission of the question; and

(3) The total amount to be repaid over the life of the bond issue based on the anticipated interest rate, if the bond election is approved.

The verified, official district's statement shall be made a part of the official ballot and be included in the official notice of the election.

SECTION 59. That Section 39-1459B, Idaho Code, as added by Section 11, Chapter 183, Laws of 1976, be, and the same is hereby amended to read as follows:

39-~~1459B~~1457B. AGREEMENT OF THE STATE. The state does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued under this act, and with those parties who may enter into contracts with the authority pursuant to the provisions of this act, that the state will not limit, alter, restrict or impair the rights hereby vested in the authority to acquire, construct, reconstruct, maintain and operate any facility as defined in this act or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds, notes or other obligations authorized and issued by this act, and with the parties who may enter into contracts with the authority pursuant to this act, or in any way impair the rights or remedies of the holders of such bonds, notes or other obligations of such parties until the bonds, notes and such other obligations, together with interest thereon, with interest on any unpaid ~~instalment~~ installment of interest and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this act precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds, notes or other obligations of the authority or those entering into such contracts with the authority. The authority is authorized to include this pledge and undertaking for the state in such bonds, notes or other obligations and in such contracts.

SECTION 60. That the Heading for Chapter 49, Title 39, Idaho Code, as added by Section 1, Chapter 333, Laws of 1980, be, and the same is hereby amended to read as follows:

CHAPTER ~~49~~50
EQUAL OPPORTUNITY FOR DISPLACED HOMEMAKER ACT

SECTION 61. That Section 39-4901, Idaho Code, as added by Section 1, Chapter 333, Laws of 1980, be, and the same is hereby amended to read as follows:

39-~~4901~~5001. POLICY. The policy of the state of Idaho is hereby declared to be a recognition of the increasing number of persons in the state who, having fulfilled the valuable role of homemaker, find themselves displaced because of death or disability of spouse, or divorce or other loss of family income. As a consequence, displaced homemakers have an insufficient income; high rate of unemployment due to age, lack of paid work experience and discrimination; and limited opportunities to collect funds of assistance from social security, unemployment compensation, medicaid or other health insurance benefits, or pension plans of the spouse. This chapter seeks to coordinate efforts by state and local public agencies in cooperation with private agencies and organizations to assist displaced homemakers to continue as productive citizens, even though their role has necessarily changed.

SECTION 62. That Section 39-4904, Idaho Code, as added by Section 1, Chapter 333, Laws of 1980, be, and the same is hereby amended to read as follows:

39-~~4904~~5004. SITE SELECTION. (a) In selecting sites for the centers established under this chapter, the administrator shall consider:

(1) The needs of each region of the state for a center;

(2) The needs of both urban and rural communities; and

(3) The availability of existing facilities adaptable for use as a center.

(b) The administrator may select a public or nonprofit private organization to administer the centers.

(c) The administrator is authorized to enter into contracts with and make grants to the organizations selected for the purpose of establishing and administering centers under this chapter.

(d) The administrator shall cooperate with other state, local and federal agencies to coordinate, through the service centers, all programs applicable to displaced homemakers and to avoid duplication of services.

(e) To the greatest extent possible, the staff of the service centers established under this chapter, including supervisory, technical and administrative positions, shall be filled by displaced homemakers. Where necessary, potential staff members shall be provided with on-the-job training.

SECTION 63. That Section 39-4905, Idaho Code, as added by Section 1, Chapter 333, Laws of 1980, be, and the same is hereby amended to read as follows:

39-~~4905~~5005. ELIGIBILITY AND FEES. The administrator with the advice of the staff at the centers, shall promulgate rules concerning the eligibility of persons to receive assistance through the multipurpose service centers. A sliding fee may be charged for services at the discretion of the director of the center.

SECTION 64. That Section 39-4906, Idaho Code, as added by Section

1, Chapter 333, Laws of 1980, be, and the same is hereby amended to read as follows:

39-~~4906~~5006. GRANTS AND GIFTS. The director of the center may, with approval of the administrator, apply for and accept any funds, grants, gifts or services made available by any agency or department of the federal government or any private agency or individual, which funds shall be used to carry out the total program of the centers.

SECTION 65. That Section 39-4907, Idaho Code, as added by Section 1, Chapter 333, Laws of 1980, be, and the same is hereby amended to read as follows:

39-~~4907~~5007. REPORTS OF EACH CENTER. The director of each center shall report to the administrator or his/her designee, and shall evaluate the effectiveness of the job training, placement and service to displaced homemakers, including the number of persons trained, the number of persons placed in employment, follow-up data on such persons, the number of persons served by the various service programs, and cost effectiveness of the various components of the center. The administrator shall report annually to the education committees of the house of representatives and the senate of the legislature on the status of the displaced homemaker program. The report shall be filed not later than the fifteenth legislative day and in addition to compilations of the information received from each center, may include recommendations of the administrator relating to the program.

SECTION 66. That Section 39-4908, Idaho Code, as added by Section 1, Chapter 333, Laws of 1980, be, and the same is hereby amended to read as follows:

39-~~4908~~5008. DISCRIMINATION PROHIBITED. No person shall, on the ground of sex, age, race, color, religion, national origin or handicap, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity made available under this chapter.

SECTION 67. That the Heading for Chapter 81, Title 39, Idaho Code, as added by Section 1, Chapter 357, Laws of 2001, be, and the same is hereby amended to read as follows:

CHAPTER 8~~1~~2
IDAHO SAFE HAVEN ACT

SECTION 68. That Section 39-8101, Idaho Code, as added by Section 1, Chapter 357, Laws of 2001, be, and the same is hereby amended to read as follows:

39-~~8101~~8201. TITLE. This chapter shall be known as the "Idaho Safe Haven Act."

SECTION 69. That Section 39-8102, Idaho Code, as added by Section 1, Chapter 357, Laws of 2001, be, and the same is hereby amended to read as follows:

39-~~8102~~8202. DEFINITIONS. As used in this chapter, the following terms shall mean:

(1) "Custodial parent," for the purposes of this chapter, means, in the absence of a court decree, the parent with whom the child resides.

(2) "Safe haven" means:

(a) Hospitals licensed in the state of Idaho;

(b) Licensed physicians in the state of Idaho and staff working at their offices and clinics;

(c) Advanced practice professional nurses including certified nurse-midwives, clinical nurse specialists, nurse practitioners and certified registered nurse anesthetists licensed or registered pursuant to chapter 14, title 54, Idaho Code;

(d) Physician assistants licensed pursuant to chapter 18, title 54, Idaho Code.

(e) Medical personnel when making an emergency response to a "911" call from a custodial parent, for the purpose of taking temporary physical custody of a child pursuant to the provisions of this act. For purposes of this act, "medical personnel" shall include those individuals certified by the department of health and welfare as:

(i) First responders;

(ii) Emergency medical technicians - basic;

(iii) Advanced emergency medical technicians - ambulance;

(iv) Emergency medical technicians - intermediate; and

(v) Emergency medical technicians - paramedic.

SECTION 70. That Section 39-8103, Idaho Code, as added by Section 1, Chapter 357, Laws of 2001, be, and the same is hereby amended to read as follows:

39-~~8103~~8203. EMERGENCY CUSTODY OF CERTAIN ABANDONED CHILDREN -- CONFIDENTIALITY -- IMMUNITY. (1) A safe haven shall take temporary physical custody of a child, without court order, if the child is personally delivered to a safe haven, provided that:

(a) The child is no more than thirty (30) days of age;

(b) The custodial parent delivers the child to the safe haven; and

(c) The custodial parent does not express an intent to return for the child.

(2) If a safe haven takes temporary physical custody of a child pursuant to subsection (1) of this section, the safe haven shall:

(a) Perform any act necessary, in accordance with generally accepted standards of professional practice, to protect, preserve, or aid the physical health and safety of the child during the temporary physical custody including, but not limited to, delivering the child to a hospital for care or treatment; and

(b) Immediately notify a peace officer or other person appointed by the court of the abandonment.

(3) The safe haven shall not inquire as to the identity of the custodial parent and, if the identity of a parent is known to the safe haven, the safe haven shall keep all information as to the identity confidential. The custodial parent leaving the child shall not be required to provide any information to the safe haven but may voluntarily provide information including, but not limited to, medical history of the parent(s) or the child.

(4) A safe haven with responsibility for performing duties under

this section, and any employee, doctor, or other personnel working at the safe haven, are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith in receiving a child and performing duties under this section.

(5) A custodial parent may leave a child with a safe haven in this state without being subjected to prosecution for abandonment pursuant to the provisions of title 18, Idaho Code, provided that the child was no more than thirty (30) days of age when it was left at the safe haven, as determined within a reasonable degree of medical certainty.

SECTION 71. That Section 39-8104, Idaho Code, as added by Section 1, Chapter 357, Laws of 2001, be, and the same is hereby amended to read as follows:

39-~~8104~~8204. PROTECTIVE CUSTODY -- PLACEMENT -- IMMUNITY. (1) Upon notification by a safe haven that a child has been abandoned pursuant to the provisions of this chapter, a peace officer or other person appointed by the court shall take protective custody of the child and shall immediately deliver the child to the care, control and custody of the department of health and welfare. Provided however, where the child requires further medical evaluation, care or treatment, the child shall be left in the care of a hospital and the peace officer or other person appointed by the court shall notify the court and prosecutor of the action taken and the location of the child so that a shelter care hearing may be held.

(2) The department of health and welfare shall place an abandoned child with a potential adoptive parent as soon as possible.

(3) A peace officer or other person appointed by the court who takes a child into custody under this section, shall not be held liable either criminally or civilly unless the action of taking the child was exercised in bad faith or in violation of the provisions of this chapter.

SECTION 72. That Section 39-8105, Idaho Code, as added by Section 1, Chapter 357, Laws of 2001, be, and the same is hereby amended to read as follows:

39-~~8105~~8205. SHELTER CARE HEARING -- INVESTIGATION -- ADJUDICATORY HEARING -- TERMINATION OF PARENT-CHILD RELATIONSHIP. (1) A shelter care hearing shall be held pursuant to section 16-1614, Idaho Code, and the department shall file a petition for adjudicatory hearing to vest legal custody in the department pursuant to section 16-1610, Idaho Code, at or prior to the time set for shelter care hearing.

(2) A child protective investigation or criminal investigation shall not be initiated based on a claim of abandonment unless a claim of parental rights is made and the court orders the investigation.

(3) During the initial thirty (30) day period from the time the child was delivered to a safe haven by a custodial parent, the department shall request assistance from law enforcement officials to investigate through the missing children information clearinghouse and other state and national resources to ensure that the child is not a missing child.

(4) An adjudicatory hearing shall be conducted pursuant to the provisions of section 16-1608, Idaho Code, and section 16-1610, Idaho Code.

(5) As soon as practicable following the initial thirty (30) day period from the time the child was delivered to a safe haven by a custodial parent, the department shall petition to terminate the parental rights of the parent who abandoned the child at the safe haven and any unknown parent pursuant to section 16-1615, Idaho Code, and in accordance with chapter 20, title 16, Idaho Code.

SECTION 73. That Section 39-8106, Idaho Code, as added by Section 1, Chapter 357, Laws of 2001, be, and the same is hereby amended to read as follows:

39-~~81~~~~06~~8206. CLAIM OF PARENTAL RIGHTS -- PROCEDURE. (1) A parent of the child may make a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of this chapter, by filing a notice of claim of parental rights with the vital statistics unit of the department of health and welfare. The vital statistics unit of the department of health and welfare shall maintain an abandoned child registry for this purpose which shall be subject to disclosure according to chapter 3, title 9, Idaho Code. The department shall provide forms for the purpose of filing a claim of parental rights, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state. Any parent claiming a parental right of an abandoned child, abandoned pursuant to the provisions of this chapter, shall file the form with the vital statistics unit of the department of health and welfare. The form must be filled out completely and provide the name and address for service of the person asserting the parental claim and set forth the approximate date the child was left in a safe haven. The form must be signed by the person claiming the parental right and be witnessed before a notary public. The department shall record the date and time the claim of parental rights is filed with the department. The claim shall be deemed to be duly filed with the department as of the date and time recorded on the claim by the department. To be valid, a claim of parental rights must be filed before an order terminating parental rights is entered by the court. A parent that fails to file a claim of parental rights prior to entry of an order terminating their parental rights is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights or adoption of the child. Registration of notice of commencement of paternity proceedings pursuant to chapter 15, title 16, Idaho Code, shall not satisfy the requirements of this section.

(2) Prior to the time set for hearing on the petition to terminate parental rights filed by the department of health and welfare, and prior to entry of an order terminating parental rights by the court, the department of health and welfare shall obtain and file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, which certificate shall state that a diligent search has been made of the registry of claims of parental rights of abandoned children, abandoned pursuant to this chapter, and shall set forth the results of that search.

(3) If a claim of parental rights is made before an order terminating parental rights is entered by the court, notice pursuant to section 16-2007, Idaho Code, will be required and the court shall hold the

action for involuntary termination of parental rights in abeyance for a period of time not to exceed sixty (60) days unless otherwise ordered by the court. During that period:

(a) The court shall order genetic testing to establish maternity or paternity, at the expense of the person or persons claiming the parental right.

(b) The department of health and welfare shall conduct an investigation pursuant to section 16-2008, Idaho Code, and in those cases where a guardian ad litem has been appointed, the guardian ad litem shall have all rights, powers and duties as provided for in chapter 16, title 16, Idaho Code, and as provided for in chapter 20, title 16, Idaho Code.

(c) When indicated as a result of the investigation, a shelter care hearing shall be conducted by the court in accordance with section 16-1614, Idaho Code, within forty-eight (48) hours, or at an earlier time if ordered by the court, to determine whether the child should remain in the physical custody of the department or be released to a parent or other third party.

(d) Further proceedings shall be conducted as the court determines appropriate. However, where a claim of parental rights is made before an order terminating parental rights is entered by the court, a parent shall not be found to have neglected or abandoned a child placed in accordance with this chapter solely because the child was left with a safe haven.

(4) If there is no showing that a parent has claimed a parental right to the child, the department of health and welfare shall file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of parental claims for children abandoned pursuant to the provisions of this chapter and that no parental claim has been made. The certificate shall be filed with the court prior to the entrance of the final order of termination of parental rights.

SECTION 74. That Section 39-8107, Idaho Code, as added by Section 1, Chapter 357, Laws of 2001, be, and the same is hereby amended to read as follows:

39-~~8107~~8207. REPORT TO LEGISLATURE. The department of health and welfare shall evaluate the program and shall submit a written report on the program, including recommendations for revisions and improvements, to the senate health and welfare committee and the house of representatives health and welfare committee of the legislature of the state of Idaho no later than two (2) years after the effective date of this act.

SECTION 75. That Section 16-1513, Idaho Code, be, and the same is hereby amended to read as follows:

16-1513. REGISTRATION OF NOTICE OF COMMENCEMENT OF PATERNITY PROCEEDINGS. (1) A person who is the father or claims to be the father of a child born out of wedlock may claim rights pertaining to his paternity of the child by commencing proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare notice of his commencement of pro-

ceedings to establish his paternity of the child born out of wedlock. The vital statistics unit of the department of health and welfare shall provide forms for the purpose of filing the notice of commencement of paternity proceedings, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state. The forms shall include a written notification that filing pursuant to this section shall not satisfy the requirements of chapter 8~~1~~2, title 39, Idaho Code, and the notification shall also include the following statements:

(a) A parent may make a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 8~~1~~2, title 39, Idaho Code, as provided by section 39-~~8106~~8206, Idaho Code, by filing a notice of claim of parental rights with the vital statistics unit of the department of health and welfare on a form as prescribed and provided by the vital statistics unit of the department of health and welfare;

(b) The vital statistics unit of the department of health and welfare shall maintain a separate registry for claims to abandoned children, abandoned pursuant to the provisions of chapter 8~~1~~2, title 39, Idaho Code;

(c) The department shall provide forms for the purpose of filing a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 8~~1~~2, title 39, Idaho Code, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state;

(d) To be valid, a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 8~~1~~2, title 39, Idaho Code, must be filed before an order terminating parental rights is entered by the court. A parent that fails to file a claim of parental rights prior to entry of an order terminating their parental rights is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights or adoption of the child.

(e) Registration of notice of commencement of paternity proceedings pursuant to chapter 15, title 16, Idaho Code, shall not satisfy the requirements of chapter 8~~1~~2, title 39, Idaho Code. To register a parental claim to an abandoned child, abandoned pursuant to the provisions of chapter 8~~1~~2, title 39, Idaho Code, an individual must file an abandoned child registry claim with the vital statistics unit of the department of health and welfare and comply with all other provisions of chapter 8~~1~~2, title 39, Idaho Code, in the time and manner prescribed, in order to preserve parental rights to the child.

When filing a notice of the commencement of paternity proceedings, a person who claims to be the father of a child born out of wedlock, shall file with the vital statistics unit of the department of health and welfare, the completed form prescribed by the vital statistics unit of the department of health and welfare. Said form will be filled out completely, signed by the person claiming paternity, and witnessed before a notary public.

(2) The notice of the commencement of paternity proceedings may be

filed prior to the birth of the child, but must be filed prior to the placement for adoption of the child in the home of prospective parents or prior to the date of commencement of any proceeding to terminate the parental rights of the birth mother, whichever event occurs first. The notice of the commencement of paternity proceedings shall be signed by the person filing the notice and shall include his name and address, the name and last address of the mother, and either the birth date of the child or the probable month and year of the expected birth of the child. The vital statistics unit of the department of health and welfare shall maintain a registry for this purpose which shall be subject to disclosure according to chapter 3, title 9, Idaho Code. The department shall record the date and time the notice of the commencement of proceedings is filed with the department. The notice shall be deemed to be duly filed with the department as of the date and time recorded on the notice by the department.

(3) If the unmarried biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in venue.

(4) Any father of a child born out of wedlock who fails to file and register his notice of the commencement of paternity proceedings prior to the placement for adoption of the child in the home of prospective parents or prior to the date of commencement of any proceeding to terminate the parental rights of the birth mother, whichever event occurs first, is deemed to have waived and surrendered any right in relation to the child and shall be barred from thereafter bringing or maintaining any action to establish his paternity of the child. Failure of such filing or registration shall constitute an abandonment of said child. The filing and registration of a notice of the commencement of paternity proceedings by a putative father shall constitute prima facie evidence of the fact of his paternity in any contested proceeding under chapter 11, title 7, Idaho Code. The filing of a notice of the commencement of paternity proceedings shall not be a bar to an action for termination of his parental rights under chapter 20, title 16, Idaho Code.

(5) In any adoption proceeding pertaining to a child born out of wedlock, if there is no showing that the putative father has consented to the adoption, a certificate shall be obtained from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, which certificate shall state that a diligent search has been made of the registry of notices from putative fathers, and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to entry of a final decree of adoption.

(6) Identities of putative fathers can only be released pursuant to procedures contained in chapter 3, title 9, Idaho Code.

(7) To cover the cost of implementing and maintaining said registry, the vital statistics unit of the department of health and welfare shall charge a filing fee of ten dollars ($10.00) at the time the putative father files his notice of his commencement of proceedings. It is the intent of the legislature that the fee shall cover all direct and indirect costs incurred pursuant to this section. The board of health and welfare shall annually review the fees and expenses incurred pursuant to administering the provisions of this section.

(8) Consistent with its authority denoted in the vital statistics

act, section 39-242(c), Idaho Code, the board of health and welfare shall adopt, amend and repeal rules for the purpose of carrying out the provisions of this section.

SECTION 76. That Section 16-1612, Idaho Code, be, and the same is hereby amended to read as follows:

16-1612. EMERGENCY REMOVAL.

(a) (1) A child may be taken into shelter care by a peace officer or other person appointed by the court without an order issued pursuant to subsection (d) of section 16-1606 or section 16-1608, Idaho Code, only where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child or where the child is an abandoned child pursuant to the provisions of chapter 8~~1~~2, title 39, Idaho Code.

(2) An alleged offender may be removed from the home of the victim of abuse or neglect by a peace officer or other person appointed by the court without an order, issued pursuant to subsection (e) of section 16-1606, Idaho Code, only where the child is endangered and prompt removal of an alleged offender is necessary to prevent serious physical or mental injury to the child.

(b) When a child is taken into shelter care under subsection (a) of this section, he may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, unless a shelter care hearing has been held pursuant to section 16-1614, Idaho Code, and the court orders an adjudicatory hearing.

(c) When an alleged offender is removed from the home under subsection (a) (2) of this section, a motion based on a sworn affidavit by the department must be filed simultaneously with the petition and the court shall determine at a shelter care hearing, held within a maximum of twenty-four (24) hours, excluding Saturdays, Sundays and holidays, whether the relief sought shall be granted, pending an adjudicatory hearing. Notice of such hearing shall be served upon the alleged offender at the time of removal or other protective relief.

SECTION 77. That Section 16-1613, Idaho Code, be, and the same is hereby amended to read as follows:

16-1613. EMERGENCY REMOVAL -- NOTICE. (a) A peace officer or other person appointed by the court who takes a child into shelter care under section 16-1612, Idaho Code, shall immediately:

(1) Take the child to a place of shelter, and

(2) Notify the court of the action taken and the place to which the child was taken, and,

(3) w~~W~~ith the exception of a child abandoned pursuant to the provisions of chapter 8~~1~~2, title 39, Idaho Code, N~~n~~otify each of the parents, guardian or other legal custodian that the child has been taken into shelter care, the type and nature of shelter care, and that the child may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, within which time there must be a shelter care hearing.

(b) A peace officer or other person appointed by the court who takes a child into shelter care under section 16-1612, Idaho Code, shall not be held liable either criminally or civilly unless the action of

taking the child was exercised in bad faith and/or the requirements of subsection (a) of this section are not complied with.

SECTION 78. That Section 16-1623, Idaho Code, be, and the same is hereby amended to read as follows:

16-1623. POWERS AND DUTIES OF THE DEPARTMENT. The department, working in conjunction with the court and other public and private agencies and persons, shall have the primary responsibility to implement the purpose of this chapter. To this end, the department is empowered and shall have the duty to do all things reasonably necessary to carry out the purpose of this chapter, including, but not limited to, the following:

(a) The department shall administer treatment programs for the protection and care of neglected, abused and abandoned children, and in so doing may place in foster care, shelter care, or other diagnostic, treatment, or care centers or facilities, children of whom it has been given custody. The department is to be governed by the standards found in chapter 12, title 39, Idaho Code.

(b) On December 1, the department shall make an annual statistical report to the governor covering the preceding fiscal year showing the number and status of persons in its custody and including such other data as will provide sufficient facts for sound planning in the conservation of children and youth. All officials and employees of the state and of every county and city shall furnish the department upon request, such information within their knowledge and control as the department deems necessary. Local agencies shall report in such uniform format as may be required by the department.

(c) The department shall be required to maintain a central registry for the reporting of child neglect, abuse and abandonment information. Provided however, that the department shall not retain any information for this purpose relating to a child, or parent of a child, abandoned pursuant to chapter 8~~1~~2, title 39, Idaho Code.

(d) The department shall make periodic evaluation of all persons in its custody or under its supervision for the purpose of determining whether existing orders and dispositions in individual cases shall be modified or continued in force. Evaluations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding six (6) months. Reports of evaluation made pursuant to this section shall be filed with the court which vested custody of the person with the department. Reports of evaluation shall be provided to persons having full or partial legal or physical custody of a child. Failure of the department to evaluate a person or to reevaluate him within six (6) months of a previous examination shall not of itself entitle the person to a change in disposition but shall entitle him, his parent, guardian or custodian or his counsel to petition the court pursuant to section 16-1611, Idaho Code.

(e) In a consultive capacity, the department shall assist communities in the development of constructive programs for the protection, prevention and care of children and youth.

(f) The department shall keep written records of investigations, evaluations, prognoses and all orders concerning disposition or treatment of every person over whom it has legal custody. Department records shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless otherwise ordered by the court, the person consents to the

disclosure, or disclosure is necessary for the delivery of services to the person. Notwithstanding the provisions restricting disclosure or the exemptions from disclosure provided in chapter 3, title 9, Idaho Code, all records pertaining to investigations, the rehabilitation of youth, the protection of children, evaluation, treatment and/or disposition records pertaining to the statutory responsibilities of the department shall be disclosed to any duly elected state official carrying out his official functions.

(g) The department shall establish appropriate administrative procedures for the processing of complaints of child neglect, abuse and abandonment received and for the implementation of the protection, treatment and care of children formally or informally placed in the custody of the department under this chapter.

(h) The department having been granted legal custody of a child, subject to the judicial review provisions of this subsection, shall have the right to determine where and with whom the child shall live, provided that the child shall not be placed outside the state without the court's consent. Provided however, that the court shall retain jurisdiction over the child, which jurisdiction shall be entered on any order or petition granting legal custody to the department, and the court shall have jurisdiction over all matters relating to the child. The department shall not place the child in the home from which the court ordered the child removed without first obtaining the approval of the court.

(i) The department shall give to the court any information concerning the child that the court may at any time require, but in any event shall report the progress of the child under its custody at intervals of not to exceed six (6) months. The department shall file with the court at least five (5) days prior to the permanency hearing under section 16-1611, Idaho Code, the permanency plan and recommendations of the department. There shall be a rebuttable presumption that if a child is placed in the custody of the department and was also placed in out of the home care for a period not less than fifteen (15) out of the last twenty-two (22) months from the date the child entered shelter care, the department shall initiate a petition for termination of parental rights. This presumption may be rebutted by a finding of the court that the filing of a petition for termination of parental rights would not be in the best interests of the child or reasonable efforts have not been provided to reunite the child with his family, or the child is placed permanently with a relative.

(j) The department shall establish appropriate administrative procedures for the conduct of administrative reviews and hearings as required by federal statute for all children committed to the department and placed in out of the home care.

(k) At any time the department is considering a placement pursuant to this act, the department shall make a reasonable effort to place the child in the least disruptive environment to the child and in so doing may consider, without limitation, placement of the child with related persons.

SECTION 79. That Section 16-1632, Idaho Code, be, and the same is hereby amended to read as follows:

16-1632. GUARDIAN AD LITEM -- RIGHTS AND POWERS. The guardian ad litem will have the following rights and powers, which shall continue

until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

(a) The guardian ad litem, if represented by counsel, may file pleadings, motions, memoranda and briefs on behalf of the child, and shall have all of the rights of a party whether conferred by statute, rule of court or otherwise.

(b) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem and the guardian's attorney of all hearings, staffings, investigations, depositions and significant changes of circumstances of the child.

(c) Except to the extent prohibited or regulated by federal law or by the provisions of chapter 8~~1~~2, title 39, Idaho Code, upon presentation of a copy of the order appointing guardian ad litem, any person or agency, including, without limitation, any hospital, school, organization, department of health and welfare, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the guardian ad litem to inspect and copy pertinent records necessary for the proceeding for which the guardian is appointed relating to the child and parent without consent of the child or parents.

SECTION 80. That Section 16-2007, Idaho Code, be, and the same is hereby amended to read as follows:

16-2007. NOTICE -- WAIVER -- GUARDIAN AD LITEM. After a petition has been filed, the court shall set the time and place for hearing, and shall cause notice thereof to be given to the petitioner, the parents of the child if married, the mother of the child if unmarried, those persons entitled to notice pursuant to section 16-1513, Idaho Code, the guardian of the person of the child, the person having legal custody of the child, any individual standing in loco parentis to the child, and the guardian ad litem of any party, or if service cannot be had on the parent or guardian, then upon the nearest blood relative named in the petition. The division of welfare of the Idaho department of health and welfare shall be given notice of the hearing if the petition for termination was not filed in conjunction with a petition for adoption or by an adoption agency licensed by the state of Idaho. Notice shall be given by personal service on the parents or guardian. Where reasonable efforts to effect personal service have been unsuccessful, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than ten (10) days after service of notice, or where service is by registered or certified mail and publication, the hearing shall take place no sooner than ten (10) days after the date of last publication. Notice and appearance may be waived by a parent in writing before the court or in the presence of, and witnessed by, a clerk of court or a representative of an authorized agency, provided that such parent has been apprised by the court or by such person of the meaning and consequences of the termination action. Where the parent resides outside the state, the waiver shall be acknowledged before a notary of the state and shall contain the current address of the parent.

The parent who has executed such a waiver shall not be required to appear. When the termination of the parent and child relationship is sought and the parent is determined to be incompetent to participate in the proceeding, the court shall appoint a guardian ad litem for the alleged incompetent parent. The court may in any other case appoint a guardian ad litem, as may be deemed necessary or desirable, for any party. Where the putative father has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare, notice of his commencement of proceedings to establish his paternity of the child born out of wedlock, notice under this section is not required unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code. If a parent fails to file a claim of parental rights pursuant to the provisions of chapter 8~~1~~2, title 39, Idaho Code, for a child left with a safe haven pursuant thereto, prior to entry of an order terminating their parental rights, that parent is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights.

SECTION 81. That the Heading for Chapter 21, Title 40, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

CHAPTER 2~~1~~2
DETACHMENT OF TERRITORY BY PETITION
AND ORGANIZATION OF NEW DISTRICT

SECTION 82. That Section 40-2101, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2101~~2201. HIGHWAY DISTRICTS SUBJECT TO DETACHMENT. A portion of the territory of an existing highway district, provided that the district is not a single county-wide highway district organized under the provisions of chapter 14, title 40, Idaho Code, whether the district is situated wholly in one (1) or more counties, may be detached from the highway district and established as a new highway district as provided in this chapter.

SECTION 83. That Section 40-2102, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2102~~2202. PETITION. Whenever electors of a portion of the territory embraced in any existing highway district desire that their portion be detached from the highway district and organized into a new highway district, a petition describing the territory by its boundaries, signed by not less than ten (10) electors qualified to vote at a highway district election and residing in the territory sought to be detached shall be presented to the commissioners of the highway district.

SECTION 84. That Section 40-2103, Idaho Code, as added by Section

1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2103~~2203. ORDER FOR HEARING UPON PETITION. Immediately upon its next regular meeting or at a special meeting called for that purpose, the highway district commissioners shall by order or resolution fix a time and place for a hearing of the petition, which time shall not be less than twenty-one (21) days from and after the date of the first publication of the notice of the petition and of the hearing.

SECTION 85. That Section 40-2104, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2104~~2204. NOTICE OF HEARING AND PETITION. The highway district commissioners shall require their clerk to have a notice published in accordance with the provisions of section 40-206, Idaho Code, setting forth the fact that a petition has been filed with the commissioners. The notice shall state the name of the highway district from which territory is proposed to be detached and organized into a new highway district; a concise description of the boundaries of the territory so proposed to be detached and organized into a new highway district; the current bonded and current warrant indebtedness of the district; a notice of the time and place when and where the petition will be heard by the highway district commissioners; and notice that any elector qualified to vote at an election of the highway district may, prior to or at the time of the hearing, file with the highway district clerk written objections to the proposed detachment and organization of said territory.

SECTION 86. That Section 40-2105, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2105~~2205. HEARING -- ORDER FOR DETACHMENT AND ORGANIZATION. At the time and place specified in the notice, the highway district commissioners shall consider the petition and all written objections filed with them and shall hear all persons in relation to it. Upon the conclusion of the hearing, which may be continued from day to day, if the commissioners shall determine that the detachment from the highway district of the territory described in the petition is practicable and to the best interests of the territory and of the highway district, they shall, within ten (10) days, make and enter an order directing that the territory be detached from the highway district and be organized into a new highway district at a date not less than thirty (30) nor more than sixty (60) days from and after the date of the order.

SECTION 87. That Section 40-2106, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2106~~2206. NEW HIGHWAY DISTRICT -- ESTABLISHMENT OF SUBDISTRICTS. When the commissioners of the existing highway district order the establishment of a new highway district, they shall have the duty to name the new highway district and to divide the new highway district into three

(3) subdistricts, as nearly equal in population, area and mileage as practicable, to be known as highway commissioners subdistricts one, two and three. Subdistricts may be revised or modified as changes in conditions demand. Not more than one (1) of the highway district commissioners shall be an elector of the same highway subdistrict.

SECTION 88. That Section 40-2107, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2107~~2207. FIRST COMMISSIONERS OF NEW HIGHWAY DISTRICT. The existing highway district commissioners shall appoint a qualified elector to serve as a highway district commissioner for each of the subdistricts of the new highway district. The commissioners shall provide each of the commissioners appointed to the new highway district with a certificate of appointment. Each appointed highway district commissioner shall take and subscribe the official oath, which oath shall be filed in the office of the newly organized highway district commissioners. The first commissioners shall serve until the next highway district election as specified in section 40-1305, Idaho Code.

SECTION 89. That Section 40-2108, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2108~~2208. ORGANIZATION AND OPERATION OF NEW HIGHWAY DISTRICT. The newly organized highway district shall be organized and operated in accordance with the provisions of chapter 13, title 40, Idaho Code, except for the provisions of sections 40-1323, 40-1333 and 40-1334, Idaho Code. All of the public highways, public rights-of-way and public streets located within the boundaries of any unincorporated city located within the new highway district shall be under the exclusive jurisdiction of the new highway district and such highways and streets shall be eligible for maintenance and construction with highway district funds in the same manner as any other highways in the highway district system.

SECTION 90. That Section 40-2109, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2109~~2209. EFFECT OF DETACHMENT OF TERRITORY -- APPORTIONMENT OF INDEBTEDNESS. The detachment of territory from the district shall be deemed to relate only to the operations of the district subsequent to the order of detachment. Territory detached and all taxable property in that territory shall be and remain liable for the proportionate share of all bonded, warrant, and other indebtedness incurred by the district prior to the time of detachment. The proportionate share of the indebtedness of the district incurred prior to the order of detachment shall be borne by the detached territory and shall be computed as provided in section 40-1609, Idaho Code.

SECTION 91. That Section 40-2110, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2110~~2210. VALIDITY OF OUTSTANDING BONDS AND WARRANTS NOT AFFECTED. Nothing in this chapter shall be construed as impairing the validity of any bonds or warrants of a highway district outstanding at the time of the detachment of any territory.

SECTION 92. That Section 40-2111, Idaho Code, be, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2111~~2211. FILING OF CERTIFIED COPY OF ORDER. The commissioners shall cause a certified copy of the order of detachment of territory and organization of the new highway district to be filed for record in the office of the county recorder of the county in which the highway district is situate, and shall transmit a certified copy of the order to the highway district commissioners of the newly organized highway district.

SECTION 93. That Section 40-2112, Idaho Code, be, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2112~~2212. HIGHWAY DISTRIBUTION ACCOUNT -- ELIGIBILITY. After the new highway district has been organized and in operation for a full quarter of a calendar year, the newly organized highway district shall be eligible for apportionment of funds from the highway distribution account as provided in section 40-709, Idaho Code.

SECTION 94. That Section 40-2113, Idaho Code, as added by Section 1, Chapter 331, Laws of 1994, be, and the same is hereby amended to read as follows:

40-~~2113~~2213. TRANSFER OF PROPERTY, FUNDS AND MATERIEL. Except for the highways, bridges, public streets and public rights-of-way within the detached territory, none of the property, either real or personal, or any funds, ~~material~~ materiel, supplies or equipment owned and under the control of the highway district from which the territory was detached shall be transferred to the newly organized highway district unless specifically authorized in writing by the highway district owning and controlling such property. However, the highway district organizing the new highway district may provide property, funds, personnel, materiel or services to the newly organized highway district in accordance with the provisions of section 67-2328, Idaho Code.

SECTION 95. That Section 41-286, Idaho Code, as added by Section 1, Chapter 322, Laws of 1994, be, and the same is hereby amended to read as follows:

41-286~~7~~. APPLICATION OF PROVISIONS ADOPTED BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. The department may not require an insurer to comply with any rule, regulation, directive or standard adopted by the national association of insurance commissioners unless application of the rule, regulation, directive or standard, including policy reserves, is authorized by statute and implemented by the director pursuant to chapter 52, title 67, Idaho Code. This section shall not expand or

restrict the general powers and authority of the director as set forth in section 41-210, Idaho Code.

SECTION 96. That Section 41-5501, Idaho Code, be, and the same is hereby amended to read as follows:

41-5501. DEFINITIONS. As used in this chapter:

(1) "Agent" means a producer as defined in section 41-1003(8), Idaho Code.

(2) "Board" means the board of directors of the Idaho high risk individual reinsurance pool established in this chapter and the Idaho small employer reinsurance program established in section 41-4711, Idaho Code.

(3) "Carrier" means any entity that provides, or is authorized to provide, health insurance in this state. For purposes of this chapter, carrier includes an insurance company, any other entity providing reinsurance including excess or stop loss coverage, a hospital or professional service corporation, a fraternal benefit society, a managed care organization, any entity providing health insurance coverage or benefits to residents of this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(4) "Dependent" means a spouse, an unmarried child under the age of nineteen (19) years, an unmarried child who is a full-time student under the age of twenty-three (23) years and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as disabled and dependent upon the parent.

(5) "Director" means the director of the department of insurance of the state of Idaho.

(6) "Eligible individual" means:

(a) An Idaho resident individual or dependent of an Idaho resident who is under the age of sixty-five (65) years, is not eligible for coverage under a group health plan, part A or part B of title XVIII of the social security act (medicare), or a state plan under title XIX (medicaid) or any successor program, and who does not have other health insurance coverage; or

(b) An individual who is legally domiciled in Idaho on the date of application to the pool and is eligible for the credit for health insurance costs under section 35 of the Internal Revenue Code of 1986; or

(~~b~~c) An Idaho resident individual or a dependent of an Idaho resident who is a federally eligible individual (one who meets the eligibility criteria set forth in the federal health insurance portability and accountability act of 1996 Public Law 104-191, Sec. 2741(b) (HIPAA)).

Coverage under a basic, standard, catastrophic A or catastrophic B health benefit plan shall not be available to any individual who is covered under other health insurance coverage. For purposes of this chapter, to be eligible, an individual must also meet the requirements of section 41-5510, Idaho Code.

(7) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or health maintenance organization sub-

scriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance, or nonrenewable short-term coverage issued for a period of twelve (12) months or less.

(8) "Individual basic health benefit plan" means a lower cost health benefit plan developed pursuant to section 41-5511, Idaho Code.

(9) "Individual carrier" means a carrier that offers health benefit plans covering eligible individuals and their dependents.

(10) "Individual catastrophic A health benefit plan" means a higher limit health benefit plan developed pursuant to section 41-5511, Idaho Code.

(11) "Individual catastrophic B health benefit plan" means a health benefit plan offering limits higher than a catastrophic A health benefit plan developed pursuant to section 41-5511, Idaho Code.

(12) "Individual standard health benefit plan" means a health benefit plan developed pursuant to section 41-5511, Idaho Code.

(13) "Plan" or "pool plan" means the individual basic, standard, catastrophic A or catastrophic B plan established pursuant to section 41-5511, Idaho Code.

(14) "Plan of operation" means the plan of operation of the individual high risk reinsurance pool established pursuant to this chapter.

(15) "Pool" means the Idaho high risk reinsurance pool.

(16) "Premium" means all moneys paid by an individual and eligible dependents as a condition of receiving coverage from a carrier, including any fees or other contributions associated with the health benefit plan.

(17) "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under:

(a) Medicare or medicaid, civilian health and medical program for uniformed services (CHAMPUS), the Indian health service program, a state health benefit risk pool, or any other similar publicly sponsored program; or

(b) Any group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a managed care organization or a fraternal benefit society.

(18) "Reinsurance premium" means the premium set by the board pursuant to section 41-5506, Idaho Code, to be paid by a reinsuring carrier for plans issued under the pool.

(19) "Reinsuring carrier" means a carrier participating in the individual high risk reinsurance pool established by this chapter.

(20) "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

SECTION 97. That Section 50-2030, Idaho Code, as added by Section 5, Chapter 259, Laws of 1987, be, and the same is hereby amended to read as follows:

50-2030~~2~~. SEVERABILITY. The provisions of this act are hereby declared to be severable; and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SECTION 98. That Section 54-2607, Idaho Code, be, and the same is hereby amended to read as follows:

54-2607. ADMINISTRATOR OF THE DIVISION OF BUILDING SAFETY -- POWERS AND DUTIES. (1) The administrator shall exercise such powers and duties as are reasonably necessary to enforce the minimum standards provided in this chapter, and he may among other things:

(a) Prescribe and establish procedures to effectuate the efficient enforcement of this chapter not herein prescribed.

(b) Serve as secretary to the Idaho plumbing board.

(c) Appoint licensed staff inspectors who shall be authorized to enter and inspect by and through a properly identified person, at reasonable hours, plumbing and plumbing systems.

(d) Make plumbing inspections for another state or local jurisdiction upon request by an appropriate building official. Such inspections shall be made in accordance with the applicable plumbing codes of the requesting jurisdiction. Fees charged for such inspection services shall be as provided in the rules promulgated by the board.

(e) Summon witnesses to appear and testify before him on any matter within the provisions of this chapter. No person shall be required to testify outside the county wherein he resides or where his principal place of business is located. Such summons to testify shall be issued and served in like manner as a subpoena to witness issued from the district court, or in other manner consistent with the procedure of the division of building safety. In case any witness shall fail or refuse to appear and testify upon being summoned as herein provided, the clerk of the district court of the county shall upon demand by the administrator or his designated agent, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed. Violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of any other subpoena issued from the district court.

(f) Administer oaths and take affirmations of witnesses appearing before him; and have the power to appoint competent persons to issue subpoenas, administer oaths and take testimony.

(~~f~~g) Impose civil penalties as provided in this chapter and the rules of the Idaho plumbing board.

(~~g~~h) In addition to any other penalties specified in this chapter, whenever any person violates the provisions of this chapter and the rules of the Idaho plumbing board, the administrator may maintain an action in the name of the state of Idaho to enjoin that person from any further violations. Such action may be brought either in the county in which the acts are claimed to have been or are being committed, or in the county where the defendant resides, or in Ada county.

(i) Upon the filing of a certified complaint in the district court, the court, if satisfied that the acts complained of have been, or probably are being, or may be committed, may issue a

temporary restraining order, or a preliminary injunction, or both, without bond, enjoining the defendant from the commission of any such act or acts constituting the violation.

(ii) A copy of the complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other similar civil actions.

(iii) If the commission of the act or acts is established, the court shall enter a decree permanently enjoining the defendant from committing such act or acts. If an injunction issued under the provisions of this section is violated, the court, or the judge thereof at chambers, may summarily try and punish the offender for contempt of court.

(2) It shall be the duty of the administrator to give notice to cities which supply sewer service to areas outside their city limits and who have requested in writing such notice from the administrator of all permits issued relative to sewer installations. The notice shall be given within ten (10) days from the date the permit was requested for such installation. The notice shall contain a map of the physical location of the installation and reference to the date of inspection if the city so requests.

SECTION 99. That the Heading for Chapter 39, Title 54, Idaho Code, as added by Section 3, Chapter 138, Laws of 1989, be, and the same is hereby amended to read as follows:

CHAPTER 3~~9~~8
BOARD OF CEMETERIANS

SECTION 100. That Section 54-3901, Idaho Code, as added by Section 3, Chapter 138, Laws of 1989, be, and the same is hereby amended to read as follows:

54-~~3901~~3801. BOARD OF CEMETERIANS. There is hereby established in the department of self-governing agencies a state board of cemeterians to be composed of three (3) members appointed by the governor in the manner hereinafter set forth. Each member of the board shall be a cemeterian and resident of the state of Idaho for a period of at least five (5) years next preceding his appointment, during which time he shall have been continuously engaged in the cemetery business. No person shall be eligible for appointment to the board of cemeterians who is financially interested, directly, or indirectly, in any embalming college, wholesale funeral supply business, or casket manufacturing business.

The governor shall appoint the members of the board from a list of qualified cemeterians of triple the number of persons to be appointed, who shall be proposed and submitted to him by the Idaho cemetery association, inc., or other statewide organization or association of cemeterians whose membership is composed of a majority of all cemeterians of the state.

All members of the board of cemeterians shall be appointed to serve for a term of three (3) years, to expire on May 1 of the year of termination of their term, and until their successors have been appointed and qualified; provided, however, the governor is hereby granted the power to alter the term of office of the members of the board first appointed

hereunder so that the term of office of not more than one (1) member of the board shall terminate in any one (1) year. In case of a vacancy occurring on said board of cemeterians by reason of the death of any member, or his resignation, incapacity, neglect or refusal to act, or in any other way, the governor shall appoint a qualified member for the remainder of the unexpired term of the vacant office from a list of duly qualified cemeterians prepared and submitted in the manner prescribed herein for the initial appointment of members to the board. Any member of the board of cemeterians who willfully fails to properly discharge his duties may be removed by the governor.

The board shall meet, not less than annually, to elect a chairman, vice chairman, and secretary and take official board action on pending matters by majority vote of all the members of the board of cemeterians, and in doing so a majority of the members of said board shall at all times constitute a quorum. Notice of any meeting shall be given by the chairman to all members of the board at least ten (10) days in advance of each meeting unless such notice is waived in writing by all of the members of the board.

Each member of the board of cemeterians shall be compensated as provided by section 59-509(g), Idaho Code.

SECTION 101. That Section 54-3902, Idaho Code, as added by Section 3, Chapter 138, Laws of 1989, be, and the same is hereby amended to read as follows:

54-~~3902~~3802. POWERS AND DUTIES OF BOARD. The state board of cemeterians shall have the following powers and duties:

~~A.~~(1) To prepare, conduct, and grade examinations of applicants for cemeterian licenses.

~~B.~~(2) To certify the results of examinations of applicants and certify the applicant as having "passed" or "failed."~~.~~

~~C.~~(3) To conduct hearings and proceedings in connection with the suspension or revocation of licenses.

~~D.~~(4) To make findings and recommendations to the governor on any and all matters relating to the enforcement of the provisions of this act.

~~E.~~(5) To perform all duties and exercise all other powers granted under this act, or the laws of the state of Idaho.

~~F.~~(6) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

SECTION 102. That Section 54-3903, Idaho Code, as added by Section 3, Chapter 138, Laws of 1989, be, and the same is hereby amended to read as follows:

54-~~3903~~3803. LICENSE FEES. There shall be paid with the filing of any application for an original license, or the application for any renewal of a license, the following license fees:

~~A.~~(1) Twenty-five dollars ($25.00) for a cemeterian license.

~~B.~~(2) Thirty-five dollars ($35.00) for a cemetery establishment license.

~~C.~~(3) Fifteen dollars ($15.00) for a resident trainee license. All licenses shall be issued on a calendar or fiscal year basis, as determined by the board, and there shall be no proration of fees for a part year license.

All fees shall be paid to the bureau of occupational licenses.

SECTION 103. That Section 54-3904, Idaho Code, as added by Section 3, Chapter 138, Laws of 1989, be, and the same is hereby amended to read as follows:

54-~~3904~~3804. DENIAL, SUSPENSION, OR REVOCATION OF LICENSES -- GROUNDS -- PROBATION. The board may refuse to issue or may refuse to renew or may suspend or may revoke any license, or may place the holder thereof on a term of probation, after proper hearing, upon finding that the holder of such license committed any of the following acts or omissions:

~~A.~~(1) Conviction of, being found guilty of, pleading guilty to or receiving withheld judgment for a crime involving moral turpitude.

~~B.~~(2) Conviction of, being found guilty of, pleading guilty to or receiving withheld judgment for a felony.

~~C.~~(3) Unprofessional conduct, which is hereby defined to include:

(~~1~~a) Misrepresentation or fraud in the conduct of cemetery services;

(~~2~~b) False or misleading advertising as a holder of a license for the advertising or using the name of an unlicensed person in connection with that of any cemetery establishment;

(~~3~~c) Employment directly or indirectly, of any resident trainee, agent, assistant, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular cemetery establishment;

(~~4~~d) Gross immorality;

(~~5~~e) Aiding or abetting an unlicensed person to engage in practice as a cemeterian;

(~~6~~f) Violation of any of the provisions of section 54-1116, Idaho Code.

(~~7~~g) Violation of any state law, or municipal or county ordinance, or regulation authorized under this act affecting the handling, custody, care, processing or transportation of dead human bodies;

(~~8~~h) Fraud or misrepresentation in obtaining or renewing a license;

(~~9~~i) Violation of statutes of any state having to do with prearrangement or prefinancing of cemetery supplies or services.

SECTION 104. That Section 54-3905, Idaho Code, as added by Section 3, Chapter 138, Laws of 1989, and as amended by Section 91, Chapter 216, Laws of 1993, be, and the same is hereby amended to read as follows:

54-~~3905~~3805. WRITTEN COMPLAINT -- PROCEDURE FOR SUSPENSION OR REVOCATION OF LICENSE. Upon a written complaint filed with the board of cemeterians the board shall cause to be held a hearing to determine whether a license of any person issued under this act should be suspended or revoked, or the issuance or renewal thereof refused, because of a violation of any of the causes set forth in section 54-~~3904~~3804, Idaho Code. At least fifteen (15) days prior to the date set for such

hearing, the board shall cause written notice to be sent by certified mail to the licensee or applicant at his last known address, which notice shall contain a statement of the charges made, and the date, time and place set for hearing. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by the action of the board shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 105. That the Heading for Chapter 45, Title 54, Idaho Code, as added by Section 1, Chapter 33, Laws of 1998, be, and the same is hereby amended to read as follows:

CHAPTER 4~~5~~6
PATIENT FREEDOM OF INFORMATION

SECTION 106. That Section 54-4501, Idaho Code, as added by Section 1, Chapter 33, Laws of 1998, be, and the same is hereby amended to read as follows:

54-~~4501~~4601. DECLARATION OF PURPOSE. In recognition of the importance of health care to all Idahoans, it is the intent of the legislature to provide patients with easily accessible profile information on specified licensed or registered health care professionals. By creating a database of individual profiles that the public may access, patients will be able to make more informed decisions about whom they wish to engage when in need of health care services. The database should include educational background and work history, disclosure of any final board disciplinary actions, criminal convictions, malpractice history, and other pertinent information as required by this chapter. The following licensed and registered professional health care providers are subject to this chapter: physicians and surgeons and osteopathic physicians and surgeons, physical therapists, dentists, podiatrists, chiropractors, optometric physicians, psychologists, physicians' assistants, nurse practitioners, and certified registered nurse anesthetists.

SECTION 107. That Section 54-4504, Idaho Code, as added by Section 1, Chapter 33, Laws of 1998, be, and the same is hereby amended to read as follows:

54-~~4504~~4604. INFORMATION AND ACCESS TO PROVIDER PROFILE INFORMATION. The boards and providers subject to the provisions of this chapter shall inform the public that provider profile information is available and make the information available upon request.

The boards and providers shall fully implement the provisions of this chapter no later than January 1, 2000.

The boards and providers shall be responsible for promoting public awareness of and access to provider profiles as provided in this chapter, which shall include the creation of printed materials and signs to be available in board and provider offices. Profile information on individual providers shall be available at the office(s) of the provider, and their respective board, in written form, upon request, and electronically where available, and shall be considered public information.

SECTION 108. That the Heading for Chapter 27, Title 55, Idaho Code, as added by Section 1, Chapter 335, Laws of 1998, be, and the same is hereby amended to read as follows:

CHAPTER ~~27~~8
PSYCHOLOGICALLY IMPACTED REAL PROPERTY

SECTION 109. That Section 55-2701, Idaho Code, as added by Section 1, Chapter 335, Laws of 1998, be, and the same is hereby amended to read as follows:

55-~~2701~~2801. PSYCHOLOGICALLY IMPACTED DEFINED. As used in this chapter, "psychologically impacted" means the effect of certain circumstances surrounding real property which include, but are not limited to, the fact or suspicion that real property might be or is impacted as a result of facts or suspicions including, but not limited to the following:

(1) That an occupant or prior occupant of the real property is or was at any time suspected of being infected or has been infected with a disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or

(2) That the real property was at any time suspected of being the site of suicide, homicide or the commission of a felony which had no effect on the physical condition of the property or its environment or the structures located thereon; or

(3) That a registered or suspected sex offender occupied or resides near the property.

SECTION 110. That Section 55-2702, Idaho Code, as added by Section 1, Chapter 335, Laws of 1998, be, and the same is hereby amended to read as follows:

55-~~2702~~2802. NO CAUSE OF ACTION. No cause of action shall arise against an owner of real property or a representative of the owner for a failure to disclose to the transferee of the real property or a representative of the transferee that the real property was psychologically impacted.

SECTION 111. That Section 55-2703, Idaho Code, as added by Section 1, Chapter 335, Laws of 1998, be, and the same is hereby amended to read as follows:

55-~~2703~~2803. REQUEST FOR DISCLOSURE. In the event that a purchaser who is in the process of making a bona fide offer advises the owner's representative in writing that knowledge of whether the property may be psychologically impacted is an important factor in the purchaser's decision to purchase the property, the owner's representative shall make inquiry of the owner and, with the consent of the owner and subject to and consistent with the applicable laws of privacy, shall report any findings to the purchaser. If the owner refuses disclosure, the owner's representative shall advise the purchaser or the purchaser's representative that the information will not be disclosed.

SECTION 112. That the Heading for Chapter 12, Title 56, Idaho Code, as added by Section 1, Chapter 261, Laws of 2004, be, and the same is hereby amended to read as follows:

CHAPTER 1~~2~~3
LONG-TERM CARE PARTNERSHIP PROGRAM

SECTION 113. That Section 56-1201, Idaho Code, as added by Section 1, Chapter 261, Laws of 2004, be, and the same is hereby amended to read as follows:

56-~~1201~~1301. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Long-term Care Partnership Program."

SECTION 114. That Section 56-1202, Idaho Code, as added by Section 1, Chapter 261, Laws of 2004, be, and the same is hereby amended to read as follows:

56-~~1202~~1302. DEFINITIONS. The following words and phrases when used in this chapter have the meanings given to them unless the context clearly indicates otherwise:

(1) "Asset disregard" means the total assets an individual owns and may retain under medicaid and still qualify for benefits at the time the individual applies for benefits:

(a) If the individual is a beneficiary of a long-term care partnership program approved policy; and

(b) Has exhausted the benefits of the policy.

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

(3) "Long-term care partnership program approved policy" means a long-term care insurance policy which is approved by the department of insurance and is provided through state approved long-term care insurers through the Idaho long-term care partnership program.

(4) "Medicaid" means the federal medical assistance program established under title XIX of the social security act.

SECTION 115. That Section 56-1203, Idaho Code, as added by Section 1, Chapter 261, Laws of 2004, be, and the same is hereby amended to read as follows:

56-~~1203~~1303. LONG-TERM CARE PARTNERSHIP PROGRAM. (1) Upon the repeal of restrictions to asset protection contained in the omnibus budget reconciliation act of 1993 (public law 103-66, 107 Stat. 312), there shall be established the Idaho long-term care partnership program, to be administered by the department with the assistance of the department of insurance to do the following:

(a) Provide incentives for individuals to insure against the costs of providing for their long-term care needs;

(b) Provide a mechanism for individuals to qualify for coverage of the cost of their long-term care needs under medicaid without first being required to substantially exhaust their resources;

(c) Provide counseling services to individuals planning for their long-term care needs; and

(d) Alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives.

(2) Upon exhausting benefits under a long-term care partnership program policy, certain resources of an individual, as described in subsection (3) of this section, shall not be considered by the department as a determination of any of the following:

(a) Eligibility for medicaid;

(b) Amount of any medicaid payment; or

(c) Any subsequent recovery by the state of a payment for medical services.

(3) The department shall promulgate necessary rules and amendments to the state plan to allow for asset disregard. To provide asset disregard, for purchasers of a long-term care partnership program policy, the department shall count insurance benefits paid under the policy toward asset disregard to the extent the payments are for covered services under the long-term care partnership program policy.

SECTION 116. That Section 56-1204, Idaho Code, as added by Section 1, Chapter 261, Laws of 2004, be, and the same is hereby amended to read as follows:

56-~~1204~~1304. SPECIFIC ELIGIBILITY. (1) An individual who is a beneficiary of a long-term care partnership program policy is eligible for assistance under medicaid using the asset disregard under section 56-~~1203~~1303(3), Idaho Code.

(2) If the program is discontinued, an individual who purchased a long-term care partnership policy prior to the date the program is discontinued shall be eligible to receive asset disregard.

(3) The department may enter into reciprocal agreements with other states to extend the asset disregard to residents of the state who purchased long-term care policies in another state which has a substantially similar asset disregard program to the program under section 56-~~1203~~1303, Idaho Code.

SECTION 117. That Section 56-1205, Idaho Code, as added by Section 1, Chapter 261, Laws of 2004, be, and the same is hereby amended to read as follows:

56-~~1205~~1305. ADMINISTRATION. The department and the department of insurance are authorized to adopt rules to implement the provisions of this chapter and for its administration.

SECTION 118. That Section 56-1206, Idaho Code, as added by Section 1, Chapter 261, Laws of 2004, be, and the same is hereby amended to read as follows:

56-~~1206~~1306. NOTICE REQUIREMENT. (1) A long-term care insurance policy issued after the effective date of this chapter shall contain a notice provision to the consumer detailing in plain language the current law pertaining to asset disregard and asset tests.

(2) The notice to the consumer under subsection (1) of this section shall be developed by the director of the department of insurance.

SECTION 119. That Section 57-232, Idaho Code, as added by Section 30, Chapter 208, Laws of 2001, be, and the same is hereby amended to read as follows:

57-23~~2~~4. CREATION AND PERFECTION OF GOVERNMENT SECURITY INTERESTS. (1) The revenues, fees, rents, charges, taxes or other property pledged by a governmental unit for the purpose of securing its bonds, which pledge is hereby authorized, are immediately subject to the lien of the pledge, and the lien shall be a perfected lien upon the effective date of the security agreement. No physical delivery of any security agreement or any other act is required. Neither the security agreement nor a financing statement need be filed or recorded under the uniform commercial code or otherwise. The lien of any pledge is valid, binding, perfected and enforceable from the time the pledge is made. The lien of the pledge shall have priority based on the time of the creation of the pledge unless otherwise provided in the security agreement. The lien of the pledge shall have priority as against all parties having claims of any kind in tort, contract, or otherwise against the governing body, irrespective of whether the parties have notice of the lien. Each pledge and security agreement made for the benefit or security of any of the bonds shall continue to be effective until the principal, interest, and premium, if any, on the bonds have been fully paid or provision for payment has been made, or until the lien created by the security agreement has been released by agreement of the parties in interest or as provided by the security agreement that created the lien.

(2) As used in this section:

(a) "Bonds" means any bond, note, lease or other obligation of a governmental unit;

(b) "Governmental unit" has the meaning assigned in section 28-9-102, Idaho Code;

(c) "Pledge" means the creation of a security interest of any kind;

(d) "Property" means any property or interests therein, other than real property; and

(e) "Security agreement" means any resolution, ordinance, indenture, document, or other agreement or instrument under which the revenues, fees, rents, charges, taxes or other property are pledged to secure the bonds.

(3) This section expressly governs the creation, perfection, priority and enforcement of a security interest created by the state or a governmental unit of the state, notwithstanding any provisions in chapter 9, title 28, Idaho Code, to the contrary.

SECTION 120. That Section 63-3622Y, Idaho Code, as added by Section 1, Chapter 435, Laws of 1990, be, and the same is hereby amended to read as follows:

63-3622~~Y~~II. MONEY-OPERATED DISPENSING EQUIPMENT. There is hereby exempted from the taxes imposed by this chapter the sale or purchase of money-operated dispensing equipment which is solely consumed in dispensing a tangible product, amusement or service on which a retail sales tax is imposed or collected by the state of Idaho. As used in this section, "money-operated dispensing equipment" shall be interpreted narrowly to include only that equipment which consummates a sale by the placement of lawful money in the dispensing equipment and shall not include sales facilitating equipment such as, but not limited to, transportation, warehousing, storage, and display equipment which is consumed in the disposition of an item or product subject to the tax imposed by this chapter.

SECTION 121. That Section 67-818, Idaho Code, as added by Section 1, Chapter 273, Laws of 2000, be, and the same is hereby amended to read as follows:

67-8~~18~~20. FLAGS FLOWN AT HALF-STAFF -- DEATH IN LINE OF DUTY FOR POLICE, FIREFIGHTERS, PARAMEDICS OR EMTS. The governor, upon timely notification and verification of the death of a federal, state or local law enforcement officer, firefighter, paramedic or emergency medical technician who is employed or volunteering for an agency in the state of Idaho and who died in the line of duty, shall direct that the flag of the United States and the state flag be flown at half-staff, from the time of notification to the governor until the day following the memorial service, at the state capitol building and at other state and local government buildings. The flags shall be flown upon an existing flagstaff or flagstaffs or, at the option of the governor, a flagstaff or flagstaffs erected at an appropriate site, after consultation with organizations representing law enforcement officers, firefighters, paramedics or emergency medical technicians regarding the location and design of the flagstaff or flagstaffs. The flag flown over the capitol building in honor of the deceased shall be presented to the family.

SECTION 122. That the Heading for Chapter 62, Title 67, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 62
IDAHO HOUSING ~~AGENCY~~ AND FINANCE ASSOCIATION

Approved March 2, 2005.

CHAPTER 26
(H.B. No. 24)

AN ACT
RELATING TO FISCAL MATTERS OF FIRE PROTECTION DISTRICTS; AMENDING SECTION 31-1419A, IDAHO CODE, TO PROVIDE THAT THE FISCAL YEAR OF A FIRE PROTECTION DISTRICT SHALL COMMENCE EITHER ON THE FIRST DAY OF OCTOBER OF EACH CALENDAR YEAR, OR ON THE FIRST DAY OF JANUARY OF EACH CALENDAR YEAR, AS ESTABLISHED BY RESOLUTION OF THE FIRE PROTECTION DISTRICT BOARD OF COMMISSIONERS.

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

SECTION 1. That Section 31-1419A, Idaho Code, be, and the same is hereby amended to read as follows:

31-1419A. BUDGET AND HEARING -- NOTICE OF HEARING -- PUBLIC INSPECTION. (1) The fire protection district board shall adopt a budget and shall cause a public hearing to be held upon such budget, prior to certifying a tax levy to the board of county commissioners of each county within the district, or having a portion of its territory within the district.

(2) Notice of the budget hearing meeting shall be posted at least

ten (10) full days prior to the date of said meeting in at least one (1) conspicuous place in each fire protection district to be determined by the board; a copy of such notice shall also be published in a daily or weekly newspaper published within such district, in one (1) issue thereof, during such ten (10) day period. The place, hour and day of such hearing shall be specified in said notice, as well as the place where such budget may be examined prior to such hearing. A full and complete copy of such proposed budget shall be published with and as a part of the publication of such notice of hearing.

(3) Such budget shall be available for public inspection from and after the date of the posting of notices of hearing as in this section provided, at such place and during such business hours as the board may direct.

(4) A quorum of the board shall attend such hearing and explain the proposed budget and hear any and all objections thereto.

(5) The fiscal year of a fire protection district shall commence either on the first day of October of each calendar year, or on the first day of January of each calendar year, as established by resolution of the fire protection district board of commissioners.

Approved March 2, 2005.

CHAPTER 27
(H.B. No. 39)

AN ACT

RELATING TO SEARCH AND RESCUE OPERATIONS; AMENDING SECTION 21-114, IDAHO CODE, TO PROVIDE THAT PILOT REGISTRATION FEES MAY ALSO BE USED FOR PILOT SAFETY PROGRAMS, TO PROVIDE THAT SEARCH AND RESCUE OPERATIONS SHALL BE COORDINATED BY THE CHIEF OF THE BUREAU OF HOMELAND SECURITY AND TO PROVIDE THAT AERIAL SEARCH OPERATIONS SHALL BE COORDINATED BY THE DIVISION OF AERONAUTICS UNDER THE IDAHO TRANSPORTATION DEPARTMENT; AND AMENDING SECTIONS 46-1006 AND 46-1009, IDAHO CODE, TO TRANSFER AUTHORITY FOR COORDINATION OF GENERAL SEARCH AND RESCUE OPERATIONS TO THE CHIEF OF THE BUREAU OF HOMELAND SECURITY AND TO CLARIFY THAT AERIAL SEARCH OPERATIONS SHALL BE COORDINATED BY THE IDAHO TRANSPORTATION DEPARTMENT, DIVISION OF AERONAUTICS.

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

SECTION 1. That Section 21-114, Idaho Code, be, and the same is hereby amended to read as follows:

21-114. REGISTRATION OF PILOTS AND AIRCRAFT -- REQUISITES. (a) Pilot Registration -- Fees. Subject to the limitation of subsections (c) and (d) of this section, the department is authorized to require that every individual who pilots an aircraft within this state is to register with the department and to renew such registration every other year thereafter in which he pilots an aircraft within this state. The department may charge for each such registration, and for each biennial renewal thereof, a fee of twelve dollars ($12.00). Such income shall be used for department expenses associated with search and rescue of lost

aircraft and airmen~~, which said~~ and for pilot safety programs. Ssearch and rescue coordination shall be under the direction and supervision of the ~~director~~ chief of the bureau of homeland security within the military division, with aerial search operations coordinated by the department, division of aeronautics.

(b) Aircraft Registration -- Fees.

(1) Private Aircraft. Subject to the limitations of subsections (c) and (d) of this section, every aircraft operating within this state and/or holding a currently valid airworthiness certificate and a currently valid annual inspection or progressive inspection system issued by the appropriate federal agency, shall be registered with the department prior to or during each annual registration year in which the aircraft is operated within this state. The annual registration year shall commence on the date provided by regulation, and the holding of a currently valid airworthiness certificate and a currently valid annual inspection or progressive inspection system issued by the appropriate federal agency shall be considered prima facie evidence that the aircraft is operating within this state. The department shall charge for each such registration, and for each annual renewal thereof, the fees at the rate of one cent (1¢) per pound of gross weight authorized in the aircraft listing, aircraft specification or type certificate data sheet of said aircraft issued by the federal aviation agency, and in no case to exceed two hundred dollars ($200) upon any one (1) aircraft, provided that such fee shall be in lieu of all personal property taxes on such aircraft.

Registration certificates shall be kept in the aircraft at all times. In addition to the registration certificate, an identifying decal shall be issued and placed on the left side of the aircraft either upon the vertical stabilizer thereof or upon a window nearest to the rear of the aircraft, fully visible from the outside of the aircraft.

Aircraft shall only be registered prior to or during the current annual registration year. There shall be no registration of aircraft for any registration period which is prior to the current registration year. Registration certificates issued after expiration of the first six (6) months of the current annual registration year, as prescribed by the department, shall be issued at the rate of fifty percent (50%) of the annual fee. Those aircraft that have been found in violation of the provisions of this section after the first six (6) months will pay the full year's fee.

(2) Manufacturers and Dealers License. It shall be unlawful for any person to carry on or conduct the business of buying, selling, or dealing in aircraft unless registered with the department, as such manufacturer or dealer. Any manufacturer or dealer in aircraft owning, having an interest in, or having in his possession an aircraft for the purpose of sale, shall upon the registration and payment of fees as in this act required, acquire one (1) registration certificate which shall bear the distinctive registration number issued to such manufacturer or dealer, and any number of identifying decals. The registration certificate shall be kept at the main office of the manufacturer or dealer and an identifying decal shall be placed upon the left side of every aircraft that the manufacturer or dealer may have an interest in which is held for sale, on the left side thereof either upon the vertical stabilizer or upon a window nearest to the

rear of the aircraft.

An identifying decal issued to a manufacturer or dealer during the calendar year for which issued can be transferred from an aircraft no longer in the possession of the dealer or manufacturer for sale or demonstration to one acquired for the purpose of sale or demonstration during the calendar year.

No identifying decal issued to a manufacturer or dealer as herein provided may be transferred to an aircraft owned or in the possession of such manufacturer or dealer when such aircraft is used solely for commercial purposes.

The fee to be paid by a manufacturer or dealer in aircraft shall be forty dollars ($40.00) for the registration certificate and one dollar ($1.00) for each identifying decal issued to such manufacturer or dealer.

(c) Requirements for Registration, Issuance of Certificate. Possession of the appropriate effective federal certificate, permit, rating or license relating to competency of the pilot or ownership and airworthiness of the aircraft, as the case may be, and payment of the fee duly required pursuant to the provisions of this section shall be the only requisites for registration of a pilot or an aircraft under this section. Registration shall be effected by filing with the department a written statement containing the information reasonably required by the department for such purpose. It shall not be necessary for the registrant to provide the department with originals or copies of federal certificates, permits, ratings or licenses. The department may issue certificates of registration, or such other evidences of registration or payment of fees as it may deem proper, and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences similar to the requirements of section 21-113(b), Idaho Code, for the possession and exhibition of federal airman and aircraft certificates, permits, ratings or licenses. Failure to register, if required, shall be unlawful.

(d) Exemptions. The provisions of this section shall not apply to:

(1) An aircraft owned by, and used exclusively in the service of, any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft which is owned by a bona fide nonresident of this state; provided, however, that this exemption shall not apply to such aircraft operated in the transportation of persons or property for hire, in dusting, seeding, or spraying for hire, or in any other activity for hire in this state, whether such aircraft so operated be engaged casually or continuously;

(3) An aircraft engaged principally in commercial airline or air freight flying constituting an act of interstate or foreign commerce while operating under a certificate, permit or license issued by the appropriate agency of the United States government;

(4) An individual piloting an aircraft owned by, and used exclusively in the service of, any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(5) An individual piloting any aircraft registered under the laws of a foreign country;
(6) A bona fide nonresident of this state piloting aircraft in this state; provided, however, that this exemption shall not apply to any nonresident piloting an aircraft in this state for hire whether such nonresident is so engaged casually or continuously;
(7) An individual piloting an aircraft engaged principally in commercial airline or air freight flying constituting an act of interstate or foreign commerce, while such aircraft is being operated under a certificate, permit or license issued by the appropriate agency of the United States government;
(8) An individual operating model aircraft;
(9) An individual piloting an aircraft which is equipped with fully functioning dual controls when a properly certified pilot is in full charge of one (1) set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser.

(e) Transfer of Aircraft. When the ownership of an aircraft registered under the provisions of this section is transferred, the new owner will be required to register the aircraft under the provisions of this section. If the transferor wishes to register another aircraft he shall pay the registration fee required by this section less the amount of registration fee already paid on the aircraft which was sold, or if the transferor shall have an aircraft to be registered with a useful load less than the aircraft that was sold, he shall pay a transfer fee of one dollar ($1.00).

SECTION 2. That Section 46-1006, Idaho Code, be, and the same is hereby amended to read as follows:

46-1006. POWERS AND DUTIES OF CHIEF AND BUREAU. (1) In all matters of disaster services, the adjutant general shall represent the governor and shall on behalf of the governor, coordinate the activities of all of the state agencies in disaster services. The bureau shall have a coordinating officer and other professional, technical, secretarial and clerical employees necessary for the performance of its functions.

(2) The bureau shall prepare, maintain and update a state disaster plan based on the principle of self help at each level of government. The plan may provide for:
(a) Prevention and minimization of injury and damage caused by disaster;
(b) Prompt and effective response to disaster;
(c) Emergency relief;
(d) Identification of areas particularly vulnerable to disasters;
(e) Assistance to local officials in designing local emergency action plans;
(f) Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from disaster;
(g) Preparation and distribution to the appropriate state and local officials of catalogs of federal, state and private assistance programs;

(h) Assistance to local officials in designing plans for search, rescue, and recovery of persons lost, entrapped, victimized, or threatened by disaster;

(i) Organization of manpower and chains of command;

(j) Coordination of federal, state, and local disaster activities;

(k) Coordination of the state disaster plan with the disaster plans of the federal government.

(3) The bureau shall participate in the development and revision of local and intergovernmental disaster plans. To this end it may employ or otherwise secure the services of professional and technical personnel to provide expert assistance to political subdivisions, their disaster agencies, and intergovernmental planning and disaster agencies. This personnel shall consult with subdivisions and agencies and shall make field examinations of the areas, circumstances, and conditions to which particular local and intergovernmental disaster plans are intended to apply.

(4) In preparing and maintaining the state disaster plan, the bureau shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and intergovernmental agencies, the bureau shall encourage them also to seek advice from these sources.

(5) The state disaster plan or any part thereof may be incorporated in rules of the bureau promulgated subject to chapter 52, title 67, Idaho Code.

(6) The bureau shall:

(a) Promulgate standards and criteria for local and intergovernmental disaster plans;

(b) Periodically review local and intergovernmental disaster plans;

(c) Assist political subdivisions, their disaster agencies, and intergovernmental disaster agencies to establish and operate training programs and programs of public information;

(d) Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(e) Prepare executive orders and proclamations for issuance by the governor, as necessary or appropriate in coping with disasters;

(f) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this act and in implementing programs for disaster prevention, preparation, response, and recovery;

(g) Maintain a register of search and rescue organizations, units, teams, or individuals operating within the state;

(h) Assist search and rescue units to accomplish standards for equipment, training and proficiency; ~~and~~

(i) Coordinate search and rescue of lost aircraft and airmen pursuant to section 21-114, Idaho Code, with aerial search operations coordinated by the Idaho transportation department, division of aeronautics;

(j) In addition to disaster prevention measures as included in the state, local, and intergovernmental disaster plans, the bureau shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. The governor from time to time may make recommendations to the legislature, local gov-

ernments and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters; and

(~~j~~k) Not limit the powers and duties of the department of transportation, division of aeronautics, as provided by sections 21-114 and 21-118, Idaho Code.

SECTION 3. That Section 46-1009, Idaho Code, be, and the same is hereby amended to read as follows:

46-1009. LOCAL AND INTERGOVERNMENTAL DISASTER AGENCIES AND SERVICES. (1) Each county within this state shall be within the jurisdiction of and served by the bureau and by a county or intergovernmental agency responsible for disaster preparedness and coordination of response.

(2) Each county shall maintain a disaster agency or participate in an intergovernmental disaster agency which, except as otherwise provided under this act, has jurisdiction over and serves the entire county, or shall have a liaison officer appointed by the county commissioners designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response and recovery.

(3) The chairman of the board of county commissioners of each county in the state shall notify the bureau of the manner in which the county is providing or securing disaster planning and emergency services. The chairman shall identify the person who heads the agency or acts in the capacity of liaison from which the service is obtained, and furnish additional information relating thereto as the bureau requires.

(4) Each county and/or intergovernmental agency shall prepare and keep current a local or intergovernmental disaster emergency plan for its area.

(5) The county or intergovernmental disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster chain of command.

(6) Except as provided in subsections (7), (8), (9) and (10) of this section, the sheriff of each county shall:

(a) be the official responsible for command of all search and rescue operations within his jurisdiction;

(b) prepare and keep current a plan to command the search and rescue capability and resources available within the county.

(7) Pursuant to chapter 1, title 21, Idaho Code, subsection (6) of this section shall not apply to all aerial activity related to the search for lost aircraft and airmen. ~~which~~ Search and rescue coordination shall be under the direction and supervision of the ~~director of~~ chief of the bureau of homeland security within the military division, with aerial search operations coordinated by the Idaho transportation department, ~~and coordinated with the~~ division of aeronautics.

(8) Nothing in subsection (6) of this section shall apply to search and rescue operations within the incorporated limits of any city.

(9) Nothing in subsection (6) of this section shall apply to the rescue of entrapped or injured persons where their location is known to be within a fire district, where the fire district performs such service.

(10) Nothing contained in subsection (6) of this section shall apply to the removal of entrapped or injured persons where the person's location is known to a local EMS agency licensed by the state of Idaho.

Approved March 2, 2005.

CHAPTER 28
(H.B. No. 51)

AN ACT

RELATING TO THE MOTOR FUELS TAX; REPEALING SECTION 63-2406A, IDAHO CODE, RELATING TO AN INCENTIVE FOR ELECTRONIC FILING OF THE DISTRIBUTOR'S REPORTS; AND AMENDING SECTION 63-2421, IDAHO CODE, TO PROVIDE THAT ANY PERSON WHO CONSUMES MOTOR FUELS IN A MOTOR VEHICLE LICENSED OR REQUIRED TO BE LICENSED BY THE LAWS OF THIS STATE, OR WHICH IS REQUIRED TO BE LICENSED UNDER THE LAWS OF ANOTHER JURISDICTION SHALL BE LIABLE FOR THE MOTOR FUELS TAX AND TO MAKE A TECHNICAL CHANGE.

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

SECTION 1. That Section 63-2406A, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section 63-2421, Idaho Code, be, and the same is hereby amended to read as follows:

63-2421. USE TAX -- RETURNS AND PAYMENT OF USE TAX BY CONSUMERS. (1) For the privilege of using the highways of this state, any person who consumes motor fuels in a motor vehicle licensed or required to be licensed by the laws of this state, or which is required to be licensed under the laws of ~~this state~~ another jurisdiction and is operated on the highways of this state upon which the tax imposed by section 63-2402, Idaho Code, has not been paid or is subject to credit or refund under IFTA and which fuel is not exempted from tax by this chapter, shall be liable for the tax.

(2) Except for motor vehicles licensed under IFTA or operating with a temporary permit under section 49-432, Idaho Code, a persons liable under subsection (1) of this section 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 motor fuels taxes shall be made in conjunction with any other taxes due on that return and motor fuels taxes due may be offset against refunds of any other taxes shown on the return to be due the taxpayer.

(3) In the case of a person liable under subsection (1) of this section other than one who consumes motor fuels in a motor vehicle described in the exception in subsection (2) of this section and not required to file a return under chapter 30, title 63, 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.

(4) In the case of a person liable under subsection (1) of this section whose motor vehicles are licensed or required to be licensed under IFTA as provided in sections 63-2438 and 63-2439, Idaho Code, or operating with a temporary permit under section 49-432, Idaho Code, the tax shall be paid in the manner required by those provisions.

Approved March 2, 2005.

CHAPTER 29
(H.B. No. 66)

AN ACT

RELATING TO THE BOARD OF SCALING PRACTICES; AMENDING SECTION 38-1209, IDAHO CODE, TO DECREASE THE MINIMUM NUMBER OF MEETINGS THE BOARD IS REQUIRED TO HOLD IN EACH CALENDAR YEAR.

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

SECTION 1. That Section 38-1209, Idaho Code, be, and the same is hereby amended to read as follows:

38-1209. LEVY OF ASSESSMENT -- BUDGET -- HEARING -- FUNDS -- BOND OF SECRETARY -- SALARY. (a) The board is hereby authorized and directed to levy an assessment on the scale of all forest products harvested within the state of Idaho in an amount not to exceed twenty cents (20¢) per thousand (1,000) board feet or twelve cents (12¢) per cunit, provided that no such assessment shall be levied more than once on any forest product. The board shall set times and places for its meetings and shall hold not less than ~~four (4)~~ two (2) meetings in each calendar year. The board shall designate a meeting date on which a budget shall be adopted and assessment shall be levied. Notice of such meeting shall be given thirty (30) days prior thereto in a newspaper of general circulation throughout the state. The board shall designate and levy an assessment as herein provided to raise moneys necessary to fund operations of the board and the state scaling program established by this chapter based upon the budget adopted and notice of such levy shall be given in the notice of the budget. The budget and assessment shall become effective upon adoption by the board. In the event a written request is made therefor by any interested person within thirty (30) days after notice of the budget and assessment has been published, the board shall set a time and place for a hearing at which any person may submit recommendations for changes in the budget and the assessment. Thereafter the board shall either confirm or modify the budget and assessment and cause notice of such action to be published in a newspaper of general circulation throughout the state within ten (10) days after such action. If the budget or the assessment is modified, the modification shall become effective upon publication. Such hearing shall be held not later than thirty (30) days after receipt of a written request therefor.

(b) The assessment herein provided shall be levied against and paid by the purchaser. The term "purchaser" as used herein shall also include the owner of the timber where the owner processes or utilizes the forest

products in its operations or where the owner sells forest products outside the state of Idaho and the forest products are scaled within the state of Idaho, provided that the assessment provided in this chapter shall not be levied against the United States of America, nor any unit nor agency thereof. The assessment shall be transmitted to the board on or before the twentieth day of each month for all timber harvested during the previous month.

(c) The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall keep such moneys in a separate account to be known as the "state scaling account," which is hereby created in the state treasury. Such account shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only on approval of the board. All moneys in the "state scaling account" are hereby continually appropriated for the use of the board. The board may establish, maintain and use a rotary fund as provided by state law. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board, and shall be paid out of the "state scaling account." The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided in section 38-1205, Idaho Code. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this account for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act. All warrants on said "state scaling account" shall be drawn by the state controller on vouchers by the board and the state board of examiners.

Approved March 2, 2005.

CHAPTER 30
(H.B. No. 29)

AN ACT

RELATING TO COLLECTION OF TAXES; AMENDING CHAPTER 1, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-119, IDAHO CODE, TO AUTHORIZE THE STATE TAX COMMISSION TO CONTRACT WITH QUALIFIED COLLECTION AGENCIES OR ATTORNEYS FOR COLLECTION OF TAXES; AND AMENDING SECTION 63-3065, IDAHO CODE, TO DELETE PROVISIONS AUTHORIZING THE STATE TAX COMMISSION TO CONTRACT WITH COMMERCIAL COLLECTORS FOR OUT-OF-STATE TAX COLLECTIONS AND TO MAKE A TECHNICAL CHANGE.

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 63-119, Idaho Code, and to read as follows:

63-119. COLLECTION OF TAX BY COMMERCIAL COLLECTOR. (1) If a person owing tax ignores all demands for payment of a tax assessment, the state tax commission is authorized to employ the services of any qualified

collection agency or attorney and to pay fees for such services from moneys recovered.

(2) As used in this section, the term "qualified collection agency" means a person issued a permit under chapter 22, title 26, Idaho Code, or under a similar licensing or permitting statute of another state or jurisdiction in which the person conducts business.

SECTION 2. That Section 63-3065, Idaho Code, be, and the same is hereby amended to read as follows:

63-3065. JEOPARDY ASSESSMENTS. (a) If the tax commission finds that a taxpayer is about to depart from the state of Idaho or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the tax commission shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such findings and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said taxes as is unpaid, whether or not the time otherwise allowed by law for filing returns and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. The provisions of section 63-4003(1)(a), Idaho Code, shall not apply to a notice under this section and communications related thereto. In any proceedings in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the finding of the tax commission, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayer's design.

(b) Collection procedures may be instituted immediately; however, any taxpayer deeming himself aggrieved by any act of the tax commission pursuant to the provisions of this section may, within sixty-three (63) days of receipt of said notice, petition the tax commission for a redetermination or commence action for refund or redetermination upon payment of the tax together with interest and penalty or upon filing a bond in the amount of the assessment.

(c) A taxpayer who is not in default in making any return or paying any taxes assessed under this chapter may furnish to the state of Idaho under regulations to be prescribed by the tax commission, security approved by the tax commission that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The tax commission may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section.

(d) If security is approved and accepted pursuant to the provisions of this section and such further or other security with respect to the tax or taxes covered thereby is given as the tax commission shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such respective taxes.

(e) In the case of a bona fide resident of the state of Idaho about

to depart from the state of Idaho the tax commission may, at its discretion, waive any or all of the requirements placed upon the taxpayer by this section.

(f) If a taxpayer violates or attempts to violate this section there shall, in addition to all other penalties, be added as part of the tax twenty-five ~~per-cent~~ percent (25%) of the total amount of the tax or deficiency in the tax.

~~(g)--If-the-taxpayer-owing-tax-is--not--within--this--state--or--has departed--from--the-state,-or-has-property-or-is-employed-outside-of-the state-and-ignores-all-demands-for-payment,-the-tax-commission-is--authorized--to--employ--the--services--of--any-qualified-collection-agency-or attorney-and-to-pay-fees-for-such-services-out-of-moneys-recovered.~~

Approved March 2, 2005.

CHAPTER 31
(H.B. No. 31)

AN ACT
RELATING TO PROPERTY TAX RELIEF; AMENDING SECTION 63-701, IDAHO CODE, TO REVISE THE DEFINITIONS FOR "CLAIMANT" AND "OWNER."

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 sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year ~~or-before-April-15~~ in which the claimant ~~was~~ first filed a claim on the homestead in question, a claimant must be an owner of ~~a~~ the homestead and on January 1 of said year a claimant must be:

(a) Not less than sixty-five (65) years old; or

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; 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 U.S.C. 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 as described in this chapter and used as the primary dwelling place of the claimant and may be 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 the claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) "Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.

(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:

(a) Alimony;

(b) Support money;

(c) Nontaxable strike benefits;

(d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);

(e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;

(f) Worker's compensation; and

(g) The gross amount of loss of earnings insurance.

It does not include capital gains, gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and, if married, the claimant's spouse, may be deducted from income. To the extent not reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars ($5,000) per claim. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission in such form as the county assessor, board of equalization or state tax commission shall determine. "Income"

shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

(6) "Occupied" means actual use and possession.

(7) "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:

(a) Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(b) Is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or

(c) Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a ~~land~~ sale contract. Any partial ownership shall be considered as ownership for determining initial 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 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 or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property ~~is~~ <u>was</u> held by a person who has died without timely filing a claim for property tax reduction, the estate of the deceased person shall be the "owner," provided that the time periods during which the deceased person held such title shall be

attributed to the estate for the computation of any time periods under subsection (8)(a) or (8)(b) of this section.

(8) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 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 to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 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 for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

(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. Payment of utilities shall not be payment of 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, nursing 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(16), 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 2, 2005.

CHAPTER 32
(H.B. No. 59)

AN ACT

RELATING TO THE SALE OF WINE; AMENDING SECTION 23-1327, IDAHO CODE, TO REMOVE THE REQUIREMENT THAT A DISTRIBUTOR MAY ONLY SELL OR DELIVER WINE TO A RETAILER IN CASE LOTS.

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

SECTION 1. That Section 23-1327, Idaho Code, be, and the same is hereby amended to read as follows:

23-1327. ~~QUANTITY--OF~~ SALES OF WINE IN ORIGINAL CONTAINER AND SIZE OF CONTAINERS. ~~No-distributor-shall-sell-or-deliver-wine-to--a--retailer of--a--quantity--less--than--a-case-lot.-For-purposes-of-this-section,-a "case-lot"-shall-mean-that-quantity-of-containers-of-equal-size-containing-wine-which-are-equal-to-the-smallest-unit-or-quantity-of--containers of-wine-received-by-a-distributor-from-an-importer.-Nothing-contained-in this-section-shall-prohibit-a-distributor-from-mixing-brands-or-types-of wine--to--make-up-a-case-lot-for-purposes-of-sale-or-distribution-to-the retailer.~~ No distributor shall purchase, receive, or sell any wine except in the original container as prepared for the market by the importer or manufacturer. No importer or distributor shall, without permission of the director, adopt or use any container for wine ~~which~~ that will contain in excess of one (1) gallon of wine.

Approved March 7, 2005.

CHAPTER 33
(H.B. No. 91)

AN ACT

RELATING TO FISH AND GAME CONSERVATION OFFICERS; AMENDING SECTION 36-1301, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR MAY AWARD A CONSERVATION OFFICER HIS BADGE, DUTY WEAPON AND HANDCUFFS UPON RETIREMENT IN CERTAIN CIRCUMSTANCES, TO REVISE DESCRIPTIVE LANGUAGE AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. That Section 36-1301, Idaho Code, be, and the same is hereby amended to read as follows:

36-1301. POWER AND DUTY OF OFFICERS -- OFFICIAL BADGE -- WHO MAY WEAR -- ~~SEPARABILITY~~ ISSUANCE UPON RETIREMENT. (~~a~~1) Authorized Officers. The director, all conservation officers and other classified department employees, and all sheriffs, deputy sheriffs, forest supervisors, marshals, police officers, state forest department officers, and national forest rangers shall have statewide jurisdiction and it is hereby made their duty to enforce the provisions of the Idaho fish and game code.

(~~b~~2) Authority and Limitations as Peace Officers. All conservation officers who receive certification from the Idaho peace officer standards and training advisory council shall have all the authority given by statute to peace officers of the state of Idaho. All other classified employees appointed by the director shall have the power of peace officers limited to:

~~1.~~(a) The enforcement of the provisions of title 36, Idaho Code, and commission rules and proclamations promulgated pursuant thereto.

~~2.~~(b) The arrest of persons having domestic animals unlawfully in their possession.

~~3.~~(c) The enforcement of the provisions of chapter 70, title 67, Idaho Code, provided that such authority is exercised in cooperation with sheriffs of the respective counties.

~~4.~~(d) 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 for assistance 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 title 36, Idaho Code.

(~~c~~3) Additional Authority and Duties. Said officers and employees shall have additional peace officer power, but not constituting an obligation beyond their regular course of duty, relative to:

~~1.~~(a) The enforcement of the provisions of title 38, Idaho Code (Idaho forestry act), as authorized by section 38-133, Idaho Code.

~~2.~~(b) The enforcement of provisions of chapter 71, title 67, Idaho Code.

~~3.~~(c) The enforcement of the provisions of sections 18-3906 and 18-7031, Idaho Code, relating to littering.

~~4.~~(d) The enforcement of the provisions of section 42-3811, Idaho Code, relating to the enforcement of certain provisions of chapter 38, title 42, Idaho Code.

(~~d~~4) Official Badge -- Who May Wear. No person who is not at the time a classified employee or conservation officer, duly authorized and commissioned by the director, shall wear or exhibit in public an official badge of the ~~D~~department of ~~F~~fish and ~~G~~game of the state of Idaho.

(5) Issuance Upon Retirement. The director may award to a conservation officer, upon retirement, that officer's badge, duty weapon and handcuffs, providing that a committee of three (3) of the conservation officer's peers certifies to the director that the retiring officer has served meritoriously for a minimum of fifteen (15) years and should therefore be so honored.

Approved March 7, 2005.

CHAPTER 34
(S.B. No. 1032)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1402, IDAHO CODE, TO PROVIDE THAT THE TAKING OF ANY BIG GAME ANIMAL DURING A CLOSED SEASON SHALL BE CONSIDERED A FLAGRANT VIOLATION OF THE LAW AND TO MAKE A TECHNICAL CORRECTION.

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 or proclamations 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 or proclamations 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
Any other big game animal	$200
Wild turkey, swan and sturgeon	$200
Chinook salmon, wild steelhead and bull trout	$100
Any other game bird, game fish or furbearer	$ 25

(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, except that violations classified as felonies under section 36-1401, Idaho Code, or as flagrant violations as defined in subsection (e) of this section, shall authorize the court to impose license revocations for periods of time up to and including life, with 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 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 or failing to depart the real property of another after notification as set forth in section 36-1603, Idaho Code.
6. The unlawful release of any species of live fish into any public body of water in the state. For purposes of this paragraph, an "unlawful release of any species of live fish" shall mean a release of any species of live fish, or live eggs thereof, in the state

without the permission of the director of the department of fish and game; provided, that no permission is required when fish are being freed from a hook and released at the same time and place where caught or when crayfish are being released from a trap at the same time and place where caught.

Provided further, that the magistrate hearing the case of a first time hunting violation offender under the age of twenty-one (21) years 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 cost of the course shall be seventy-five dollars ($75.00) to be paid to the department. The commission shall establish by rule the curriculum 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.

For the purpose of this title, the term "conviction" shall mean either a withheld judgment or a final conviction.

(e) Flagrant Violations. In addition to any other penalties assessed by the court, the magistrate hearing the case shall forthwith revoke the hunting, fishing or trapping privileges, for a period of not less than one (1) year and may revoke the privileges for a period up to and including the person's lifetime, for any person who enters a plea of guilty, who is found guilty, or who is convicted of any of the following flagrant violations:

1. Taking a big game animal after sunset by spotlighting, with use of artificial light, or with a night vision enhancement device.
2. Unlawfully taking two (2) or more big game animals within a twelve (12) month period.
3. Taking a big game animal with a rimfire or centerfire cartridge firearm during an archery or muzzleloader only hunt.
4. Hunting, fishing, trapping or purchasing a license when license privileges have been revoked pursuant to this section or section 36-1501, Idaho Code.
5. Taking any big game animal during a closed season. ~~when there is no established take season open anywhere in the state for that species of big game.~~
6. Any felony violation provided in section 36-1401, Idaho Code.

(f) 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.

(g) Disposition of Fines and Forfeitures. Distribution of fines and forfeitures remitted shall be in accordance with section 19-4705, Idaho Code.

Approved March 7, 2005.

CHAPTER 35
(S.B. No. 1033)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-106, IDAHO CODE, TO AUTHORIZE THE DIRECTOR OF THE IDAHO DEPARTMENT OF FISH AND GAME TO REDUCE THE BAG LIMIT OR POSSESSION LIMIT FOR A SPECIES UNDER CERTAIN CIRCUMSTANCES.

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

SECTION 1. That Section 36-106, Idaho Code, be, and the same is hereby amended to read as follows:

36-106. DIRECTOR OF DEPARTMENT OF FISH AND GAME. (a) Office of Director Created. The commission shall appoint a director of the department of fish and game, hereinafter referred to as the director, who shall be a person with knowledge of, and experience in, the requirements for the protection, conservation, restoration, and management of the wildlife resources of the state. The director shall not hold any other public office, nor any office in any political party organization, and shall devote his entire time to the service of the state in the discharge of his official duties, under the direction of the commission.

(b) Secretary to Commission. The director or his designee shall serve as secretary to the commission.

(c) Compensation and Expenses. The director shall receive such compensation as the commission, with the concurrence and approval of the governor, may determine and shall be reimbursed at the rate provided by law for state employees for all actual and necessary traveling and other expenses incurred by him in the discharge of his official duties.

(d) Oath and Bond. Before entering upon the duties of his office, the director shall take and subscribe to the official oath of office, as provided by section 59-401, Idaho Code, and shall, in addition thereto, swear and affirm that he holds no other public office, nor any position under any political committee or party. Such oath, or affirmation, shall be signed in the office of the secretary of state.

The director shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

(e) Duties and Powers of Director.

1. The director shall have general supervision and control of all activities, functions, and employees of the department of fish and game, under the supervision and direction of the commission, and shall enforce all the provisions of the laws of the state, and rules and proclamations of the commission relating to wild animals, birds, and fish and, further, shall perform all the duties prescribed by section 67-2405, Idaho Code, and other laws of the state not inconsistent with this act, and shall exercise all necessary powers incident thereto not specifically conferred on the commission.

2. The director is hereby authorized to appoint as many classified employees as the commission may deem necessary to perform administrative duties, to enforce the laws and to properly implement management, propagation, and protection programs established for carrying out the purposes of the Idaho fish and game code.

3. The appointment of such employees shall be made by the director in accordance with chapter 53, title 67, Idaho Code, and rules promulgated pursuant thereto, and they shall be compensated as provided therein. Said employees shall be bonded to the state of Idaho in the time, form, and manner prescribed by chapter 8, title 59, Idaho Code.

4. The director is hereby authorized to establish and maintain fish hatcheries for the purpose of hatching, propagating, and distributing all kinds of fish.

5. (A) The director, or any person appointed by him in writing to do so, may take wildlife of any kind, dead or alive, or import the same, subject to such conditions, restrictions and rules as he may provide, for the purpose of inspection, cultivation, propagation, distribution, scientific or other purposes deemed by him to be of interest to the fish and game resources of the state.

(B) The director shall have supervision over all of the matters pertaining to the inspection, cultivation, propagation and distribution of the wildlife propagated under the provisions of title 36, Idaho Code. He shall also have the power and authority to obtain, by purchase or otherwise, wildlife of any kind or variety which he may deem most suitable for distribution in the state and may have the same properly cared for and distributed throughout the state of Idaho as he may deem necessary.

(C) The director is hereby authorized to issue a license/tag/permit to a nonresident landowner who resides in a contiguous state for the purpose of taking one (1) animal during an emergency depredation hunt which includes the landowner's Idaho property subject to such conditions, restrictions or rules as the director may provide. The fee for this license/tag/permit shall be equal to the costs of a resident hunting license, a resident tag fee and a resident depredation permit.

(D) Notwithstanding the provisions of section 36-408, Idaho Code, to the contrary, on and after the effective date of this act, the director shall not expend any funds, or take any action, or authorize any employee or agent of the department or

other person to take any action, to undertake actual transplants of bighorn sheep into areas they do not now inhabit or to augment the number of bighorn sheep in existing herds until:

(i) The boards of county commissioners of the counties in which the release is proposed to take place have been given reasonable notice of the proposed release.

(ii) The affected federal and state land grazing permittees and owners or leaseholders of private land in or contiguous to the proposed release site have been given reasonable notice of the proposed release.

(iii) The president pro tempore of the senate and the speaker of the house of representatives have received from the director a plan for the forthcoming year that details, to the best of the department's ability, the proposed transplants which shall include the estimated numbers of bighorn sheep to be transplanted and a description of the areas the proposed transplant or transplants are planned for.

Upon request, the department shall grant one (1) hearing per transplant if any affected individual or entity expresses written concern within ten (10) days of notification regarding any transplants of bighorn sheep and shall take into consideration these concerns in approving, modifying or canceling any proposed bighorn sheep transplant. Any such hearing shall be held within thirty (30) days of the request. Upon any transplant of bighorn sheep into areas they do not now inhabit or a transplant to augment existing populations, the department shall provide for any affected federal or state land grazing permittees or owners or leaseholders of private land a written letter signed by all federal, state and private entities responsible for the transplant stating that the existing sheep or livestock operations in the area of any such bighorn sheep transplant are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted.

6. (A) The director shall have the power, at any time when it is desired to introduce any new species, or if at any time any species of wildlife of the state of Idaho shall be threatened with excessive shooting, trapping, or angling or otherwise, to close any open season or to reduce the bag limit or possession limit for such species for such time as he may designate; in the event an emergency is declared to exist such closure shall become effective forthwith upon written order of the director; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.

(B) In order to protect property from damage by wildlife, the fish and game commission may delegate to the director or his designee the authority to declare an open season upon that particular species of wildlife to reduce its population. The director or his designee shall make an order embodying his findings in respect to when, under what circumstances, in which localities, by what means, and in what amounts, numbers and sex the wildlife subject to the hunt may be taken. In the event an emergency is declared to exist such open season shall become

effective forthwith upon written order of the director or his designee; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.

(C) Any season closure order issued under authority hereof shall be published in at least one (1) newspaper of general circulation in the area affected by the order for at least once a week for two (2) consecutive weeks, and such order shall be posted in public places in each county as the director may direct.

(D) During the closure of any open season or the opening of any special depredation season by the director all provisions of laws relating to the closed season or the special depredation season on such wildlife shall be in force and whoever violates any of the provisions shall be subject to the penalties prescribed therefor.

(E) Prior to the opening of any special depredation hunt, the director or his designee shall be authorized to provide up to a maximum of fifty percent (50%) of the available permits for such big game to the landholder(s) of privately owned land within the hunt area or his designees. If the landholder(s) chooses to designate hunters, he must provide a written list of the names of designated individuals to the department. If the landholder(s) fails to designate licensed hunters, then the department will issue the total available permits in the manner set by rule. All hunters must have a current hunting license and shall have equal access to both public and private lands within the hunt boundaries. It shall be unlawful for any landholder(s) to receive any form of compensation from a person who obtains or uses a depredation controlled hunt permit.

7. The director shall make an annual report to the governor, the legislature, and the secretary of state, of the doings and conditions of his office, which report shall be made in accordance with section 67-2509, Idaho Code.

8. The director may sell or cause to be sold publications and materials in accordance with section 59-1012, Idaho Code.

9. Any deer, elk, antelope, moose, bighorn sheep or bison imported or transported by the department of fish and game shall be tested for the presence of certain communicable diseases that can be transmitted to domestic livestock. Those communicable diseases to be tested for shall be arrived at by mutual agreement between the department of fish and game and the department of agriculture. Any moneys expended by the department of fish and game on wildlife disease research shall be mutually agreed upon by the department of fish and game and the department of agriculture.

In addition, a comprehensive animal health program for all deer, elk, antelope, moose, bighorn sheep, or bison imported into, transported, or resident within the state of Idaho shall be implemented after said program is mutually agreed upon by the department of fish and game and the department of agriculture.

In order to enhance and protect the health of wildlife within the state, as well as safeguard the health of livestock resources, the director of the department of agriculture shall employ at least one (1) veterinarian licensed in Idaho whose duties shall include, but not be limited to, addressing wildlife disease issues and coor-

dinating disease prevention work between the department of fish and game and the department of agriculture. The employing of said veterinarian shall be by mutual agreement of the director of the department of fish and game and of the director of the department of agriculture. The veterinarian shall be on the staff of the division of animal industries, department of agriculture. The salary or compensation to be paid said veterinarian or veterinarians shall be divided equally between the department of fish and game and the department of agriculture, and the department of fish and game's portion shall be deposited directly into the livestock disease control account. The veterinarian shall be employed on and after July 1, 1989.

10. In order to monitor and evaluate the disease status of wildlife and to protect Idaho's livestock resources, any suspicion by fish and game personnel of a potential communicable disease process in wildlife shall be reported within twenty-four (24) hours to the department of agriculture. All samples collected for disease monitoring or disease evaluation of wildlife shall be submitted to the division of animal industries, department of agriculture.

11. (A) The director is authorized to enter into an agreement with an independent contractor for the purpose of providing a telephone order and credit card payment service for controlled hunt permits, licenses, tags, and permits.

(B) The contractor may collect a fee for its service in an amount to be set by contract.

(C) All moneys collected for the telephone orders of such licenses, tags, and permits shall be and remain the property of the state, and such moneys shall be directly deposited by the contractor into the state treasurer's account in accordance with the provisions of section 59-1014, Idaho Code. The contractor shall furnish a good and sufficient surety bond to the state of Idaho in an amount sufficient to cover the amount of the telephone orders and potential refunds.

(D) The refund of moneys for unsuccessful controlled hunt permit applications and licenses, tags, and permits approved by the department may be made by the contractor crediting the applicant's or licensee's credit card account.

12. The director may define activities or facilities that primarily provide a benefit: to the department; to a person; for personal use; to a commercial enterprise; or for a commercial purpose.

Approved March 7, 2005.

CHAPTER 36
(H.B. No. 11, As Amended in the Senate)

AN ACT

RELATING TO UNCLAIMED PROPERTY; AMENDING SECTION 14-518, IDAHO CODE, TO DELETE THE REQUIREMENT OF ANNUAL NEWSPAPER PUBLICATION AND TO PROVIDE FOR QUARTERLY UPDATES ON A PUBLIC WEBSITE MAINTAINED BY THE STATE TAX COMMISSION.

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

SECTION 1. That Section 14-518, Idaho Code, be, and the same is hereby amended to read as follows:

14-518. NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY. (1) The administrator shall ~~cause a notice to be published annually each year, at least once a week for two (2) consecutive weeks in newspapers of general circulation, or in a published notice distributed, one (1) time only, concurrently with a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in a newspaper which has general circulation, or in a published notice distributed concurrently with a newspaper which has general circulation in the county in which the holder of the property has its principal place of business within this state~~ establish, maintain and update at least quarterly a current list of all reported owners of abandoned property on a website that is connected to or that may be accessed from the website maintained by the state tax commission. At least one (1) week before each quarterly website posting of such list, the administrator shall publish a notice in the official newspaper of each Idaho county stating when and where the quarterly website listing of Idaho abandoned property will be accessible to citizens. Provided however, the names and addresses of owners located in a state which will receive the accounts because of reciprocal agreements as permitted by section 14-535, Idaho Code, need not be published listed. ~~In the case of a notice which is distributed concurrently with a newspaper, the provisions of section 60-105, Idaho Code, relating to rates for official notices shall not apply.~~

(2) The ~~published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and~~ list maintained by the administrator must contain:

(a) The names, in alphabetical order, ~~and last known address, if any,~~ of persons listed in ~~the~~ any report of abandoned property filed with the administrator and entitled to notice;

(b) A statement that information concerning the property may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator;

(c) A statement that the property is in the custody of the administrator and all claims must be directed to the administrator; and

(d) A statement that the property shall escheat to the state of Idaho and become the property of the state of Idaho if not claimed within ten (10) years after it is received by the administrator.

(3) The administrator is not required to ~~publish in the notice~~ list any items of less than one hundred dollars ($100) unless the administrator considers ~~their publication~~ the inclusion of such property in the list to be in the public interest.

(4) This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed abandoned under section 14-504, Idaho Code.

Approved March 11, 2005.

CHAPTER 37
(H.B. No. 42)

AN ACT

RELATING TO THE BOARD OF OPTOMETRY; AMENDING SECTION 54-1507, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE AND TO PROVIDE THAT LICENSEES SHALL PAY FEES ANNUALLY AT THE TIME OF RENEWAL.

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

SECTION 1. That Section 54-1507, Idaho Code, be, and the same is hereby amended to read as follows:

54-1507. ADDITIONAL LICENSE FEES. In addition to the fees required by section 54-1506(2), Idaho Code, each person licensed to practice optometry in the state of Idaho ~~and each person who has been licensed to practice optometry in the state of Idaho within a period of five (5) years prior to July 1 of each year following June 30, 1972,~~ shall pay annually at the time of renewal to the treasurer of the state of Idaho a sum not to exceed seventy-five dollars ($75.00), as established by board rule~~, on July 1 of each year~~. Failure to pay the fees required by this act shall result in cancellation of the person's license by the board. Upon application for reinstatement, all fees due and not paid after the effective date of this act must be paid by the person making such application for reinstatement.

Approved March 11, 2005.

CHAPTER 38
(H.B. No. 43)

AN ACT

RELATING TO THE BOARD OF HEARING AID DEALERS AND FITTERS; AMENDING SECTION 54-2907, IDAHO CODE, TO REVISE EDUCATION REQUIREMENTS FOR LICENSE APPLICANTS.

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

SECTION 1. That Section 54-2907, Idaho Code, be, and the same is hereby amended to read as follows:

54-2907. LICENSE REQUIREMENTS. (a) Applicants may obtain a license by successfully passing a qualifying examination. In addition, applicants must:

(1) Be at least twenty-one (21) years of age;

(2) Be of good moral character; and

(3) Have an education equivalent to a four (4) year course in an accredited high school.

(b) Applicants shall appear at a time, place and before such persons as the board may designate to be examined by means of written and practical tests in order to demonstrate that they are qualified to prac-

tice the fitting and sale of hearing aids. The examination shall be administered as directed by the board. Nothing in this examination shall imply that applicants shall possess the degree of medical competence normally expected of physicians.

(c) Each applicant for a hearing aid dealer's and fitter's license shall file an application with the board on a form provided by the bureau of occupational licenses which shall include the following information:

(1) Name, home address and telephone number of the applicant;

(2) Name of present employer;

(3) Business address and telephone number;

(4) Statement of past criminal convictions and guilty pleas;

(5) ~~Copy~~ Documentation of high school ~~diploma~~ graduation or a general education diploma (GED) or the equivalent as approved by the board;

(6) Identification of any prior licensure as a hearing aid dealer or fitter in another state;

(7) Disclosure of suspension or revocation of any license as a hearing aid dealer or fitter in any state within the previous seven (7) years;

(8) Disclosure of any judgment in any jurisdiction against the person as a hearing aid dealer or fitter within the last seven (7) years; and

(9) Disclosure of any habitual use of drugs or intoxicants to such a degree as to render a person unfit and unreliable to practice as a hearing aid dealer and fitter.

(d) If the board, after investigation, is satisfied that the applicant meets the requirements in subsection (a) of this section and has provided truthful responses to the information requested in subsection (c) of this section, the applicant shall be entitled to take the next regularly scheduled examination.

(e) The completed application shall be filed with the board at least sixty (60) days prior to the next scheduled examination in order for the applicant to become eligible for examination.

(f) The board shall give examinations as required to permit applicants to be examined following the submission of the official form at the next examination period.

Approved March 11, 2005.

CHAPTER 39
(H.B. No. 46)

AN ACT

RELATING TO THE IDAHO TOBACCO MASTER SETTLEMENT AGREEMENT ACT; AMENDING SECTION 39-7802, IDAHO CODE, TO FURTHER DEFINE THE TERM "UNITS SOLD" AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 39-7802, Idaho Code, be, and the same is hereby amended to read as follows:

39-7802. DEFINITIONS. (a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," nine one-hundredths (0.09) ounces of "roll-your-own" tobacco shall constitute one (1) individual "cigarette."

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 39-7803, Idaho Code.

(g) "Released claims" means released claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco product manufacturer" means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate):

(1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect

to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) Becomes a successor of an entity described in paragraph (1) or (2) of this subsection.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs (1) through (3) of this subsection.

(j) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state or on unstamped "roll-your-own" tobacco containers. with each nine one-hundredths (0.09) ounces of "roll-your-own" tobacco equaling one (1) unit sold. The state tax commission shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Approved March 11, 2005.

CHAPTER 40
(H.B. No. 47)

AN ACT

RELATING TO THE IDAHO TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT; AMENDING SECTION 39-8403, IDAHO CODE, TO PROVIDE THAT THE ATTORNEY GENERAL MAY CONDITION CERTIFICATION OF A NONPARTICIPATING TOBACCO PRODUCT MANUFACTURER UPON OBTAINING FROM THE MANUFACTURER ITS CONSENT TO BE SUED IN IDAHO DISTRICT COURT FOR PURPOSES OF THE STATE OF IDAHO ENFORCING ANY PROVISIONS OF CHAPTER 78 OR 84, TITLE 39, IDAHO CODE, OR FOR THE STATE BRINGING A RELEASED CLAIM.

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

SECTION 1. That Section 39-8403, Idaho Code, be, and the same is hereby amended to read as follows:

39-8403. CERTIFICATIONS -- DIRECTORY -- TAX STAMPS. (1) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a wholesaler, distributor, retailer or similar intermediary or intermediaries shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general no later than the thirtieth day of April each year, certifying, under penalty of perjury, that, as of the date of such certification, such tobacco product manufacturer is either: a participating manufac-

turer; or in full compliance with section 39-7803(b), Idaho Code, including all quarterly installment payments required by section 39-8405(5), Idaho Code.

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty (30) days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families that were sold in the state at any time during the preceding calendar year, or that have been sold in the state at any time during the current calendar year, and shall:

(i) List, for each brand family, the number of units sold in the state during the preceding calendar year;

(ii) Note, by means of an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification;

(iii) Identify by name and address any other manufacturer of such brand families in the preceding calendar year or the current calendar year. The nonparticipating manufacturer shall update such list thirty (30) days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general;

(c) In the case of a nonparticipating manufacturer, such certification shall further certify:

(i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice thereof as required by section 39-8404, Idaho Code;

(ii) That such nonparticipating manufacturer has:

1. Established and continues to maintain a qualified escrow fund;

2. Executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(iii) That such nonparticipating manufacturer is in full compliance with section 39-7803(b), Idaho Code, and this section, and any rules promulgated pursuant thereto.

(iv) 1. The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to section 39-7803(b), Idaho Code, and all rules promulgated thereto;

2. The account number of such qualified escrow fund and any subaccount number for the state of Idaho;

3. The amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing;

4. The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time

from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to section 39-7803(b), Idaho Code, and all rules promulgated thereto.

(d) A tobacco product manufacturer may not include a brand family in its certification unless:

(i) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and

(ii) In the case of a nonparticipating manufacturer, said nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of section 39-7803(b), Idaho Code. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of section 39-7803(b), Idaho Code.

(e) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five (5) years, unless otherwise required by law to maintain them for a greater period of time.

(2) Not later than September 30, 2003, the attorney general shall develop and publish on his website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section, and all brand families that are listed in such certifications, except as noted below.

(a) The attorney general shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with subsections (1)(b) and (c) of this section, unless the attorney general has determined that such violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the attorney general concludes in the case of a nonparticipating manufacturer that:

(i) Any escrow payment required pursuant to section 39-7803(b), Idaho Code, for any period and for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(ii) Any outstanding final judgment, including interest thereon, for a violation of Idaho's tobacco master settlement agreement act has not been fully satisfied for such brand family and such manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity

with the requirements of this chapter. The attorney general shall transmit by electronic mail, if possible, or by other means as are reasonable to each stamping agent, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family.

(d) Every stamping agent shall provide and update as necessary a mailing address and, where available, an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

(3) It shall be unlawful for any person:

(a) To affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory;

(b) To sell, offer or possess for sale in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory;

(c) To acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of this subsection (3).

(4) Nothing in this chapter shall excuse payment of cigarette taxes under chapter 25, title 63, Idaho Code, by any person in regard to any package or other container of cigarettes not included in the directory but sold by that person.

(5) The attorney general may condition certification of a non-participating tobacco product manufacturer upon obtaining from the manufacturer its consent to be sued in Idaho district court for purposes of the state of Idaho enforcing any provisions of chapter 78 or 84, title 39, Idaho Code, or for the state bringing a released claim as that term is defined by subsection (g) of section 39-7802, Idaho Code.

Approved March 11, 2005.

CHAPTER 41
(H.B. No. 48)

AN ACT

RELATING TO MUNICIPAL RECORDS; REPEALING SECTIONS 50-907, 50-908, 50-909 AND 50-910, IDAHO CODE; AMENDING CHAPTER 9, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-907, IDAHO CODE, TO PROVIDE FOR CLASSIFICATION AND RETENTION OF MUNICIPAL RECORDS; AMENDING CHAPTER 9, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-908, IDAHO CODE, TO PROVIDE FOR DESIGNATION, POWERS AND RESPONSIBILITIES OF MUNICIPAL RECORDS MANAGEMENT OFFICERS AND TO PROVIDE DUTIES OF CITY OFFICIALS CONCERNING MUNICIPAL RECORDS; AND AMENDING CHAPTER 9, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-909, IDAHO CODE, TO PROVIDE FOR RETENTION OF MUNICIPAL RECORDS USING PHOTOGRAPHIC AND DIGITAL MEDIA.

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

SECTION 1. That Sections 50-907, 50-908, 50-909 and 50-910, Idaho Code, be, and the same are hereby repealed.

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 50-907, Idaho Code, and to read as follows:

50-907. CLASSIFICATION AND RETENTION OF MUNICIPAL RECORDS. (1) "Permanent records" shall consist of:

(a) Adopted meeting minutes of the city council and city boards and commissions;

(b) Ordinances and resolutions;

(c) Building plans and specifications for commercial projects and government buildings;

(d) Fiscal year-end financial reports;

(e) Records affecting the title to real property or liens thereon;

(f) Cemetery records of lot ownership, headstone inscriptions, interment, exhumation and removal records, and cemetery maps, plot plans and surveys;

(g) Poll books, excluding optional duplicate poll books used to record that the elector has voted, tally books, sample ballots, campaign finance reports, declarations of candidacy, declarations of intent, and notices of election; and

(h) Other documents or records as may be deemed of permanent nature by the city council.

Permanent records shall be retained by the city in perpetuity, or may be transferred to the Idaho state historical society's permanent records repository upon resolution of the city council.

(2) "Semipermanent records" shall consist of:

(a) Claims, canceled checks, warrants, duplicate warrants, purchase orders, vouchers, duplicate receipts, utility and other financial records;

(b) Contracts;

(c) Building applications for commercial projects and government buildings;

(d) License applications;

(e) Departmental reports;

(f) Bonds and coupons; and

(g) Other documents or records as may be deemed of semipermanent nature by the city council.

Semipermanent records shall be kept for not less than five (5) years after the date of issuance or completion of the matter contained within the record.

(3) "Temporary records" shall consist of:

(a) Building applications, plans, and specifications for noncommercial and nongovernment projects after the structure or project receives final inspection and approval;

(b) Cash receipts subject to audit;

(c) Election ballots and duplicate poll books; and

(d) Other documents or records as may be deemed of temporary nature by the city council.

Temporary records shall be retained for not less than two (2) years, but in no event shall financial records be destroyed until completion of the city's financial audit as provided in section 67-450B, Idaho Code.

(4) Semipermanent and temporary records may only be destroyed by resolution of the city council, and upon the advice of the city attorney. Such disposition shall be under the direction and supervision of

the city clerk. The resolution ordering destruction shall list in detail records to be destroyed. Prior to destruction of semipermanent records, the city clerk shall provide written notice, including a detailed list of the semipermanent records proposed for destruction, to the Idaho state historical society thirty (30) days prior to the destruction of any records.

(5) Prior to January 1, 2007, each city council shall adopt by resolution a records retention schedule, listing the various types of city records and the retention period for each type of record.

SECTION 3. 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 50-908, Idaho Code, and to read as follows:

50-908. DESIGNATION, POWERS AND RESPONSIBILITIES OF MUNICIPAL RECORDS MANAGEMENT OFFICERS -- DUTIES OF CITY OFFICIALS CONCERNING RECORDS. (1) The city clerk shall serve as the municipal records manager in each city, and each department may designate a department records manager who reports to the city clerk. The municipal records manager shall supervise the administration of city records, including:

(a) Ensuring the orderly and efficient management of municipal records in compliance with state and federal statutes and regulations and city ordinances, resolutions and policies;

(b) Identification and appropriate administration of records of enduring value for historical or other research;

(c) Overseeing retention and destruction of municipal records as directed by state and federal statutes and regulations and city ordinances, resolutions and policies; and

(d) Coordinating transfer of permanent records to the Idaho state historical society's permanent records repository, with the assistance of the state archivist.

(2) All city officials, elected, appointed and staff, shall:

(a) Protect the records in their custody;

(b) Cooperate with the municipal records manager on the orderly and efficient management of records including identification and management of inactive records and identification and preservation of records of enduring value; and

(c) Pass on to their successor records necessary for the continuing conduct of city business.

All city records are property of the city, and no city official, elected, appointed or staff, shall have any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction or removal of city records is prohibited.

SECTION 4. 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 50-909, Idaho Code, and to read as follows:

50-909. RETENTION OF CITY RECORDS USING PHOTOGRAPHIC AND DIGITAL MEDIA. (1) A city officer may reproduce and retain documents in a photographic, digital or other nonpaper medium. The medium in which a document is retained shall accurately reproduce the document in paper form during the period for which the document must be retained and shall pre-

clude unauthorized alteration of the document.

(2) If the medium chosen for retention is photographic, all film used must meet the quality standards of the American national standards institute (ANSI).

(3) If the medium chosen for retention is digital, the medium must provide for reproduction on paper at a resolution of at least two hundred (200) dots per inch.

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

(5) Once a paper document is retained in a nonpaper medium as authorized by this section, the original paper document may be disposed of or returned to the sender, except in the case of "permanent" records, as defined in section 50-907, Idaho Code. Paper originals of permanent records shall be retained by the city in perpetuity, or may be transferred to the Idaho state historical society's permanent records repository upon resolution of the city council.

(6) Whenever any record is reproduced by photographic or digital process as herein provided, it shall be made in duplicate, and the custodian thereof shall place one (1) copy in a fire-resistant vault, or off-site storage facility, and he shall retain the other copy in his office with suitable equipment for displaying such record at not less than original size and for making copies of the record.

Approved March 11, 2005.

CHAPTER 42
(H.B. No. 103)

AN ACT

RELATING TO COMMUNITY COLLEGES; AMENDING SECTION 33-2110A, IDAHO CODE, TO PROVIDE THAT A COUNTY'S LIABILITY FOR A RESIDENT OF THE COUNTY FOR OUT OF DISTRICT TUITION TO A COMMUNITY COLLEGE SHALL BE FOR THE TERM OF THE CURRICULUM FOR WHICH THE STUDENT IS ENROLLED WITH A MAXIMUM LIFETIME LIABILITY OF THREE THOUSAND DOLLARS, TO PROVIDE DATE CHANGES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 33-2110A, Idaho Code, be, and the same is hereby amended to read as follows:

33-2110A. TUITION OF OUT OF DISTRICT IDAHO STUDENTS, COUNTY TAXES AND OTHER FINANCIAL SUPPORT. (1) Any student residing in the area of a county outside of a community college district or in a county without a community college district, who has been a resident of the county and state as defined by section 33-2110B, Idaho Code, immediately prior to the date of his first enrollment in a community college, which residence may not be acquired while attending and enrolled in a community college,

may enroll in any community college in the state, and the county of his residence shall pay that portion of his tuition as hereinafter set out. The tuition which shall be paid by the resident county shall be that portion of the tuition uniformly established by a community college district for all out of district students, both in state as well as out of state, pursuant to section 33-2110, Idaho Code, after deducting therefrom the amount of tuition paid by a resident student at the community college; however, the liability of the resident county shall not exceed two-thirds (2/3) of the total tuition and fees charged and in no instance shall it exceed five hundred dollars ($500) each semester for a two (2) semester year for a full-time student. The student shall pay the tuition and fees charged a student resident in the district, and the balance, if any, of the nonresident student tuition above the maximum liability of the county of his residence. No county shall be liable for out of district tuition unless the board of county commissioners of that county has first verified to the community college in writing the fact that the student is a resident of the county. Upon verification, the county shall thereafter be liable for the out of district tuition so long as the student is duly enrolled and attending the college subject to the following limitations:

(a) Liability shall be ~~for--six-(6)-semesters-or~~ the term of the curriculum for which the student is enrolled, ~~whichever--is--lesser~~ with a maximum lifetime liability of three thousand dollars ($3,000).

(b) Liability shall terminate if the student's domiciliary residence changes and that change continues for twelve (12) months.

(2) The nonresident tuition shall be established annually not later than August ~~1st~~ and shall be forthwith filed with the state board of education, together with a statement supporting the computation thereof. Each community college, by ~~September-30~~ October 15 and March 15 of each year, shall bill the county of residence of each nonresident student enrolled at the commencement of each semester, and each board of county commissioners shall allow and order paid any bill for tuition at the first regular meeting following receipt of the bill, but not exceeding forty-five (45) days after receipt. Upon failure of a county to pay the tuition, a community college district may commence action in the district court of the state of Idaho for the county to collect the same.

(3) For the payment of tuition of nonresident students as herein provided, there shall be allocated in each county without a community college district to a county community college fund, and paid to the county treasurer to be held in that fund, fifty ~~per-cent~~ percent (50%) of all moneys apportioned to the county out of liquor funds of the state of Idaho as set forth in chapter 4, title 23, Idaho Code, and that amount shall be deducted from the amount that would otherwise be allocated to the county; and if liquor funds are not sufficient to pay the tuition, commencing for the calendar year 1966, the board of county commissioners shall levy upon the taxable property within each county without a community college district, and, in a county with such a district, upon the taxable property within the county lying outside of the community college district, ~~an-ad-valorem~~ a property tax not to exceed six hundredths ~~per-cent~~ percent (.06%) of market value for assessment purposes, to be certified as set out in section 33-2111, Idaho Code. The proceeds of the levy shall be placed in the county community college fund. Apportionment of liquor funds herein provided shall commence for

the fiscal quarter ending September 30, 1965, and accruing during that quarter.

(4) Based upon the enrollment established by the first semester's tuition bills received by ~~September 30~~ October 15, the board of county commissioners shall establish immediately a total community college annual tuition budget for two (2) semesters which shall be equal to twice the amount of the tuition bills plus a contingency factor of ten ~~per-cent~~ percent (10%). This budget shall be adjusted after March 15 based on any change of enrollment shown by the second semester tuition bills. If enrollment is from ~~none~~ zero to not more than four (4) students, a minimum budget of five (5) students at five hundred dollars ($500) each shall be established. In the event all tuition bills received have been paid, notwithstanding any other provision hereof, (a) any liquor funds received, which in the quarter when received to any extent are in excess of the budget, to the extent of that excess shall not be paid over to the county treasurer to be held in the community college fund, and (b) any funds received from the levy on taxable property, which when received to any extent are in excess of the budget after the application of liquor funds thereto, to the extent of that excess shall not be paid over to the community college fund. Excess liquor funds shall be paid pursuant to law as if this section were not applicable and excess funds shall be paid to the general fund of the county. In the event the total liquor fund payable hereunder to the county community college fund together with the receipts from the levy on taxable property for each fiscal year are insufficient to pay tuition bills, which deficiency is caused by a levy of less than the maximum allowed hereunder, or by enrollment in excess of the budget herein provided, the budget for each following year shall be increased to the maximum allowed by the maximum tax levy authorized to pay any deficiency at the earliest time. If the deficiency is due to the lack of funds in a fiscal year when the maximum levy authorized shall have been made, for the next fiscal year thereafter the number of students from that county shall be limited by the board of county commissioners to the extent necessary to pay the deficiency not later than the end of the following year. Provided nevertheless, for the two (2) semesters commencing September, 1965, the board of county commissioners shall limit the community college budget and total students to estimated liquor funds available on quarterly disbursements through June 30, 1966. Any limitation of students authorized shall be accomplished (a) on the basis of student grades and financial need, and (b) by each community college notifying the county of residence of each student's application and the county shall accept or reject the application at least five (5) days prior to the tuition billing dates set out herein. A community college shall nevertheless have a right to require any student residing outside the district to pay nonresident tuition if the county of his residence is more than twenty-five ~~per-cent~~ percent (25%) in arrears of a total county tuition bill for one (1) year as of the beginning of the subsequent semester, but tuition shall be refunded to such students when paid by the county.

Approved March 11, 2005.

CHAPTER 43
(S.B. No. 1162)

AN ACT

RELATING TO ENDOWMENT DISTRIBUTIONS; APPROPRIATING ADDITIONAL MONEYS FOR THE GENERAL EDUCATION PROGRAMS AT BOISE STATE UNIVERSITY, IDAHO STATE UNIVERSITY, LEWIS-CLARK STATE COLLEGE, THE UNIVERSITY OF IDAHO AND THE OFFICE OF THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 2005; REDUCING THE APPROPRIATION FOR THE GENERAL EDUCATION PROGRAMS AT BOISE STATE UNIVERSITY, IDAHO STATE UNIVERSITY, LEWIS-CLARK STATE COLLEGE, THE UNIVERSITY OF IDAHO AND THE OFFICE OF THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 2005; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2005; REDUCING THE APPROPRIATION TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2005; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2005; REDUCING THE APPROPRIATION TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2005; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF FAMILY AND COMMUNITY SERVICES FOR FISCAL YEAR 2005; REDUCING THE APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF FAMILY AND COMMUNITY SERVICES FOR FISCAL YEAR 2005; AMENDING SECTION 4, CHAPTER 195, LAWS OF 2004, TO REVISE LEGISLATIVE INTENT REGARDING TRANSFERS BY THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 2005; 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 363, Laws of 2004, 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 amounts to be expended for the designated program from the listed funds for the period July 1, 2004, through June 30, 2005:

FOR:	
General Education Programs	$755,700
FROM:	
Normal School Endowment Earnings Fund	$228,300
University Endowment Fund	527,400
TOTAL	$755,700

SECTION 2. The appropriation of moneys 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 made in Section 1, Chapter 363, Laws of 2004, is hereby reduced by the following amounts for the designated program from the listed funds for the period July 1, 2004, through June 30, 2005:

FOR:

General Education Programs	$755,700

FROM:

Agricultural College Endowment Fund	$380,400
Charitable Institutions Endowment Earnings Fund	375,300
TOTAL	$755,700

SECTION 3. In addition to the appropriation made in Section 1, Chapter 153, Laws of 2004, there is hereby appropriated to the Department of Juvenile Corrections the following amount to be expended for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

INSTITUTIONS:

FOR:

Operating Expenditures	$375,300

FROM:

General Fund	$375,300

SECTION 4. The appropriation to the Department of Juvenile Corrections made in Section 1, Chapter 153, Laws of 2004, is hereby reduced by the following amount for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

INSTITUTIONS:

FOR:

Operating Expenditures	$375,300

FROM:

State Juvenile Corrections Center Fund	$375,300

SECTION 5. In addition to the appropriation made in Section 1, Chapter 200, Laws of 2004, there is hereby appropriated to the Department of Correction the following amount to be expended for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

IDAHO STATE CORRECTIONAL INSTITUTION - BOISE:

FOR:

Operating Expenditures	$375,300

FROM:

Penitentiary Endowment Fund	$375,300

SECTION 6. The appropriation to the Department of Correction made in Section 1, Chapter 200, Laws of 2004, is hereby reduced by the following amount for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

IDAHO STATE CORRECTIONAL INSTITUTION - BOISE:

FOR:

Operating Expenditures	$375,300

FROM:

General Fund	$375,300

SECTION 7. In addition to the appropriation made in Section 1, Chapter 368, Laws of 2004, there is hereby appropriated to the Department of Health and Welfare for the Division of Family and Community Ser-

vices 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, 2004, through June 30, 2005:

I. STATE HOSPITAL NORTH:

FOR:

Operating Expenditures	$375,300

FROM:

General Fund	$375,300

II. STATE HOSPITAL SOUTH:

FOR:

Operating Expenditures	$375,300

FROM:

Mental Hospital Endowment Fund	$375,300

SECTION 8. The appropriation to the Department of Health and Welfare for the Division of Family and Community Services made in Section 1, Chapter 368, Laws of 2004, is hereby reduced by the following amounts for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

I. STATE HOSPITAL NORTH:

FOR:

Operating Expenditures	$375,300

FROM:

State Hospital North Endowment Income Fund	$375,300

II. STATE HOSPITAL SOUTH:

FOR:

Operating Expenditures	$375,300

FROM:

General Fund	$375,300

SECTION 9. That Section 4, Chapter 195, Laws of 2004, is hereby amended to read as follows:

SECTION 4. It is legislative intent that for fiscal year 2005, the Endowment Fund Investment Board transfer ~~$37,676,200~~ $37,394,710 as follows: $22,957,800 from the Public School Earnings Reserve Fund to the Public School Income Fund; ~~$760,800~~ $380,400 from the Agricultural College Earnings Reserve Fund to the Agricultural College Income Fund; ~~$2,814,900~~ $1,407,450 from the Charitable Institutions Earnings Reserve Fund to the Charitable Institutions Income Fund; ~~$2,741,300~~ $2,969,624 from the Normal School Earnings Reserve Fund to the Normal School Income Fund; ~~$1,134,200~~ $1,509,520 from the Penitentiary Earnings Reserve Fund to the Penitentiary Income Fund; $3,136,900 from the Scientific School Earnings Reserve Fund to the Scientific School Income Fund; ~~$1,499,400~~ $1,874,720 from the Mental Hospital Earnings Reserve Fund to the Mental Hospital Income Fund; and ~~$2,630,900~~ $3,158,296 from the University Earnings Reserve Fund to the University Income Fund.

SECTION 10. 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, 2005.

CHAPTER 44
(H.B. No. 34)

AN ACT

RELATING TO POWERS AND DUTIES OF THE DEPARTMENT OF AGRICULTURE; AMENDING CHAPTER 2, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-238, IDAHO CODE, TO AUTHORIZE THE IMPOSITION OF CIVIL PENALTIES FOR VIOLATIONS SPECIFIED, TO GOVERN APPEALS, TO AUTHORIZE ADOPTION OF A FORMAL COMPLIANCE SCHEDULE AND TO PROVIDE DEPOSIT OF MONEYS COLLECTED.

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

SECTION 1. That Chapter 2, 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 25-238, Idaho Code, and to read as follows:

25-238. CIVIL PENALTIES. (1) Any person, firm or corporation violating the provisions of this chapter or rules promulgated under this chapter may be assessed a civil penalty by the department or its agent of not more than five thousand dollars ($5,000) for each offense. Persons, firms or corporations against whom civil penalties are assessed are liable for reasonable attorney's fees. Civil penalties may be assessed in conjunction with any other department administrative action. Civil penalties may not be assessed unless the person, firm or corporation charged has been given notice and an opportunity for a hearing pursuant to the provisions of chapter 52, title 67, Idaho Code. If the department is unable to collect an assessed civil penalty or if any person, firm or corporation fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court. Any person, firm or corporation against whom the department has assessed a civil penalty under this chapter may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of chapter 52, title 67, Idaho Code. Moneys collected for violations of this chapter, or rules promulgated under this chapter, shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund. If the director determines that a person, firm or corporation has not complied with this chapter, or the rules promulgated under this chapter, the director shall identify appropriate corrective actions. The director may develop a formal compliance schedule to correct deficiencies caused by noncompliance. The director may, through a formal compliance schedule, allow all or part of the value of the assessed civil penalties to apply toward correction of the deficiencies.

(2) Nothing in this section requires 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.

Approved March 15, 2005.

CHAPTER 45
(H.B. No. 41)

AN ACT
RELATING TO PHYSICIANS; AMENDING CHAPTER 18, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1841, IDAHO CODE, TO PROVIDE A VOLUNTEER'S LICENSE, TO SPECIFY QUALIFICATIONS, TO SET FORTH APPLICATION REQUIREMENTS AND TO GOVERN LICENSE RENEWAL AND REVOCATION.

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

SECTION 1. That Chapter 18, 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 54-1841, Idaho Code, and to read as follows:

54-1841. VOLUNTEER'S LICENSE -- QUALIFICATIONS. (1) Upon application and qualification, the board may issue, without examination, a volunteer's license to a physician who is retired from the active practice of medicine and surgery or osteopathic medicine and surgery to enable the retired physician to provide medical services to persons who, due to age, infirmity, handicap, indigence or disability, are unable to receive regular medical treatment.

(2) (a) For purposes of this section, a physician previously holding a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathic medicine with active status in Idaho or another state shall be considered to be retired if, prior to the date of application for a volunteer's license:

(i) He has surrendered or allowed his license with active status to expire with the intention of ceasing to actively practice as a physician for remuneration;

(ii) He has converted his license with active status to a license with inactive status with the intention of ceasing to actively practice as a physician for remuneration; or

(iii) He has converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice of medicine and surgery or osteopathic medicine and surgery.

(b) A physician whose license had been restricted, suspended, revoked, surrendered, resigned, converted, or allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action being taken shall not be eligible for a volunteer's license.

(3) An application for a volunteer's license shall include, but not be limited to, the following:

(a) Verification of graduation from an acceptable school of medicine or an acceptable osteopathic school of medicine;

(b) Verification from each state board in which the applicant was licensed that the applicant maintained his license in good standing without disciplinary action that restricted the applicant's license or resulted in the applicant's license being placed on probation, suspended, revoked or being surrendered, resigned or otherwise allowed to lapse or expire in lieu of disciplinary action;

(c) Verification that the applicant held a license in good standing

in Idaho or another state as of the date upon which the physician became retired;

(d) Verification that the applicant held an active status license in good standing in Idaho or another state within five (5) years of the date of application for a volunteer's license, provided, that the board may waive the five (5) year requirement in the event that the applicant demonstrates that he possesses the knowledge and skills requisite to the practice of medicine and surgery or osteopathic medicine and surgery by successfully completing such examinations as are required by the board; and

(e) A notarized statement from the applicant on a form prescribed by the board, that the applicant will not provide any physician services to any person other than those permitted by the license and that the applicant will not accept any amount or form of remuneration, other than as reimbursement for the amount of actual expenses incurred as a volunteer physician, for any physician services provided under the authority of a volunteer's license.

(4) A volunteer's license shall be valid for that period specified for physicians in section 54-1808, Idaho Code, and may be renewed upon application of the licensee unless the license has been revoked in accordance with this section. The board shall maintain a register of all physicians who hold a volunteer's license. The board shall not charge an application or licensing fee for issuing or renewing a volunteer's license. A volunteer's license cannot be converted to a license with active, inactive or temporary status.

(5) The board may revoke a volunteer's license upon receiving proof satisfactory to the board that grounds existed for enforcement or disciplinary action against the holder of a volunteer's license under other sections of this chapter or the administrative rules promulgated under this chapter.

Approved March 15, 2005.

CHAPTER 46
(H.B. No. 45)

AN ACT

RELATING TO COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS; AMENDING SECTION 54-3405, IDAHO CODE, TO REMOVE A REFERENCE TO CONDITIONAL LICENSES; REPEALING SECTION 54-3405B, IDAHO CODE, APPLICABLE TO CONDITIONAL LICENSES; AMENDING SECTION 54-3405C, IDAHO CODE, TO REMOVE PROVISIONS PROVIDING FOR LICENSURE BASED UPON CERTAIN EDUCATION AND EXPERIENCE REQUIREMENTS AND TO REMOVE A REFERENCE TO CONDITIONAL LICENSES; AMENDING SECTION 54-3408, IDAHO CODE, TO REMOVE A REFERENCE TO CONDITIONAL LICENSES; AND AMENDING SECTION 54-3411, IDAHO CODE, TO PROVIDE FOR AN ADMINISTRATIVE FEE AND TO INCREASE THE MAXIMUM ANNUAL RENEWAL FEE.

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

SECTION 1. That Section 54-3405, Idaho Code, be, and the same is hereby amended to read as follows:

54-3405. QUALIFICATIONS FOR LICENSURE. Licensure as a "licensed professional counselor" shall be restricted to persons of good moral character who have successfully completed each of the following requirements:

(1) A planned graduate program of sixty (60) semester hours which is primarily counseling in nature, six (6) semester hours of which are earned in an advanced counseling practicum, and including a graduate degree in a counseling field from an accredited university or college offering a graduate program in counseling.

(2) An examination if required by the board's rules.

(3) One thousand (1,000) hours of supervised experience in counseling acceptable to the board.

(4) A license ~~or conditional license~~ will not be allowed an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field. Such an individual may not be licensed under this chapter unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that an acceptable degree of rehabilitation has been accomplished.

SECTION 2. That Section 54-3405B, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 54-3405C, Idaho Code, be, and the same is hereby amended to read as follows:

54-3405C. QUALIFICATIONS FOR LICENSURE. Licensure as a "marriage and family therapist" shall be restricted to persons who have successfully completed each of the following requirements:

(1) A graduate degree which consists of at least sixty (60) semester hours or ninety (90) quarter credits in marriage and family therapy from a program accredited by the commission on accreditation for marriage and family therapy education, or a marriage and family counseling or therapy program which is accredited by the council for accreditation of counseling and related educational programs, or a graduate degree from a regionally accredited educational institution and an equivalent course of study as approved by the board. The course of study for any graduate degree shall include a minimum of thirty-nine (39) semester credits in the following areas:

(a) Marriage and family studies -- nine (9) semester credit minimum. Studies in this area shall include:

(i) Theoretical foundations, history, philosophy, etiology and contemporary conceptual directions of marriage and family therapy or marriage and family counseling;

(ii) Family systems theories and other relevant theories and their application in working with a wide variety of family structures, including families in transition, nontraditional families and blended families, and a diverse range of presenting issues; and

(iii) Preventive approaches, including premarital counseling, parent skill training and relationship enhancement, for working with couples, families, individuals, subsystems and other systems.

(b) Marriage and family therapy -- nine (9) semester credit minimum. Studies in this area shall include:

(i) The practice of marriage and family therapy related to theory, and a comprehensive survey and substantive understanding of the major models of marriage and family therapy or marriage and family counseling; and

(ii) Interviewing and assessment skills for working with couples, families, individuals, subsystems and other systems, and skills in the appropriate implementation of systematic interventions across a variety of presenting clinical issues including, but not limited to, socioeconomic disadvantage, abuse and addiction.

(c) Human development -- nine (9) semester credit minimum. Studies in this area shall include:

(i) Individual development and transitions across the life span;

(ii) Family, marital and couple life cycle development and family relationships, family of origin and intergenerational influences, cultural influences, ethnicity, race, socioeconomic status, religious beliefs, gender, sexual orientation, social and equity issues and disability;

(iii) Human sexual development, function and dysfunction, impacts on individuals, couples and families, and strategies for intervention and resolution; and

(iv) Issues of violence, abuse and substance use in a relational context, and strategies for intervention and resolution.

(d) Psychological and mental health competency -- six (6) semester credit minimum. Studies in this area shall include:

(i) Psychopathology, including etiology, assessment, evaluation and treatment of mental disorders, use of the current diagnostic and statistical manual of mental disorders, differential diagnosis and multiaxial diagnosis;

(ii) Standard mental health diagnostic assessment methods and instruments, including standardized tests; and

(iii) Psychotropic medications and the role of referral to and cooperation with other mental health practitioners in treatment planning, and case management skills for working with individuals, couples and families.

(e) Professional ethics and identity -- three (3) semester credit minimum. Studies in this area shall include:

(i) Professional identity, including professional socialization, professional organizations, training standards, credentialing bodies, licensure, certification, practice settings and collaboration with other disciplines;

(ii) Ethical and legal issues related to the practice of marriage and family therapy, legal responsibilities of marriage and family therapy and marriage and family counseling practice and research, business aspects, reimbursement, recordkeeping, family law, confidentiality issues and the relevant codes of ethics, including the code of ethics specified by the board; and

(iii) The interface between therapist responsibility and the professional, social and political context of treatment.

(f) Research -- three (3) semester credit minimum. Studies in this area shall include:

(i) Research in marriage and family therapy or marriage and family counseling and its application to working with couples and families; and

(ii) Research methodology, quantitative and qualitative methods, statistics, data analysis, ethics and legal considerations of conducting research, and evaluation of research.

(2) Completion of a one (1) year practicum of supervised marriage and family therapy experience, consisting of a minimum of three hundred (300) direct client contact hours, of which one hundred fifty (150) hours shall be with couples or families, as part of the graduate program.

(3) Supervised experience in marriage and family therapy of three thousand (3,000) hours, acceptable to the board as defined by rule. A minimum of two hundred (200) hours of supervision of the postgraduate experience. Supervision may be provided by a clinical member of the American association for marriage and family therapy, by a licensed marriage and family therapist, or another qualified licensed professional as determined by the board who has a minimum of five (5) years experience providing marriage and family therapy, including: a licensed professional counselor, private practice; psychologist; certified social worker, private and independent practice; or psychiatrist.

(4) Successful completion of a written examination as approved by the board and defined by rule.

(5) ~~From--the--effective--date-of-this-section-until-June-30,-2003, any-person-who-meets-the-educational-qualifications-for--an--appropriate graduate-degree,-as-defined-by-the-board,-from-an-accredited-educational institution--so--recognized-at-the-time-of-granting-such-degree,-and-who demonstrates-three-thousand-(3,000)--hours--of--postgraduate--experience providing--marriage--and-family-therapy-may-upon-application,-finding-of fitness,-and-payment-of-fees,-be-issued-a-marriage-and-family--therapist license.--In--determining-if-the-education-and-experience-qualifications have-been-met,-the-board-may-consider-a-current-clinical--membership--in the--American-association-of-marriage-and-family-therapy-or-the-national association-of-certified-family-therapy,-or-membership-in-or--certification-by-another-appropriate-professional-organization,-as-defined-by-the board,--to--be--sufficient--demonstration-of-the-qualifications,-and-may issue-a-marriage-and-family-therapy-license.~~

~~(6)~~ A license ~~or-conditional-license~~ will not be allowed an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field. Such an individual may not be licensed under this chapter unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that an acceptable degree of rehabilitation has been accomplished.

SECTION 4. That Section 54-3408, Idaho Code, be, and the same is hereby amended to read as follows:

54-3408. CERTAIN ACTS PROHIBITED. The following acts shall be unlawful and punishable as a misdemeanor:

(1) The violation of any of the provisions of this chapter and any rules promulgated pursuant thereto;

(2) A person representing himself to be a licensed counselor or licensed professional counselor or licensed marriage and family therapist without having first complied with the provisions of this chapter;

(3) A person who shall practice or attempt to offer to practice professional counseling or marriage and family therapy, as defined in this chapter, without having at the time of so doing, a valid, unexpired, unrevoked and unsuspended license ~~or conditional license~~ issued under this chapter or the laws of Idaho or any other state governing mental health professionals.

SECTION 5. That Section 54-3411, Idaho Code, be, and the same is hereby amended to read as follows:

54-3411. FEES ON LICENSURE. The board shall establish fees for licensure under the provisions of this chapter as follows:

(1) The fee for applications not to exceed one hundred dollars ($100).

(2) The fee for examination, when required, equal to that charged by the national examining entity plus an administration fee not to exceed twenty-five dollars ($25.00).

(3) The fee for endorsement not to exceed one hundred dollars ($100).

(4) The fee for the original license not to exceed one hundred dollars ($100).

(5) The fee for annual renewal not to exceed ~~sixty~~ one hundred dollars ($~~60.~~100).

(6) The fee for the original registration of interns not to exceed twenty-five dollars ($25.00).

(7) Fees under subsection (2) or (3) of this section shall be in addition to the application fee.

(8) All fees paid pursuant to this section shall be nonrefundable.

Approved March 15, 2005.

CHAPTER 47
(H.B. No. 62)

AN ACT

RELATING TO FUNERAL DIRECTORS; AMENDING SECTION 54-1109, IDAHO CODE, TO APPLY ENDORSEMENT PROVISIONS TO FUNERAL DIRECTORS.

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

SECTION 1. That Section 54-1109, Idaho Code, be, and the same is hereby amended to read as follows:

54-1109. REQUIREMENTS FOR MORTICIAN LICENSE -- REQUIREMENTS FOR FUNERAL DIRECTOR LICENSE -- LICENSE BY ENDORSEMENT. (1) The board shall issue to any person a mortician's license to practice as a mortician and perform mortician services within the state of Idaho who has complied with and fulfilled all of the following requirements:

(a) Has attained the age of twenty-one (21) years.

(b) Is of good moral character.

(c) Has completed and received credit for at least sixty (60) semester hours' or ninety (90) quarter-hours' instruction in a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all of such credits must be for courses in the fields of liberal arts, business or science as defined and specified by the board of morticians.

(d) Has successfully completed a course in an embalming school accredited by the American board of funeral service education, inc., or such other embalming school as approved by the board of morticians.

(e) Has practiced as a licensed resident trainee in the state of Idaho under the personal supervision of a licensed resident mortician for not less than twelve (12) months, and has assisted in embalming at least twenty-five (25) dead human bodies; provided, however, such practice as a licensed resident trainee of the state of Idaho may be filled and performed either before or after the required post-high school education.

(f) Has filed an application with the board as required by this chapter and paid the required filing fee therefor.

(g) Has passed the required examination prepared and conducted by the board of morticians. Provided further, that the board shall determine compliance with all of the above qualifications, except this paragraph relating to examinations, at the time the applicant files his application as hereinafter provided and before the examination is conducted by the board of morticians.

(2) The board shall issue to any person a funeral director license to practice as a funeral director and perform funeral director services within the state of Idaho who has complied with and fulfilled all of the following requirements:

(a) Has attained the age of twenty-one (21) years.

(b) Is of good moral character.

(c) Has completed and received at least sixty (60) semester hours' or ninety (90) quarter-hours' instruction from a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in the fields of liberal arts, business or science as defined and specified by the board.

(d) Has successfully completed at least fifteen (15) semester credit hours or the equivalent from a mortuary college accredited by the American board of funeral service education, inc., or such credits as are otherwise approved by the board, with course of study to include business law, psychology, sociology, funeral service counseling, funeral service management and other classes that relate to conducting funeral business.

(e) Has practiced as a licensed trainee in the state of Idaho under the personal supervision of a licensed mortician for not less than twelve (12) months, and has assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals.

(f) Has successfully passed the required examination as established by the rules of the board. An applicant shall not be qualified to

take the examination until all other requirements have been met.

(g) Has filed an application with the board as required by this chapter and paid the required fees.

(3) Any person holding a current, valid license in another state or territory having substantially similar requirements to those existing in this state, may be granted a license without examination, provided:

(a) The applicant files with the board a certified statement from the examining board of the state or territory in which the applicant holds his license, verifying the license and showing the basis upon which the license was granted; and

(b) The applicant pays the license fee; and

(c) The applicant satisfies the board that he understands the laws and rules of this state as to funeral service.

(4) A person holding a current, valid license in another state or territory with requirements significantly lower than those of this state who has at least five (5) consecutive years of experience as a licensee in the other state or territory prior to application, may apply for a license to practice in this state without meeting the full requirements of subsection (1) or (2) of this section. Upon payment of the license fee and passing such test of proficiency as the board shall require including, but not limited to, a knowledge of the laws and administrative rules of this state as to funeral service, the board shall grant a license.

Approved March 15, 2005.

CHAPTER 48
(H.B. No. 78)

AN ACT

RELATING TO CONSERVATORS; AMENDING SECTION 15-5-420, IDAHO CODE, TO PROVIDE FOR CONSERVATOR POWERS OVER TITLES TO PROPERTY OF A PROTECTED PERSON'S ESTATE.

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

SECTION 1. That Section 15-5-420, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-420. CONSERVATORS -- TITLE BY APPOINTMENT. (a) The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact, or to the part thereof specified in the order. An order specifying that only a part of the property of the protected person vests in the conservator creates a limited conservatorship.

(b) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific

provision by contract or dispositive instrument relating to a conservator.

(c) Until termination of his appointment, a conservator has the same power over the title to property of the protected person's estate that an absolute owner would have, provided however, that such power is held in trust for the benefit of the protected person. This power may be exercised without notice, hearing, or order of the court.

Approved March 15, 2005.

CHAPTER 49
(H.B. No. 79)

AN ACT

RELATING TO GUARDIANS AD LITEM; AMENDING PART 3, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-315, IDAHO CODE, TO SET FORTH THE DUTIES OF A GUARDIAN AD LITEM IN A GUARDIANSHIP CASE; AMENDING PART 3, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-316, IDAHO CODE, TO SET FORTH THE RIGHTS AND POWERS OF A GUARDIAN AD LITEM IN A GUARDIANSHIP CASE; AMENDING PART 4, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-434, IDAHO CODE, TO SET FORTH THE DUTIES OF A GUARDIAN AD LITEM IN A CONSERVATORSHIP CASE; AND AMENDING PART 4, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-435, IDAHO CODE, TO SET FORTH THE RIGHTS AND POWERS OF A GUARDIAN AD LITEM IN A CONSERVATORSHIP CASE.

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

SECTION 1. That Part 3, Chapter 5, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 15-5-315, Idaho Code, and to read as follows:

15-5-315. GUARDIAN AD LITEM -- DUTIES. Subject to the direction of the court, the guardian ad litem shall have the following duties, which shall continue until the resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever occurs first:

(1) To conduct an independent factual investigation of the circumstances of the ward including, without limitation, the circumstances described in the petition;

(2) To file with the court a written report stating the results of the investigation, the guardian ad litem's recommendations, and such other information as the court may require. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case, at least five (5) days before the date set for the adjudicatory hearing;

(3) To act as an advocate for the ward for whom appointed at each stage of the proceedings under this chapter and to be charged with the general representation of the ward. To that end, the guardian ad litem shall participate fully in the proceedings to the degree necessary to

adequately represent the ward, and shall be entitled to confer with the ward and the ward's immediate family including, but not limited to, spouse, parents, siblings, children and next of kin;

(4) To facilitate and negotiate to ensure that the court, the department of health and welfare, if applicable, and the ward's attorney, if any, each fulfill their obligations to the ward in a timely fashion;

(5) To monitor the circumstances of a ward, if the ward is found to be within the purview of this chapter, to assure compliance with the law, and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the ward;

(6) To meet any parent or other person having legal or physical custody of the ward, record the concerns of the parent, and report them to the court or, if no such meeting occurs, file an affidavit stating why no meeting occurred;

(7) To maintain all information regarding the case confidential and to not disclose such information except to the court or to other parties to the case;

(8) To determine whether existing powers, trusts, and other measures may adequately give the ward the legal protection otherwise provided by a guardian, or whether such powers, trusts or other measures could be reasonably created and, if so, to recommend that either no guardianship be granted or that only a suitably limited guardianship be granted; and

(9) To exercise such other and further duties as may be expressly imposed by court order.

SECTION 2. That Part 3, Chapter 5, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 15-5-316, Idaho Code, and to read as follows:

15-5-316. GUARDIAN AD LITEM -- RIGHTS AND POWERS. (1) The guardian ad litem has the rights and powers set forth in this section, which shall continue until the resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever occurs first.

(2) The guardian ad litem shall have the right and power to file pleadings, motions, memoranda and briefs on behalf of the ward, and to have all of the rights of the ward, whether conferred by statute, rule of court, or otherwise.

(3) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem, and the guardian's attorney, if any, of all hearings, staff hearings or meetings, investigations, depositions, and significant changes of circumstances of the ward.

(4) Except to the extent prohibited or regulated by federal law, upon presentation of a copy of the order appointing the guardian ad litem, any person or agency including, without limitation, any hospital, school organization, department of health and welfare, doctor, nurse or other health care provider, psychologist, psychiatrist, police department, or mental health clinic, shall permit the guardian ad litem to inspect and copy pertinent records relating to the ward necessary for the proceeding for which the guardian ad litem has been appointed.

SECTION 3. That Part 4, Chapter 5, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 15-5-434, Idaho Code, and to read as follows:

15-5-434. GUARDIAN AD LITEM -- DUTIES. Subject to the direction of the court, the guardian ad litem shall have the following duties, which shall continue until the resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever occurs first:

(1) To conduct an independent factual investigation of the circumstances of the protected person including, without limitation, the circumstances described in the petition;

(2) To file with the court a written report stating the results of the investigation, the guardian ad litem's recommendations, and such other information as the court may require. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case, at least five (5) days before the date set for the adjudicatory hearing;

(3) To act as an advocate for the protected person for whom appointed at each stage of the proceedings under this chapter and to be charged with the general representation of the protected person. To that end, the guardian ad litem shall participate fully in the proceedings to the degree necessary to adequately represent the protected person, and shall be entitled to confer with the protected person and the protected person's immediate family including, but not limited to, spouse, parents, siblings, children and next of kin;

(4) To facilitate and negotiate to ensure that the court, the department of health and welfare, if applicable, and the protected person's attorney, if any, each fulfill their obligations to the protected person in a timely fashion;

(5) To monitor the circumstances of a protected person, if the protected person is found to be within the purview of this chapter, to assure compliance with the law, and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the protected person;

(6) To meet any parent or other person having legal or physical custody of the protected person, record the concerns of the parent, and report them to the court or, if no such meeting occurs, file an affidavit stating why no meeting occurred;

(7) To maintain all information regarding the case confidential and to not disclose such information except to the court or to other parties to the case;

(8) To determine whether existing powers, trusts, and other measures may adequately give the protected person the legal protection otherwise provided by a conservator, or whether such powers, trusts or other measures could be reasonably created and, if so, to recommend that either no conservatorship be granted or that only a suitably limited conservatorship be granted; and

(9) To exercise such other and further duties as may be expressly imposed by court order.

SECTION 4. That Part 4, Chapter 5, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 15-5-435, Idaho Code, and to read as follows:

15-5-435. GUARDIAN AD LITEM -- RIGHTS AND POWERS. (1) The guardian ad litem has the rights and powers set forth in this section, which shall continue until the resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever occurs first.

(2) The guardian ad litem shall have the right and power to file pleadings, motions, memoranda and briefs on behalf of the protected person, and to have all of the rights of the protected person, whether conferred by statute, rule of court, or otherwise.

(3) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem, and the conservator's attorney, if any, of all hearings, staff hearings or meetings, investigations, depositions, and significant changes of circumstances of the protected person.

(4) Except to the extent prohibited or regulated by federal law, upon presentation of a copy of the order appointing the guardian ad litem, any person or agency including, without limitation, any hospital, school organization, department of health and welfare, doctor, nurse or other health care provider, psychologist, psychiatrist, police department, or mental health clinic, shall permit the guardian ad litem to inspect and copy pertinent records relating to the protected person necessary for the proceeding for which the guardian ad litem has been appointed.

Approved March 15, 2005.

CHAPTER 50
(H.B. No. 80)

AN ACT

RELATING TO CONSERVATORS; AMENDING SECTION 15-5-419, IDAHO CODE, TO SET FORTH REQUIREMENTS FOR REPORTS SUBMITTED BY CONSERVATORS.

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

SECTION 1. That Section 15-5-419, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-419. ACCOUNTS AND REPORTS. (a) Every conservator or guardian shall submit a written annual report to the court concerning the status of the ward and of the ward's estate that has been under the guardian's or conservator's control. The guardian or conservator shall also be required to provide copies of the report to all persons listed by the court as having an interest in receiving copies of the report. The court may order more frequent reports by its own ruling or pursuant to a petition of any person interested in the ward's welfare. Every conservator must account annually, or as otherwise directed by the court, and upon his resignation or removal. On termination of the protected person's

minority or disability, a conservator shall account to the court and shall account to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

(b) Except as otherwise provided in subsection (c) of this section, every report submitted by a conservator shall cover a specific time period, which period shall be stated explicitly in the report. The report shall cover all of the estate of the protected person which is under the control of the conservator. Supporting documentation for items in the report shall either accompany such report or, if such supporting documentation is voluminous, or expensive to provide, or contains sensitive or private information, or another good reason exists for not providing such supporting documentation with the report, the report shall state the reason that the supporting documentation is not provided and that the supporting documentation is held by, or is reasonably available to, the conservator and will be produced upon request. The report shall contain, to the extent reasonably available to the conservator, at least the following:

(1) A reasonably detailed listing of the starting inventory of the estate of the protected person at the beginning of the time period for which the report is made. Every such inventory item shall be specifically identified; provided however, that items may be reported in categories, such as miscellaneous personal property, rather than individually, and valued by category, when reasonable. The fair market value of each such item or category shall be stated in such starting inventory and the method of determining such fair market value shall also be stated. In the case of an item or category which is secured by an encumbrance or debt of any nature, the encumbrance or debt shall be listed separately from the item or category and shall be specifically identified, including the items or category secured by the encumbrance or debt, the amount of the encumbrance or debt as of the date of the starting inventory, the holder of such debt or encumbrance, the family relationship of such holder to the protected person if actually known to the conservator, and any other reasonably relevant information;

(2) A reasonably detailed listing, for the covered time period, of the receipts, of any nature, by the estate of the protected person; provided however, that the receipts may be reported in categories, such as interest income, social security payments or rental receipts, if reasonable. Such listing shall reasonably identify each such receipt or category, including the source of such receipt or category and the exact amount or fair market value thereof, and the method of determining such amount or fair market value;

(3) A reasonably detailed listing, for the covered time period, of all payments or expenses, of any nature, by the estate of the protected person; provided however, that the payments or expenses may

be reported in categories, such as rental or house payments, medical expenses or transportation expenses, if reasonable. Each such payment or category shall be set forth in reasonable detail, including the amount thereof, to whom the payment was made, the method or frequency of making such payment if not reasonably indicated by the item or category, the consideration for such payment if not reasonably indicated by the item or category, the family relationship of the receiver of such payment to the protected person if actually known to the conservator, the time period covered by such payment if relevant, and any other information reasonably relevant to such payment;

(4) A reasonably detailed listing of the ending inventory of the estate of the protected person at the end of the time period for which the report is made, in the same manner as described above for the starting inventory;

(5) If the report does not, on its face, balance exactly the starting and ending inventories with the receipts and payments of the estate of the protected person, a reasonably detailed analysis and statement of the reasons for such imbalance, and a reasonably detailed listing of the correcting entries necessary to balance such report, such as unrealized gains or losses on assets of the estate, shall be made as part of the report; and

(6) Any other information, of any nature, which is reasonably relevant to the actions of the conservator during the time period covered by the report, which shall be submitted as part of the report or shall accompany such report.

(c) Any report prepared by a federally or state chartered financial institution using a fiduciary accounting system that produces statements containing asset positions, receipts, and disbursements shall be deemed to satisfy the reporting requirements set forth in subsection (b) of this section. The court may order any such report filed by a federally or state chartered financial institution to be supplemented or may order that any information reasonably relevant to the report be produced.

(d) If a conservator or guardian:

(1) Makes a substantial misstatement on filings of any required annual reports; or

(2) Is guilty of gross impropriety in handling the property of the ward; or

(3) Willfully fails to file the report required by this section, after receiving written notice of the failure to file and after a grace period of two (2) months have elapsed;

then the court may impose a fine in an amount not to exceed five thousand dollars ($5,000) on the conservator or guardian. The court may appoint a guardian ad litem for the ward on its own motion or on the motion of any interested party to represent the ward in any proceedings hereunder and may also appoint appropriate persons or entities to make investigation of the actions of the conservator or guardian. The court may also order restitution of funds misappropriated from the estate of a ward and may impose a surcharge upon the conservator or guardian responsible for such misappropriation for all damages, costs and other appropriate sums determined by the court, in addition to any fine imposed including, but not limited to, any fees and costs of the guardian ad litem. The court may take any other actions which are in the best interests of the ward and the protection of the assets of the ward. Any sums

awarded hereunder shall be paid by the conservator or guardian and may not be paid by the estate of the ward. The court may enter judgment against a conservator or guardian for any or all of the foregoing, and may impose judgment against any bond of such conservator or guardian.

Approved March 15, 2005.

CHAPTER 51
(H.B. No. 81)

AN ACT

RELATING TO GUARDIANS AND CONSERVATORS; AMENDING SECTION 15-5-303, IDAHO CODE, TO SET FORTH REQUIREMENTS FOR PETITIONS FOR GUARDIANSHIPS; AND AMENDING SECTION 15-5-404, IDAHO CODE, TO SET FORTH REQUIREMENTS FOR PETITIONS FOR CONSERVATORSHIPS AND TO CORRECT A CODIFIER'S ERROR.

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

SECTION 1. That Section 15-5-303, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON. (a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian, limited or general. It is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their own needs. Recognizing that every individual has unique needs and differing abilities, the public welfare should be promoted by establishing a guardianship that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of guardianship that least interferes with legal capacity of a person to act in his own behalf. The petition shall include a plan in reasonable detail for the proposed actions of the guardian regarding the affairs of the ward after appointment of the guardian, to the extent reasonably known to the petitioner at the time of filing of the petition. If the complete mental, physical and emotional status, and the health care needs and other needs of the ward are not reasonably known to the petitioner at the time the petition is filed, or if the petitioner is not the proposed guardian, then the guardian shall submit to the court, and to all interested persons, in writing, within thirty (30) days after appointment of the guardian, a reasonably detailed plan covering such matters. Such plan must also be given to any person who has filed a request for notice under section 15-5-406, Idaho Code, and to other persons as the court may direct. Such plan shall be given to all such persons in accordance with the methods set forth in section 15-1-401, Idaho Code. If the plan changes during any time period between the periodic reports of the guardian, the modified plan shall be filed with the next report as a part thereof.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician or other qualified person appointed by the court who shall submit his report in writing to the court. The court may, in appropriate cases, appoint a mental health professional, defined as a psychiatrist, psychologist, gerontologist, licensed social worker, or licensed counselor, to examine the proposed ward and submit a written report to the court. The person alleged to be incapacitated also shall be interviewed by a visitor sent by the court. The visitor shall also interview the person who appears to have caused the petition to be filed and any person who is nominated to serve as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. Where possible without undue delay and expenses beyond the ability to pay of the allegedly incapacitated person, the court, in formulating the judgment, may utilize the service of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.

(c) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence and subpoena witnesses and documents, to examine witnesses, including the court-appointed physician, mental health professional, or other person qualified to evaluate the alleged impairment, as well as the court-appointed visitor, and otherwise participate in the hearing. The hearing may be a closed hearing upon the request of the person alleged to be incapacitated or his counsel and a showing of good cause. After appointment, the guardian shall immediately provide written notice of any proposed change in the permanent address of the ward to the court and all interested parties.

SECTION 2. That Section 15-5-404, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-404. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER. (a) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is

requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

(c) The petition shall include a financial plan for the proposed actions of the conservator regarding the financial affairs of the protected person after appointment of the conservator, to the extent reasonably known to the petitioner at the time of filing of the petition. If the complete assets, income, expenses, debts and other financial concerns of the protected person are not reasonably known to the petitioner at the time the petition is filed, or if the petitioner is not the proposed conservator. then the conservator shall submit to the court. and to all interested persons, in writing, within the ninety (90) day inventory, as a part thereof, a financial plan covering all of the assets, income, expenses, debts and other financial concerns of the protected person. Such financial plan must also be given to any person who has filed a request for notice under section 15-5-406, Idaho Code, and to other persons as the court may direct. Such financial plan shall be given to all such persons in accordance with the methods set forth in section 15-1-401, Idaho Code. If the financial plan changes during any time period between the periodic reports of the conservator, the modified financial plan shall be filed with the next report as a part thereof.

Approved March 15, 2005.

CHAPTER 52
(H.B. No. 82)

AN ACT

RELATING TO GUARDIANSHIPS; AMENDING SECTION 15-5-310, IDAHO CODE, TO PROVIDE THAT THE AUTHORITY OF AN EMERGENCY GUARDIAN SHALL NOT EXCEED NINETY DAYS UNLESS EXTENDED FOR GOOD CAUSE UPON APPLICATION OF THE TEMPORARY GUARDIAN; AND AMENDING SECTION 15-5-407A, IDAHO CODE, TO REMOVE LANGUAGE REQUIRING A REPORT FROM A MEDICAL DOCTOR OR A LICENSED PSYCHOLOGIST.

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

SECTION 1. That Section 15-5-310, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-310. TEMPORARY GUARDIANS. (a) If the court finds that a guardian is not properly performing the duties of guardian or an emergency exists such that the likely result will be substantial harm to an alleged incapacitated person's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the alleged incapacitated person's welfare, may appoint an emergency guardian whose authority may not exceed ~~sixty~~ ninety (6~~9~~0) days, unless extended for good cause upon application of the temporary guardian. The emergency guardianship must be limited to only those powers absolutely necessary, or the least restrictive to the proposed ward, for the imme-

diate health and safety of the proposed ward until such time as a full hearing may be held in the matter and the emergency guardian may exercise only those powers specified in the order. Emergency letters of guardianship shall allow the temporary guardian only such access to the proposed ward's assets as is necessary to provide and pay for the proposed ward's necessities of life, including short and long-term health care, but shall expressly deny a temporary guardian the right to have the temporary guardian's name added to any assets of the proposed ward pending a hearing on the guardianship.

(b) The court shall appoint a guardian ad litem to represent the proposed ward in all cases involving a petition for adjudication of incapacity. The alleged incapacitated person may substitute his own attorney for the guardian ad litem appointed by the court. Any attorney representing an alleged incapacitated person may not serve as guardian of the proposed ward or as counsel for the petitioner for guardianship.

(c) An emergency guardian may be appointed without notice to the alleged incapacitated person or his attorney only if the court finds from affidavit or other sworn testimony that the proposed ward will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the proposed ward, the proposed ward must be given notice of the appointment within forty-eight (48) hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within five (5) days after the appointment if requested by an interested party at which time the court shall appoint a visitor to meet with the alleged incapacitated person and make a written report to the court. The court shall also appoint a physician to examine the proposed ward giving preference to the appointment of the proposed ward's treating physician if the proposed ward has a current treating physician.

SECTION 2. That Section 15-5-407A, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-407A. TEMPORARY AND EMERGENCY APPOINTMENTS. (a) The court may appoint upon an ex parte petition, without hearing, a person to act as temporary conservator, pending the final hearing, upon a finding supported by statement made under oath that an emergency situation exists. The emergency appointment shall remain in effect no longer than ninety (90) days, unless extended for good cause upon application of the temporary conservator.

(b) ~~A report from a medical doctor or a licensed psychologist to the effect that the person to be protected is unable to take care of his own activities of daily living, together with a~~Any one (1) of the following~~,~~ shall be considered an emergency situation:

(1) A finding that the person to be protected is unable to reasonably manage said person's finances and as a result the person's assets will be wasted or dissipated unless proper management is provided without delay; or

(2) A finding that the person to be protected has been taken advantage of and that the situation is likely to continue unless a temporary appointment is made without delay; or

(3) A finding that funds are needed for support, care and welfare of the person to be protected and a temporary appointment is necessary to secure such funding; or

(4) A finding that other conditions exist that in the court's determination necessitate the appointment of a temporary conservator.

(c) The duty of a temporary conservator shall be to preserve and protect the assets of the estate and to provide the funding necessary for the support, care and welfare of the person to be protected. The conservator shall have all the powers enumerated in section 15-5-424, Idaho Code, to be exercised, however, only within said limited context. The court may expand the duties of the temporary conservator upon application and a finding that a proposed action is necessary prior to the hearing.

(d) A temporary conservator shall not remove any of the assets of the estate from the jurisdiction of the court without a specific order to that effect.

(e) The petition for appointment of a temporary conservator must be accompanied by a petition for appointment of a conservator pursuant to section 15-5-404, Idaho Code.

(f) If the person to be protected is a minor, the court shall appoint a guardian ad litem for said minor at the same time the temporary appointment of a conservator is made.

(g) Upon application by an interested party and a hearing, the court may limit the powers and duties of the temporary conservator.

(h) Notice of the appointment of a temporary conservator shall be given to all interested persons by the petitioner within five (5) days after the date of such appointment.

(i) The court shall hold a hearing on the appropriateness of the temporary appointment within five (5) days if requested by an interested party. In such event, if a visitor and physician have not already been appointed, the court shall appoint a visitor to meet with the alleged incapacitated person and to make a written report to the court, and shall appoint a physician to examine the proposed ward and submit a written report to the court, giving preference to the appointment of the proposed ward's treating physician if the proposed ward has a current treating physician.

Approved March 15, 2005.

CHAPTER 53
(H.B. No. 106)

AN ACT

RELATING TO AN IDAHO ENERGY RESOURCES AUTHORITY; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 89, TITLE 67, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A DECLARATION OF NECESSITY AND PURPOSE, TO DEFINE TERMS, TO CREATE THE IDAHO ENERGY RESOURCES AUTHORITY, TO PROVIDE FOR DIRECTORS OF THE AUTHORITY, TO PROVIDE TERMS OF OFFICE, APPOINTMENT AND FILLING VACANCIES AND REMOVAL, TO PROVIDE A QUORUM, MODE OF ACTION AND COMPENSATION FOR THE DIRECTORS, TO PROVIDE FOR AN ORGANIZATIONAL MEETING, OFFICERS AND APPOINTMENT OF AN EXECUTIVE DIRECTOR, TO PROVIDE FOR DELEGATION OF POWER, TO PROVIDE A SURETY BOND AND TO PROVIDE FOR A CONFLICT OF INTEREST, TO PROVIDE POWERS OF THE AUTHORITY, TO PROVIDE FOR DEVELOPMENT, ACQUISITION AND CONSTRUCTION OF FACILITIES, TO PROVIDE FOR

MANAGEMENT AND OPERATION OF FACILITIES, TO PROVIDE FOR THE SALE OF ELECTRICITY, PRODUCT OR SERVICE FROM FACILITIES AND TO PROVIDE FOR CHARGES, TO PROVIDE FOR COST RECOVERY AND FOR RATE STABILIZATION CHARGES OF PARTICIPATING UTILITIES, TO PROVIDE FOR COOPERATION WITH OTHER AGENCIES AND POLITICAL SUBDIVISIONS, TO PROVIDE FOR EXEMPTION FROM INCOME TAXATION, TO PROVIDE FOR THE ISSUANCE OF BONDS TO FINANCE FACILITIES, TO PROVIDE FOR REFUNDING OF BONDS, TO PROVIDE FOR PAYMENT OF BONDS AND THE NONLIABILITY OF THE STATE OF IDAHO, TO PROVIDE FOR THE STATE OF IDAHO'S PLEDGE TO HOLDERS OF BONDS, TO PROVIDE FOR FEES, TO PROVIDE FOR EXEMPTION OF REAL PROPERTY OF THE AUTHORITY FROM LEVY AND SALE BY EXECUTION, TO PROVIDE FOR AN ANNUAL REPORT, TO PROVIDE THAT AUTHORITY OBLIGATIONS ARE LEGAL INVESTMENTS, TO PROVIDE THAT THIS ACT IS NOT A LIMITATION OF POWERS OF THE AUTHORITY AND TO PROVIDE FOR CONSTITUTIONALITY.

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

SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 89, Title 67, Idaho Code, and to read as follows:

CHAPTER 89
IDAHO ENERGY RESOURCES AUTHORITY ACT

67-8901. SHORT TITLE. This act may be referred to and cited as the "Idaho Energy Resources Authority Act."

67-8902. DECLARATION OF NECESSITY AND PURPOSE. (1) It is hereby determined and declared that:

(a) Industrial, irrigation, commercial and residential consumers in the state of Idaho receive electric service from various investor-owned, cooperative and municipal utilities and the ability of these utilities to provide reliable and economic electric services at stable prices is essential to the economy and the economic development of the state of Idaho and to the health, safety and welfare of its people;

(b) The regional interconnection of electric utilities causes events and conditions in other western states to have a significant impact of the operations of utilities in the state of Idaho and the restructuring of the electric industry in recent years by the federal government and in other states has exposed all utilities in Idaho, and the consumers served by them, to volatile market prices, reliability concerns and other adverse conditions;

(c) It is in the best interest of the state of Idaho and its people that sufficient and reliable electric generation and transmission resources are developed and made available at cost-based rates in order to enable these utilities to meet existing and future demands for electric services, to provide adequate reserves and to promote reliability at the most stable rates practicable;

(d) The electric utility and energy industries are and will continue to be capital-intensive industries and the availability of cost-effective financing to investor-owned, cooperative and municipal utilities will enhance the ability of these utilities to provide and promote economic electric services to consumers in the state;

(e) Coordination, cooperation and joint ventures between and among such utilities with one another and with the private, cooperative, federal, state and municipal utilities and agencies that provide wholesale and retail electric services in the western states will promote regional electric reliability and stability and will provide economies of scale; and

(f) It is the intent of the legislature to create the Idaho energy resources authority to promote the development and financing of facilities for the benefit of participating utilities and to accomplish the purposes stated above, and to authorize the authority to exercise all such powers as are necessary to enable it to achieve such purposes and to thereby promote and protect the economy of the state of Idaho and the health, safety and welfare of its people.

(2) Nothing contained herein is intended or shall be construed to limit or restrict the authority of the Idaho public utilities commission with respect to the regulation of electric corporations and public utilities pursuant to title 61, Idaho Code.

67-8903. DEFINITIONS. When used in this chapter, the following terms shall have the following meanings:

(1) "Authority" means the Idaho energy resources authority created pursuant to section 67-8904, Idaho Code.

(2) "Board" means the board of directors of the authority.

(3) "Bonds" means any bonds, notes, certificates or other obligations or evidences of indebtedness issued by the authority.

(4) "Commission" means the Idaho public utilities commission created pursuant to section 61-201, Idaho Code.

(5) "Electric cooperative" means a cooperative corporation or association which is:

(a) Organized under the provisions of section 501(c)(12) or 1381 of the Internal Revenue Code;

(b) Is an Idaho nonprofit corporation pursuant to chapter 3, title 30, Idaho Code; and

(c) Is an operating entity or successor entity thereof which owns facilities and provides electric service to customers in Idaho as of the effective date of this chapter.

(6) "Facility" means any facility necessary, used or useful in connection with the generation or transmission of electric power and energy, in each case including, but not limited to, all real and personal property, fuel supplies and transportation facilities, pollution control facilities and all equipment and improvements necessary or desirable in connection with a facility. "Facility" shall include facilities owned in whole or in part by the authority or a participating utility, including undivided ownership interests in facilities, leasehold interests in facilities and other estates, but excludes a generating facility that sells any portion of its output as a qualifying facility to a participating utility under provisions of the public utility regulatory policies act of 1978, 16 U.S.C. section 2601 et sec.

(7) "Participating utility" means, with respect to any facilities undertaken by the authority pursuant to this chapter, any public or private corporation, electric cooperative or other cooperative corporation or association, municipal corporation, political subdivision of this state or another state, state or federal agency, joint operating entity or other entity that:

(a) Owns and operates an electric utility system that provides electric services to consumers of electricity located in an existing service area within the boundaries of this state;

(b) Provides electric generation, power supply, transmission and/or ancillary and related services at wholesale to one (1) or more participating utilities described in paragraph (a) of this subsection; or

(c) Is organized or operates as a regional transmission organization covering all or any part of the state of Idaho and one (1) or more other states.

(8) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, rents, fees and charges, and all other income or receipts derived by the authority from a participating utility.

67-8904. CREATION OF IDAHO ENERGY RESOURCES AUTHORITY. There is hereby created and established an independent public body politic and corporate to be known as the "Idaho Energy Resources Authority." The authority is a public instrumentality of the state and its exercise of the powers conferred by this chapter is and shall be deemed to be the performance of essential public functions and purposes.

67-8905. DIRECTORS -- TERMS OF OFFICE -- APPOINTMENT -- FILLING VACANCIES AND REMOVAL. (1) The powers of the authority shall be vested in a board of seven (7) directors to be appointed by the governor and confirmed by the senate.

(2) In making appointments, the governor shall endeavor to appoint individuals with direct professional experience and demonstrated knowledge in the electric utility industry. In addition to representatives of investor-owned, electric cooperative or municipal utilities, the governor may also appoint individuals with expertise in fields related to the functions of the authority such as engineering, banking, finance, economics and law.

(3) The directors of the authority first appointed by the governor shall serve for terms to be designated by the governor expiring on June 30, as follows: two (2) in 2006, one (1) in 2007, two (2) in 2008 and one (1) in each of 2009 and 2010. After the expiration of these initial terms, directors shall serve for five (5) year terms. Each director shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any director shall be eligible for reappointment but no director may serve more than two (2) consecutive terms.

(4) The governor shall fill any vacancy for the remainder of any unexpired term.

(5) Any director may be removed by the governor for malfeasance or willful neglect of duty or other cause.

67-8906. QUORUM -- MODE OF ACTION -- COMPENSATION. (1) Four (4) directors of the authority shall constitute a quorum for the purpose of conducting business and exercising its powers.

(2) Action may be taken by the authority upon the affirmative vote of at least four (4) directors. No vacancy on the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(3) Notice of meetings shall be given as provided in sections

67-2341 through 67-2347, Idaho Code, and the bylaws of the authority.

(4) The board may hold any of its meetings by telephone, teleconference or other electronic means, as and to the extent provided in its bylaws.

(5) The board shall act by resolution or order which shall be recorded in its official minutes but need not be published or posted.

(6) Directors shall be compensated for services as provided by section 59-509(o), Idaho Code.

67-8907. ORGANIZATIONAL MEETING -- CHAIRMAN -- SECRETARY AND TREASURER -- EXECUTIVE DIRECTOR -- DELEGATION OF POWER -- SURETY BOND AND CONFLICT OF INTEREST. (1) A director designated by the governor shall call and convene the initial organizational meeting of the authority and shall serve as its chairman pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers and the delegation of certain powers and duties and such other matters as the authority deems proper. At such meeting and annually thereafter the board shall elect one (1) of the directors as chairman and one (1) as vice chairman.

(2) The board shall appoint a secretary and a treasurer and may appoint one (1) or more assistant secretaries and assistant treasurers, any of whom may be, but not required to be, a director of the authority, and who shall serve at the pleasure of the board. A single individual may be appointed as secretary-treasurer. They shall receive such compensation for their services as shall be fixed by the board. The secretary or an assistant secretary designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the authority, the minute books or journal thereof and its official seal. The secretary or any assistant secretary shall cause necessary copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates. The treasurer shall have custody of and responsibility for the safekeeping of the funds and investments of the authority.

(3) The board may employ an executive officer and one (1) or more additional employees as it shall deem necessary and expedient to carry out its purposes. The executive officer may be, but is not required to be, a director of the authority. The executive officer shall serve at the pleasure of the board and shall receive such compensation as shall be fixed by the board.

(4) The board may delegate by resolution such powers and duties as it may deem proper to one (1) or more of its directors or to its secretary, executive officer or any assistant officers.

(5) The secretary, the treasurer and any executive officer shall execute a surety bond in the penal sum of one million dollars ($1,000,000) or, in lieu thereof, the chairman of the authority shall execute a blanket bond covering each director, the secretary, the treasurer, the executive officer and any other employees or officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(6) Notwithstanding any other law to the contrary, it shall not

constitute a conflict of interest for a trustee, director, officer, or employee of any electric corporation, electric utility, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architecture firm, insurance company, or any other firm, person or corporation to serve as a director of the authority, provided such trustee, director, officer, or employee shall abstain from deliberation, action and vote by the authority in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

67-8908. POWERS. (1) The authority shall have the following powers, which are hereby declared to be necessary to enable the authority to carry out and effectuate the purposes and provisions of this chapter, together with all powers incidental thereto or necessary for the performance thereof:

(a) To have perpetual succession as a body politic and corporate;

(b) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(c) To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

(d) To have and to use a corporate seal and to alter the same at pleasure;

(e) To maintain an office at such place or places as it may designate;

(f) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;

(g) To acquire, whether by purchase, gift, grant, bequest, devise, exchange, eminent domain or otherwise, own, hold, improve, lease, transfer, assign, pledge and dispose of, any real or personal property or any interest therein necessary or convenient in connection with any facility or its purposes under this chapter; provided however, that the power of eminent domain is limited to only those purposes and participating utilities as authorized by section 7-701, Idaho Code;

(h) To acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, manage, operate, lease as lessee or lessor, and regulate any facility; to enter into contracts for any and all of such purposes and for the acquisition and management of fuel supplies, provided such is reasonably necessary for the operation and maintenance of any facility; to enter into contracts and agreements to manage risks associated with the purchase and sale of energy and energy commodities, provided such is reasonably necessary for the operation and maintenance of any facility; and shall designate one (1) or more qualified participating utilities as agent or agents of the authority, as agreed to among the participating utilities, with respect to the foregoing;

(i) To sell, lease or otherwise provide by contract to one (1) or more participating utilities the services, output or product provided by any or all of the facilities undertaken by the authority upon such terms and conditions as the authority and the participating utilities shall deem proper, and to establish, charge, collect and revise from time to time such rents, fees and charges for such

services, output or product as provided for in this chapter;
(j) To borrow money and to issue bonds for any of the purposes described in this chapter, to issue refunding bonds and to enter into contracts and agreements determined by the authority to be necessary or desirable to manage its debt service and interest costs;
(k) To establish rules and regulations for the use of facilities and to designate a participating utility as its agent, to establish rules and regulations for the use of the facilities undertaken or operated by such participating utility;
(l) To employ or contract for consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment and to fix their compensation;
(m) To enter into contracts, agreements or other transactions with and accept grants and the cooperation of the United States or any agency thereof or any state or any agency or governmental subdivision thereof, in furtherance of the purposes of this chapter including, but not limited to, the development, maintenance, operation, and financing of any facility and to do any and all things necessary in order to avail itself of such aid and cooperation;
(n) To receive and accept aid or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied to carry out the purposes of this chapter subject to such conditions upon which such grants and contributions may be made, including, but not limited to, gifts or grants from any department or agency of the United States or any state for any purpose consistent with this chapter;
(o) To assign and pledge all or any part of its revenues and income and to mortgage or otherwise encumber any or all of its facilities and the site or sites thereof, whether then owned or thereafter acquired, for the benefit and security of the holders of bonds issued to finance such facilities or any portion thereof;
(p) To make loans to any participating utility to finance the cost of any facilities in accordance with an agreement between the authority and such participating utility;
(q) To make secured or unsecured loans to a participating utility to refinance obligations and indebtedness incurred for facilities undertaken and completed prior to or after the enactment of this chapter when the authority finds that such financing is in the public interest and either alleviates the financial hardship upon the participating utility or is in connection with other financing by the authority for such participating utility or may be expected to result in a cost-effective delivery of electricity to the consumers served by the participating utility, or any combination thereof;
(r) To charge to and equitably apportion its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter among the participating utilities that have entered into contracts with the authority;
(s) To procure insurance against any loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable and to self-insure against such risks as it shall deem to be reasonable;

(t) To invest any funds not needed for immediate use or disbursement, including any funds held in reserve, in:

(i) Bonds, notes and other obligations of the United States or any agency or instrumentality thereof and other securities secured by such bonds, notes or other obligations;

(ii) Money market funds which are insured or the assets of which are limited to obligations of the United States or any agency or instrumentality thereof;

(iii) Time certificates of deposit and savings accounts;

(iv) Commercial paper which, at the time of its purchase, is rated in the highest category by a nationally recognized rating service;

(v) Property or securities in which the state treasurer may invest funds in the state treasury pursuant to section 67-1210, Idaho Code; and

(vi) With respect to any funds representing bond proceeds or amounts pledged to the payment of bonds, such other investments as may be specified in a bond resolution or trust indenture securing bonds of the authority;

(u) To participate in cooperative ventures with any agencies or organizations in order to provide affordable and reliable energy to the residents of the state; and

(v) To do all things necessary and convenient to carry out the purposes of this chapter.

(2) Notwithstanding any other provision of this chapter, the authority shall have no power to:

(a) Acquire the operating property of any investor-owned, private, cooperative, municipal or other utility by the exercise of the power of eminent domain;

(b) Provide financing for the acquisition of the operating property of any such utility by or under threat of eminent domain, in either case unless such utility consents in writing to the acquisition; or

(c) Deliver retail electricity or related retail products or services to any ultimate consumer, whether in violation of the Idaho electric supplier stabilization act or otherwise.

67-8909. DEVELOPMENT, ACQUISITION AND CONSTRUCTION OF FACILITIES. (1) The authority will endeavor to achieve efficiencies and economies of scale by pursuing the development of facilities with multiple participating utilities on a joint and cooperative basis and shall, to the fullest extent practicable, offer all potential participating utilities the opportunity to participate in the development of a facility and the electricity, service or product to be provided by the facility.

(2) The authority shall not commence the development or financing for any facility until it shall have entered into contractual arrangements with one (1) or more participating utilities that contain provisions acceptable to both the authority and the participating utility or utilities and which are determined by the authority to provide adequate assurance that all capital, operating and related costs of the facility will be paid by or provided for by one (1) or more participating utilities.

(3) The authority may acquire, construct and own any facility undertaken by it, may cause such facility to be acquired and constructed on its behalf by one (1) or more participating utilities as its agent,

may enter into joint ownership arrangements with respect to any facility, and may enter into contractual arrangements with third parties for the acquisition and construction of a facility.

(4) Upon the payment in full of all bonds issued by the authority to finance or refinance the cost of a facility and upon the discharge of all other obligations of the authority with respect to a facility, the authority will convey title to the facility to the participating utility or utilities with respect to such facility, unless a participating utility requests in writing to the authority that it continue to retain title of the facility on behalf of the participating utility. Any such conveyance shall be in proportion to the funds provided or paid by the participating utility in respect of the debt service and operating costs of the facility.

67-8910. MANAGEMENT AND OPERATION OF FACILITIES. The authority shall cause any facilities undertaken by it to be managed and operated on its behalf by one (1) or more qualified participating utilities, or if no participating utility is qualified, willing or able to manage and operate such facility, by an agent so designated by the authority capable and skilled in the management and operation of such a facility. The authority shall enter into joint operating arrangements with participating utilities, designated agents of the authority or others and may enter into any and all contractual arrangements determined by the authority to promote the effective and efficient management and operation of its facilities.

67-8911. SALE OF ELECTRICITY, PRODUCT OR SERVICE FROM FACILITIES -- CHARGES. (1) The authority shall operate on a not-for-profit basis and shall sell the electricity, product or service provided by its facilities to participating utilities at cost, as provided in subsections (2) and (3) of this section. The authority shall contract with one (1) or more participating utilities for the sale of the electricity, product or service provided or to be provided by each facility upon such terms and conditions as the authority shall deem proper and to provide reasonable assurances that the authority will recover all of its costs associated with each of its facilities. Such contracts may contain the agreement of each participating utility to purchase a specified quantity of the output or service provided by a facility, to purchase all or a portion of its requirements for electric generation, transmission or other services from the authority and to make payments to the authority regardless of whether any particular facility is completed, operable, operating, damaged or destroyed, in whole or in part.

(2) The authority shall establish and collect rents, fees and charges for the electricity, product or service from its facilities that it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenues, income and receipts of the authority, will be sufficient:

(a) To pay, as the same become due, the principal of and interest on the bonds issued to finance or refinance its facilities and to make, create and maintain deposits, reserves and margins required or provided for in any resolution authorizing, or trust agreement securing, bonds of the authority;

(b) To pay its costs, including its organizational, operational and management costs; and

(c) To pay for the operation, maintenance, renewal, replacement and repair of its facilities, including necessary reserves and allowances for depreciation and decommissioning costs.

The authority is hereby authorized to fix, revise, charge and collect rents, fees and charges for the use of and for the electricity, products or services furnished or to be furnished by each facility and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof.

(3) Rents, fees and charges for the electricity, product or service from a facility shall be revised and adjusted by the authority from time to time as necessary so as to provide funds sufficient, together with any other revenues or moneys available therefor, to pay the cost of maintaining, repairing and operating the facility and each and every portion thereof; and, to the extent that the payment of such cost has not otherwise been adequately provided for, to pay the principal of and the interest on outstanding bonds of the authority issued in respect of such facility as the same shall become due and payable.

(4) Notwithstanding the language, terms or definitions contained in sections 61-119 and 61-129, Idaho Code, the authority shall not be considered to be an electrical corporation as provided by section 61-119, Idaho Code, or a public utility as provided by section 61-129, Idaho Code, and the rents, fees and charges established by contract between the authority and one (1) or more participating utilities for the purchase and sale of the output or services provided by any facility shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this state other than the authority provided that any participating utility regulated pursuant to title 61, Idaho Code, shall be required to submit such contract to the commission to the extent required by title 61, Idaho Code.

67-8912. COST RECOVERY AND RATE STABILIZATION CHARGES OF PARTICIPATING UTILITIES. (1) A participating utility contracting with the authority for the electricity, service or product provided by a facility may establish one (1) or more rate stabilization charges, cost recovery charges or power cost adjustment charges as it deems necessary to provide for the payment of all amounts owed by the participating utility to the authority with respect to the facility and otherwise enable the participating utility to stabilize its rates, to protect its consumers from volatile market prices and to insure against market and other risks. Such rate stabilization charges, cost recovery charges or power cost adjustment charges may be established by the participating utility as a separate component of its existing rates and charges or as a new charge.

(2) A participating utility that is subject to rate regulation by the commission shall submit each of its proposed rate stabilization charges, cost recovery charges or power cost adjustment charges to the commission for approval.

(3) Each other participating utility that serves electric consumers in the state but which is not subject to rate regulation by the commission, may establish a rate stabilization charge, cost recovery charge or power cost adjustment charge only after it has provided adequate notice of and a public meeting or hearing on such charge to the members or consumers served by it. A notice shall be deemed to be adequate if:

(a) It is given at least fifteen (15) days prior to the public meeting or hearing in the manner usually employed by the participat-

ing utility to give notice of its hearings or meetings, by mail, publication or otherwise; and

(b) It provides a brief description of the proposed rate stabilization, cost recovery or power cost adjustment charges and a summary of the purposes for which it is being established.

After the meeting or hearing has been held, the participating utility may proceed to establish and fix the rate stabilization, cost recovery or power cost adjustment charge.

(4) Each participating utility may agree in its contractual arrangements with the authority as to the use and disposition of all or any part of the revenues from any rate stabilization, cost recovery or power cost adjustment charges established by the participating utility. Each participating utility may pledge, and may create and grant a security interest in, all or a portion of such revenues to secure its payment obligations to the authority in respect of any facility. Any such agreement or pledge by a participating utility that is a municipal corporation of the state shall not be deemed to create an indebtedness or liability of such municipal corporation or a loan or donation of its credit within the meaning of any constitutional or statutory provision.

67-8913. COOPERATION WITH OTHER AGENCIES AND SUBDIVISIONS. The authority may enter into agreements with any other state body or agency, any other political subdivision of the state and any other public agency, as defined in section 67-2327, Idaho Code, for the joint exercise of powers and the authority and all other public agencies may join or cooperate with each other, either jointly or otherwise, in the exercise of any of their powers for the purpose of planning, undertaking, owning, constructing, or contracting with respect to, a facility.

67-8914. EXEMPTION FROM INCOME TAXATION. All bonds issued by the authority and the interest thereon and all revenues, fees, charges, gifts, grants, receipts and other moneys of the authority pledged to the payment of its bonds shall at all times be free from the taxes imposed under the Idaho income tax act.

67-8915. ISSUANCE OF BONDS TO FINANCE FACILITIES. (1) The authority shall have power and is hereby authorized to issue, from time to time, its bonds in such principal amount as it shall determine to be necessary to provide sufficient funds to pay, finance or refinance the cost of any facility, and all other expenditures of the authority incidental and necessary or convenient to carry out its corporate purposes and powers. The cost of any facility shall include all amounts determined by the authority to be necessary or desirable in connection with the acquisition, construction, development, improvement and equipping of a facility including, but not limited to:

(a) The cost of acquiring all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests necessary, used or useful for or in connection with the facility;

(b) The cost of all machinery and equipment necessary, used or useful in connection with the facility;

(c) The cost of architectural, engineering and legal services, including studies, surveys, plans and specifications, and related services;

(d) The cost of interest on bonds prior to and during construction,

and if judged advisable by the authority, for a period after completion of such construction, and all other costs incidental to the issuance of bonds by the authority;

(e) The cost of reserves for future repairs, replacements and additions to a facility, insurance policies and premiums and related costs and expenses; and

(f) All other costs and expenses determined by the authority to be necessary and incidental to the acquisition, construction, financing and placing in operation of a facility.

The proceeds of the bonds may also be used to provide for the payment of any financial fees and charges, including underwriting discounts, financial advisory, legal and trustee fees and expenses, the premiums for or costs of bond insurance, surety bonds or other forms of credit or liquidity enhancement, and to provide for any necessary debt service reserves associated with such bonds.

(2) The bonds shall be authorized by resolution or resolutions of the authority, shall be dated, shall mature, shall bear interest, shall be in such form and shall otherwise have such terms and provisions as such resolution or resolutions may provide, except that no bond shall mature more than forty (40) years from the date of its issue. The bonds shall bear interest at such rate or rates, shall be executed in such manner, shall be payable in such medium at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The authority may sell its bonds at public or private sale, at such price or prices as it shall determine.

(3) Any resolution or resolutions authorizing bonds, or any trust indenture or other instrument securing bonds, may contain provisions which shall be a part of the contract or contracts with the holders thereof, as to:

(a) Pledging and assigning all or any part of the revenues of the authority to secure the payment of the bonds, and the use and disposition of such revenues pending the payment of the bonds;

(b) Pledging and assigning all or any part of the assets of the authority including mortgages and obligations securing the same, to secure the payment of the bonds;

(c) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of bonds may be applied and limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(f) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter;

(g) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority to the holders of the bonds and providing for the rights and remedies of the holders of the bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(h) Any other matters, of like or different character, deemed necessary, desirable or appropriate by the authority in connection with the issuance of its bonds.

(4) Any pledge made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(5) Neither the directors of the authority nor any other person executing such bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(6) The authority may from time to time purchase any of its outstanding bonds out of any moneys available to it for such purpose at such price or prices as the authority shall deem reasonable or necessary.

(7) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any bank or trust company organized under the laws of the United States or any state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be determined by the authority to be reasonable and necessary, including covenants setting forth the duties of the authority in relation to the exercise of its corporate powers, the custody, the safeguarding and application of all moneys, the events of default and the rights and remedies of the bondholders and the corporate trustee upon the occurrence of an event of default. The authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the authority. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(8) Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

67-8916. REFUNDING BONDS. (1) The authority may provide for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium thereon, any interest accrued or to accrue to the date of redemption of such bonds and for any additional corporate purpose of the authority. The issuance of such bonds, the maturities, and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of bonds, insofar as such provisions

may be appropriate therefor.

(2) Refunding bonds may be sold or exchanged for outstanding bonds issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Pending the application of the proceeds of any such refunding bonds, with any other available funds, to the payment of the principal, accrued interest, and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding bonds or in the trust agreement securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in such obligations as may be permitted for the defeasance of the outstanding bonds in the resolution or indenture under which they were issued.

67-8917. PAYMENT OF BONDS -- NONLIABILITY OF STATE. (1) Bonds issued by the authority shall not constitute or become an indebtedness, or a debt or liability of the state or any agency or subdivision of the state and neither the state nor any of its agencies or subdivisions shall be liable on such bonds nor shall the bonds constitute the giving, pledging or loaning of the faith and credit of the state or any agency or subdivision of the state, but shall be payable solely from the funds provided for their payment. The issuance of bonds under the provisions of this chapter shall not, directly, indirectly or contingently, obligate the state or any agency or subdivision of the state to levy or collect any form of taxes or assessments for their payment or to create any indebtedness payable out of taxes or assessments. Nothing in this chapter shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of the state of Idaho or authorize the authority to levy or collect taxes or assessments and all bonds issued by the authority pursuant to the provisions of this chapter are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor and are not a debt or liability of the state of Idaho.

(2) The state shall not in any event be liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

(3) All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter.

67-8918. STATE'S PLEDGE. (1) The state pledges to and agrees with the holders of any bonds issued under this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the state will not limit, alter, restrict or impair the rights hereby vested in the authority to acquire,

construct, reconstruct, maintain and operate any facility as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized and issued under this chapter, and with the parties who may enter into contracts with the authority pursuant to this chapter, or in any way impair the rights or remedies of the holders of such bonds or of such parties until the bonds, together with the interest thereon, are fully paid and discharged and such contracts are fully performed on the part of the authority.

(2) Nothing in this chapter precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds or those entering into such contracts with the authority.

(3) The authority is authorized to include this pledge and undertaking for the state in such bonds and in such contracts.

67-8919. FEES. All expenses of the authority incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter by participating utilities to the authority in the form of application fees, annual service, loan or administrative fees and other negotiated fees as between the authority and the participating utilities and no liability shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter, except that for the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided hereunder, the authority shall be empowered to borrow moneys as may be required for such necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided for under this chapter.

67-8920. EXEMPTION OF REAL PROPERTY OF AUTHORITY FROM LEVY AND SALE BY EXECUTION. All real property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the authority be a charge or lien upon its real property; provided however, that the provisions of this section shall not apply to or limit the right of bondholders to foreclose or otherwise enforce any mortgage or other security of the authority or the right of obligees and bondholders to pursue any remedies for the enforcement of any pledge or lien given by the authority on its rents, fees or revenues or the right of obligees or bondholders to pursue any remedies conferred upon the same pursuant to this chapter.

67-8921. ANNUAL REPORT. The authority shall submit to the governor within ninety (90) days after the end of its fiscal year a complete and detailed report setting forth:

(1) Its operations and accomplishments;

(2) An accounting of its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes;

(3) Its assets and liabilities at the end of its fiscal year, including the status of reserve, special or other funds; and

(4) A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

67-8922. AUTHORITY OBLIGATIONS ARE LEGAL INVESTMENTS. The bonds of the authority shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

67-8923. CHAPTER NOT A LIMITATION OF POWERS. Neither this chapter nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state, and this chapter is cumulative to any such powers. This chapter does and shall be construed to provide a complete additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. This chapter is intended to provide full and exclusive authority for the issuance of bonds and the authority shall not be subject to any other state law applicable to the issuance of bonds, notes and other obligations by the state or its agencies or instrumentalities. Contracts for the construction and acquisition of any facilities undertaken pursuant to this chapter need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of state owned property. No proceedings, notice or approval shall be required for the issuance of any bonds by the authority or any instrument as security therefor, except as is provided in this chapter.

67-8924. CONSTITUTIONALITY. (1) Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent, that if any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(2) If any section, subdivision, paragraph, sentence, clause or provision of this chapter shall be unconstitutional or ineffective, in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.

Approved March 15, 2005.

CHAPTER 54
(H.B. No. 121)

AN ACT

RELATING TO THE INSTALLATION OF HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS; AMENDING SECTION 54-5002, IDAHO CODE, TO PROVIDE A LIMITED EXCEPTION FOR MODULAR BUILDINGS; AND AMENDING SECTION 54-5006, IDAHO CODE, TO AUTHORIZE THE ADMINISTRATOR OF THE DIVISION OF BUILDING SAFETY TO MAKE INSPECTIONS OF HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS FOR OTHER JURISDICTIONS AND UPON WRITTEN REQUEST FROM MANUFACTURERS.

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

SECTION 1. That Section 54-5002, Idaho Code, be, and the same is hereby amended to read as follows:

54-5002. EXCEPTIONS. Certificate of competency requirements of this chapter shall not apply to:

(1) Any person who installs or maintains a heating, ventilation and air conditioning system in a single or duplex family dwelling, including accessory buildings, quarters and grounds in connection with such dwelling; provided that such person owns or is a contract purchaser of the premises; and provided further that such person shall comply with the standards and rules applicable to heating, ventilation and air conditioning installation or repairs as provided in this chapter.

(2) Farm buildings located outside the incorporated limits of any city; and a farm is hereby defined to be an agricultural unit on which the owner or occupant resides and from which the owner or occupant derives his principal income and livelihood.

(3) Logging, mining or construction camps when heating, ventilation or air conditioning installations are made to conform to the recommendations of the department of health and welfare.

(4) Work on heating, ventilation or air conditioning systems on premises owned or operated by an employer who regularly employs maintenance or construction heating, ventilation and air conditioning journeymen, provided that alterations, extensions and new construction shall comply with the minimum standards and rules applicable to heating, ventilation and air conditioning practices in accordance with the provisions of this chapter.

(5) Modular buildings, as defined in section 39-4105(12), Idaho Code, that are constructed in the state of Idaho for installation on building sites outside the state; provided however, that no modular

building shall be installed on a building site in the state of Idaho until it has been approved and bears the insignia of approval of the division as being in compliance with the requirements set forth in section 39-4121, Idaho Code.

SECTION 2. That Section 54-5006, Idaho Code, be, and the same is hereby amended to read as follows:

54-5006. ADMINISTRATOR OF THE DIVISION OF BUILDING SAFETY. The administrator shall exercise such powers and duties as are reasonably necessary to enforce standards provided in this chapter, and he may, among other things:

(1) Serve as secretary to the Idaho heating, ventilation and air conditioning board.

(2) Appoint state mechanical inspectors who shall be authorized to enter and inspect by and through a properly identified person, at reasonable hours, heating, ventilation and air conditioning systems.

(3) Make HVAC inspections for another state or local jurisdiction upon request by an appropriate building official. Such inspections shall be made in accordance with the applicable HVAC codes of the requesting jurisdiction. Fees charged for such inspection services shall be as provided in the rules promulgated by the board.

(4) Notwithstanding the exception provided in section 54-5002(5), Idaho Code, the administrator may make inspections of modular buildings constructed in Idaho upon written request from the manufacturer. Such inspections shall be made in accordance with the codes adopted in this chapter. Inspection fees for such inspections shall be as promulgated in board rule and shall be paid prior to the inspection. The administrator may issue an insignia of approval if the buildings are in compliance with the requirements set forth in section 39-4121, Idaho Code.

(5) Summon witnesses to appear and testify before him on any matter within the provisions of this chapter. No person shall be required to testify outside the county wherein he resides or where his principal place of business is located. Such summons to testify shall be issued and served in like manner as a subpoena to witness issued from the district court, or in other manner consistent with procedure of the division of building safety. In case any witness shall fail or refuse to appear and testify upon being summoned as herein provided, the clerk of the district court of the county shall, upon demand by said administrator or his designated agent, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed. Violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of any other subpoena issued from the district court.

(~~4~~6) Administer oaths and take affirmations of witnesses appearing before him or a duly appointed hearing officer; and have the power to appoint competent persons to issue subpoenas, administer oaths and take testimony.

(~~5~~7) Impose civil penalties as provided in this chapter and rules of the board.

Approved March 15, 2005.

CHAPTER 55
(H.B. No. 131)

AN ACT

RELATING TO COUNTY FEES; AMENDING CHAPTER 32, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-3201G, IDAHO CODE, TO SET FORTH FEES FOR THE ESTABLISHMENT OF A GUARDIANSHIP PILOT PROJECT FUND, TO PROVIDE FOR THE ADMINISTRATION AND DISBURSEMENT OF FUND MONEYS AND TO REQUIRE AN ANNUAL REPORT; PROVIDING A SUNSET DATE AND PROVIDING FOR DISTRIBUTION OF FUND MONEYS.

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

SECTION 1. That Chapter 32, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-3201G, Idaho Code, and to read as follows:

31-3201G. PILOT PROJECT FEE. (1) In addition to any other filing and reporting fees applicable to guardianships and conservatorships, the court shall charge the following fees:

(a) Fifty dollars ($50.00) for filing cases involving guardianships or conservatorships;

(b) Forty-one dollars ($41.00) for reports required to be filed with the court by conservators; and

(c) Twenty-five dollars ($25.00) for reports required to be filed with the court by guardians.

(2) The additional fees set forth in paragraphs (a), (b) and (c) of subsection (1) of this section shall be paid to the county treasurer, who shall pay such fees to the state treasurer for deposit in the guardianship pilot project fund, which is hereby created in the state treasury. The fund shall be administered by the Idaho supreme court and shall consist of fees as provided in this section and any funds as may be appropriated by the legislature, grants, donations and moneys from other sources.

(3) Moneys in the fund shall be expended exclusively for the development of a pilot project which will operate in at least three (3) Idaho counties and which shall be designed to improve reporting and monitoring systems and processes for the protection of persons and their assets where a guardian or conservator has been appointed. Elements of the pilot project may include, but are not limited to, the following:

(a) The adoption of standards of practice for guardians;

(b) A requirement that guardians be registered;

(c) Consideration of an office of the public guardian in counties in which the pilot project operates;

(d) A review of the strengths of Idaho law regarding the treatment and care of developmentally disabled persons; and

(e) If federal or grant funding is available, funding for adult protection services to seek guardians in cases for which volunteers cannot be enlisted.

(4) The supreme court shall make a report in January 2007, and annually thereafter to the senate judiciary and rules committee and the house judiciary, rules and administration committee regarding the progress of the pilot project.

SECTION 2. The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2009, and any moneys remaining in the Guardianship Pilot Project Fund at that time shall be deposited in the State General Fund.

Approved March 15, 2005.

CHAPTER 56
(H.B. No. 170)

AN ACT

RELATING TO THE IDAHO CANOLA AND RAPESEED COMMISSION; AMENDING SECTION 22-4720, IDAHO CODE, TO REVISE AUDIT PROVISIONS RELATING TO MONEYS RECEIVED OR EXPENDED BY THE COMMISSION.

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

SECTION 1. That Section 22-4720, Idaho Code, be, and the same is hereby amended to read as follows:

22-4720. DEPOSITS AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate the banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) ~~The right is reserved to the state of Idaho to audit the funds of the commission at any time.~~

~~(4)~~ On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year. From and after January 15, 1999, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(~~5~~4) All moneys received or expended by the commission shall be audited ~~annually~~ every second year, but shall address each year separately, by a certified public accountant designated by the commission, who shall furnish a copy of the audit to the director of legislative services 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. The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(65) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

Approved March 15, 2005.

CHAPTER 57
(H.B. No. 176)

AN ACT

RELATING TO ENVIRONMENTAL QUALITY; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 39-175A, 39-175B AND 39-175C, IDAHO CODE, TO STATE LEGISLATIVE FINDINGS AND PURPOSES, TO PROVIDE FOR THE RELATIONSHIP BETWEEN STATE AND FEDERAL LAW, TO PROVIDE A PROCESS FOR APPROVAL OF A STATE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM.

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

SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 39-175A, 39-175B and 39-175C, Idaho Code, and to read as follows:

39-175A. LEGISLATIVE FINDINGS AND PURPOSES. (1) The legislature finds:

(a) That navigable waters within the state are one of the state's most valuable natural resources;

(b) That it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into navigable waters, and to explore whether the state should control such permitting decisions as authorized under the federal clean water act;

(c) That the clean water act allows a state to develop and implement, with approval from the United States environmental protection agency, a national pollutant discharge elimination system (NPDES) program to be administered by the state;

(d) That the clean water act, as amended, and regulations adopted pursuant thereto, establish complex and detailed provisions for regulation of those who discharge pollutants into navigable waters;

(e) That a state program to implement permitting decisions as authorized in the clean water act, and regulations adopted pursuant thereto may enable the state to issue flexible permits consistent with the clean water act and avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems;

(f) That a state program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the endangered species act or analysis under the provisions of the national environmental policy act. There should be no conditions of approval of the state program which have the effect of undermining or circumventing this principle;

(g) That the decision to accept delegation of authority from the environmental protection agency to operate an NPDES program has significant public policy implications that should be made by the legislature.

(2) Therefore, it is the intent of the legislature to establish requirements that must be satisfied prior to legislative approval of a permitting program that complies with the clean water act and which incorporates flexible permitting procedures and rules to be promulgated by the board.

39-175B. RELATIONSHIP BETWEEN STATE AND FEDERAL LAW. The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under the clean water act. However, any state permitting program must avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems. Further, the board may promulgate rules to implement a state permitting program but such rules shall not impose conditions or requirements more stringent or broader in scope than the clean water act and regulations adopted pursuant thereto. Further, the department will not require NPDES permits for activities and sources not required to have permits by the United States environmental protection agency.

39-175C. APPROVAL OF STATE NPDES PROGRAM. (1) The department is authorized to explore whether the state should operate an NPDES program by evaluating the costs and benefits to the state, of such a program, consistent with the requirements of this section. The department shall prepare a report to the legislature as to its findings by December 31, 2005.

(2) The board is authorized to proceed with negotiated rulemaking and all other actions that may eventually be necessary to obtain approval of a state NPDES program by the United States environmental protection agency.

(3) The director shall not execute a memorandum of agreement with the United States environmental protection agency to obtain NPDES program approval as specified under section 402 of the clean water act and 40 CFR 123 until completion of any required consultation and issuance of any final biological opinion or biological assessment under the endangered species act.

(4) Any memorandum of agreement executed by the director to obtain approval to operate a state NPDES program shall not be binding on the state of Idaho unless authorized by enactment of a statute. Any memorandum of agreement not authorized in the above manner shall be of no force and effect.

(5) Implementation of a state NPDES program shall not occur prior to statutory enactment of implementing legislation and authorization of a memorandum of agreement as specified in subsection (4) of this section.

(6) No provision of this chapter shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV, of the constitution of the state of Idaho, and title 42, Idaho Code.

(7) Nothing in this section is intended to supersede any existing agreements between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the clean water act.

Approved March 15, 2005.

CHAPTER 58
(H.B. No. 222)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-340D, IDAHO CODE, TO PROVIDE THAT RECORDS OF A COUNTY ASSESSOR CONTAINING INFORMATION SHOWING THE INCOME AND EXPENSES OF A TAXPAYER, WHICH INFORMATION WAS PROVIDED TO THE ASSESSOR BY THE TAXPAYER TO PERMIT THE ASSESSOR TO DETERMINE THE VALUE OF PROPERTY OF THE TAXPAYER, SHALL BE EXEMPT FROM DISCLOSURE AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 9-340D, Idaho Code, be, and the same is hereby amended to read as follows:

9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic 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.

(2) Production records, housing production, rental and financing 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 or submitted to or otherwise obtained by an independent public body corporate and politic. 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.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public

body corporate and politic 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.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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 or independent public body corporate and politic.

(12) Records of laboratory test results provided by or retained by the Idaho food 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.

(13) 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.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic 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.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 9-335, Idaho Code. 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.

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

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

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

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

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

(20) Records of a county assessor containing information showing the income and expenses of a taxpayer, which information was provided to the assessor by the taxpayer to permit the assessor to determine the value of property of the taxpayer.

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, 2005.

CHAPTER 59
(H.B. No. 262)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE STATE BOARD OF EDUCATION AND THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO FOR THE UNIVERSITY OF IDAHO AND IDAHO STATE UNIVERSITY FOR FISCAL YEAR 2005; 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 363, Laws of 2004, there is hereby appropriated to the State Board of Education and the Board of Regents of the University of Idaho the following amounts for the University of Idaho and Idaho State University to support the costs of occupying new general education facilities for the period July 1, 2004, through June 30, 2005:

FOR:	
General Education Programs	$548,100
FROM:	
General Fund	$548,100

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 March 15, 2005.

CHAPTER 60
(S.B. No. 1066)

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-206, IDAHO CODE, TO REVISE THE DEFINITION FOR "HABITUAL TRUANT" AND TO REMOVE LANGUAGE SETTING FORTH PETITION REQUIREMENTS BASED UPON TRUANCY; AND AMENDING SECTION 33-207, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO PROCEEDINGS AGAINST PARENTS AND GUARDIANS WHOSE CHILDREN ARE HABITUAL TRUANTS.

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

SECTION 1. That Section 33-206, Idaho Code, be, and the same is hereby amended to read as follows:

33-206. HABITUAL TRUANT DEFINED. (1) An habitual truant is:

(a) A~~a~~ny public school pupil who, in the judgment of the board of trustees, repeatedly has violated the attendance regulations established by the board; or

(b) A~~a~~ny child whose parents or guardians, or any of them, have failed or refused to cause such child to be instructed as provided in section 33-202, Idaho Code.~~,--and-the~~

(2) A child who is an habitual truant shall come under the purview of the juvenile corrections act if he or she is within the age of compulsory attendance.

~~Whenever--it--is--determined--by-the-board-of-trustees-of-any-school district-that-any-child-enrolled-in-public-school--repeatedly--has--violated--the--attendance-regulations-established-by-the-board,-or-whenever it-is-determined-by-the-board-under-provisions-providing-due-process--of law-for-the-student-and-his-or-her-parents-that-the-parents-or-guardians of--any--child--are--failing-to-meet-the-requirements-of-section-33-202, Idaho-Code,-an-authorized-representative-of-the-board--shall--notify--in writing--the-prosecuting-attorney-in-the-county-of-the-pupil's-residence and-recommend-that-a-petition-shall-be-filed-in-the-magistrates-division of-the-district-court-of-the-county-of-the-pupil's--residence,--in--such form--as--the--court-may-require-under-the-provisions-of-section-20-510, Idaho-Code.~~

SECTION 2. That Section 33-207, Idaho Code, be, and the same is hereby amended to read as follows:

33-207. PROCEEDINGS AGAINST PARENTS OR GUARDIANS. Whenever the parents or guardians of any child between the ages of seven (7) years, as qualified in section 33-202, Idaho Code, and sixteen (16) years, have failed, neglected or refused to place the child in school as provided in this chapter or to have the child comparably instructed, or knowingly have allowed a pupil to become an habitual truant, proceedings shall be brought against such parent or guardian under the provisions of the juvenile corrections act or as otherwise provided in subsection (2) of this section.

(2) Whenever it is determined by the board of trustees of any school district that a child enrolled in public school is an habitual truant, as defined in section 33-206, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the child's residence. Proceedings may be brought directly against any parent or guardian of a public school pupil who is found to have knowingly allowed such pupil to become an habitual truant, and such parent or guardian shall be guilty of a misdemeanor.

(3) Whenever it is determined by the board under provisions providing due process of law for the student and his or her parents that the parents or guardians of any child not enrolled in a public school are failing to meet the requirements of section 33-202, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the pupil's residence and recommend that a petition shall be filed in the magistrates division of the dis-

trict court of the county of the pupil's residence, in such form as the court may require under the provisions of section 20-510, Idaho Code.

Approved March 16, 2005.

CHAPTER 61
(S.B. No. 1110)

AN ACT

RELATING TO SPECIAL PUBLIC COLLEGE AND UNIVERSITY MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-418A, IDAHO CODE, TO EXPAND THE SPECIAL MOTOR VEHICLE LICENSE PLATE PROGRAM TO INCLUDE THREE NONPUBLIC COLLEGES AND UNIVERSITIES.

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

SECTION 1. That Section 49-418A, Idaho Code, be, and the same is hereby amended to read as follows:

49-418A. IDAHO ~~PUBLIC~~ COLLEGE AND UNIVERSITY PLATES. (1) Any person who is the owner of a vehicle registered under the provisions of section 49-402 or 49-434(1), Idaho Code, may apply for special plates featuring one (1) of Idaho's ~~public~~ colleges or universities. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho ~~public~~ college and university special license plates for other vehicles may be authorized by rule of the board.

(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. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) of the renewal fee shall be deposited in the state highway account to be used by the department to fund highway, road and bridge construction projects and to fund the cost of administration of this special license plate program. The department shall transfer twenty-five dollars ($25.00) of the initial fee and fifteen dollars ($15.00) of the renewal fee for deposit to the institution designated on the license plate.

(3) 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. The owner may only display the plates after receipt of new registration from the department.

(4) All special college and university plates shall be of a color and design comparable to the standard issue of license plates with blue numerals on a red, white and blue background and shall indicate the participating institution.

(a) The standard red, white and blue graphic shall be used, except that the word "Idaho" and "Famous Potatoes" shall appear on every plate, the identification of county shall be omitted, and the inscription "Scenic Idaho" may be omitted.

(b) Each ~~public~~ college or university that chooses to participate

in this program shall provide that portion of the design which features the particular institution and such design shall be acceptable to the president of the institution. ~~and~~ For public colleges and universities, approval of the state board of education and board of regents of the university of Idaho shall also be required.

Each version of the special ~~public~~ college and university plate featuring the participating ~~public~~ college or university shall be approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including the cost of plate design, shall be paid by the participating ~~public~~ college or university.

(5) The state board of education and board of regents of the university of Idaho shall adopt rules to account for receipt and distribution of revenues accruing to participating public colleges and universities from the special license plate program. Revenues from the special plate program shall be used to:

(a) Fund scholarships for Idaho residents attending that college or university.

(b) Match funds contributed in equal amounts from nonstate sources for academic programs, provided that such expenditures for public colleges and universities shall be subject to prior approval by the state board of education and board of regents of the university of Idaho.

(6) For the purposes of this section, nonpublic colleges and universities shall mean and are limited to: Albertson College of Idaho located in Caldwell, Idaho; Northwest Nazarene University located in Nampa, Idaho; and Brigham Young University-Idaho located in Rexburg, Idaho.

(7) Sample ~~public~~ college and university license plates may be purchased from the department for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be retained by the department for deposit to the state highway account and twenty dollars ($20.00) shall be transferred by the department to the college or university designated on the license plate. No additional fee shall be charged for personalizing sample plates.

Approved March 17, 2005.

CHAPTER 62
(H.B. No. 113)

AN ACT

RELATING TO PRODUCER LICENSING; AMENDING SECTION 41-1024, IDAHO CODE, TO PROVIDE THAT FIDUCIARY FUNDS RECEIVED OR COLLECTED BY A PRODUCER SHALL BE TRUST FUNDS AND SHALL BE PAID TO THE PERSON ENTITLED TO THE FUNDS, TO PROVIDE THAT PRODUCERS SHALL ESTABLISH A SEPARATE ACCOUNT FOR CERTAIN FUNDS, TO REVISE TERMINOLOGY, TO PROVIDE THAT PRODUCERS MAY COLLECT AND DEPOSIT FUNDS INTO A SWEEP ACCOUNT MAINTAINED BY OR FOR THE BENEFIT OF AN APPLICABLE INSURER, TO PROVIDE FOR THE PROMULGATION OF RULES AND TO DEFINE FIDUCIARY FUNDS.

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

SECTION 1. That Section 41-1024, Idaho Code, be, and the same is hereby amended to read as follows:

41-1024. REPORTING AND ACCOUNTING FOR PREMIUMS. (1) All ~~premiums or return--premiums~~ fiduciary funds received or collected by a producer shall be trust funds received by the producer in a fiduciary capacity, and the producer shall, in the applicable regular course of business, account for and pay the same to the ~~insured, insurer or producer~~ person entitled to the funds. ~~If t~~The producer shall establish~~es~~ a separate ~~deposit~~ account for funds belonging to others in order to avoid a commingling of such fiduciary funds with his own funds.~~, he~~ The producer may deposit and commingle in such separate ~~deposit~~ account all fiduciary funds ~~belonging to others~~ so long as the amount of such deposit so held for all other persons is reasonably ascertainable from the records and accounts of the producer. A producer who duly collects and deposits funds into a sweep account maintained by or for the benefit of an applicable insurer shall not be deemed to be in violation of the fiduciary fund account requirement. The director may promulgate rules relating to accounting for and handling of fiduciary funds and the fiduciary fund account.

(2) Fiduciary funds shall include all funds collected by an insurance producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or the producer's employer, and all funds collected by an insurance producer from an insurance company or its agents that are to be paid to a policyholder or claimant under any contract of insurance.

(3) Any producer who, not being lawfully entitled thereto, diverts or appropriates to his own use such trust or fiduciary funds or any portion thereof, whether or not such funds have been separately deposited, shall upon conviction be guilty of a felony.

Approved March 18, 2005.

CHAPTER 63
(H.B. No. 146)

AN ACT

RELATING TO COMMERCIAL VEHICLE SPECIAL PILOT PROJECT ROUTES; AMENDING SECTION 49-1004, IDAHO CODE, TO PROVIDE CONTINUATION OF A ROUTE FROM US-26 AT ITS JUNCTION WITH US-91 NORTH TO ITS INTERSECTION WITH GALLATIN/WEST 23RD STREET.

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

SECTION 1. That Section 49-1004, Idaho Code, be, and the same is hereby amended to read as follows:

49-1004. PERMITS FOR OVERWEIGHT OR OVERSIZE LOADS -- SPECIAL PILOT PROJECT ROUTES AND ANNUAL PERMITS. (1) Upon application in writing to the board or other proper authorities in charge of, or having jurisdiction over a highway, the board or authorities may in their discretion issue a special permit to the owner or operator of any vehicle allowing

vehicles or loads having a greater weight or size than permitted by law to be moved or carried over and on the highways and bridges.

(a) Special permits shall be in writing and may limit the time of use and operation over the particular highways and bridges which may be traversed and may contain any special conditions and require any undertaking or other security as the board or other proper authority shall deem to be necessary to protect the highways and bridges from injury, or provide indemnity for any injury to highways and bridges or to persons or property resulting from such operation.

(b) The owner or operator of an overweight or oversize vehicle shall obtain a permit, or shall establish intent to obtain a permit by contacting a permit office and receiving a permit number before moving the vehicle on the highways.

(c) All special permits or evidence of intent to obtain a permit, shall be carried in the vehicles to which they refer and shall upon demand be delivered for inspection to any peace officer, authorized agent of the board or any officer or employee charged with the care or protection of the highways.

(2) Nonreducible vehicles or combinations of vehicles hauling nonreducible loads at weights in excess of those set forth in section 49-1001, Idaho Code, shall pay fees as set forth in this subsection (2). Such fees are based on the number of axles on the vehicle or combination of vehicles and the total gross weight.

Number of axles	Column 1 Gross weight of vehicle and load in pounds	Column 2 Gross weight of vehicle and load in pounds
2	40,001	-
3	54,001	-
4	68,001	-
5	80,001	131,001
6	97,001	148,001
7	114,001	165,001

(a) To determine the maximum allowable permit fee for vehicles with more than seven (7) axles, the table can be extended by adding seventeen thousand (17,000) pounds to the last listed weight in both columns 1 and 2 for each added axle.

(b) Permit fees for column 1 shall start at four cents (4¢) per mile and increase four cents (4¢) per mile for each additional two thousand (2,000) pound increment up to the weight indicated in column 2. Permit fees for column 2 shall start at one dollar and two cents ($1.02) per mile and increase seven cents (7¢) per mile for each additional two thousand (2,000) pound increment.

(c) Vehicles operating at weights less than the starting weights per axle configuration listed in column 1 shall be charged four cents (4¢) per mile.

(d) For vehicles operating with axles wider than eight (8) feet six (6) inches or axles with more than four (4) tires per axle, the fee may be reduced by the board or other proper authority having jurisdiction over a highway.

(3) It shall be unlawful for any person to violate, or to cause or permit to be violated, the limitations or conditions of special permits and any violation shall be deemed for all purposes to be a violation of

the provisions of this chapter.

(4) An annual special pilot project route permit authorizing travel on pilot project routes shall be issued by the board or may, in its discretion, be issued by a local public highway agency for operation of vehicles with a legal maximum gross weight of at least one hundred five thousand five hundred one (105,501) pounds but not exceeding one hundred twenty-nine thousand (129,000) pounds. Such pilot project routes on nonstate and noninterstate highways shall be determined by the local highway agency for those roads under its jurisdiction. No local public highway agency shall approve a pilot project route which provides a thoroughfare for interstate carriers to pass through the state. State pilot project routes designated by the legislature and identified on a map entitled "Designated Pilot Project Routes" are:

(a) Ashton to Kimberly to Twin Falls to Nevada using US-20, US-30, SH-33, US-93, SH-25, SH-50 and SH-74.

(b) US-91 from its junction with SH-34 to the Utah border.

(c) US-30 from its junction with I-15 to the Wyoming border.

(d) US-95 south from Fruitland to junction with SH-55.

(e) SH-19 between Wilder and Caldwell.

(f) SH-78 between Marsing and Hammett.

(g) SH-67 from Mountain Home to junction with SH-78 at Grandview.

(h) SH-55 from intersection with Farmway Road to junction with US-95.

(i) SH-25 from the intersection of SH-24 to Paul.

(j) SH-25 from intersection with US-93 to Hazelton.

(k) SH-24 from intersection with US-93 to intersection with SH-25.

(l) US-20 from its intersection with New Sweden Road to its junction with SH-22/33.

(m) SH-34 from milepost 78 to the junction with US-91.

(n) US-26 from the intersection with 45th West to the junction with US-91; and US-26 from its junction with US-91 north to its intersection with Gallatin/West 23rd Street.

(o) US-91 from the intersection with Canyon Road to the junction with US-26.

(~~o~~p) SH-22 from Dubois to the junction with SH-33.

(~~p~~q) SH-45 from junction with SH-78 to intersection with I-84 business loop; I-84 business loop to intersection with SH-55; SH-55 to I-84 interchange no. 35.

Additions or deletions to the approved state pilot project routes specified in this subsection (4) shall be made only with the approval of the state legislature.

(5) An annual administrative permit fee for operating on pilot project routes at the weights specified in subsection (4) of this section shall be set by the board for travel on state pilot project routes and by the local public highway agency for travel on routes under its jurisdiction, but not to exceed a maximum of fifty dollars ($50.00) per vehicle. The annual administrative permit fee shall cover administrative costs. Local public highway agencies are authorized to issue special pilot project permits and such permits shall be in writing. Administrative permit fees for permits issued by a local public highway agency shall be retained by the local public highway agency to cover administrative costs, and administrative permit fees for permits issued by the department shall be retained by the department to cover administrative costs. In addition to the annual administrative permit fee and the

appropriate registration fee for weights up to one hundred five thousand five hundred (105,500) pounds, the appropriate vehicle registration fees for weights over one hundred five thousand five hundred (105,500) pounds shall be calculated and collected in accordance with the fee schedules set forth in section 49-432 or 49-434, Idaho Code.

Approved March 18, 2005.

CHAPTER 64
(H.B. No. 147)

AN ACT

RELATING TO THE MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT; AMENDING SECTION 49-1901, IDAHO CODE, TO PROVIDE CHANGES TO THE AGREEMENT AS MUTUALLY AGREED UPON BY THE PARTICIPATING JURISDICTIONS, INCLUDING TO REVISE THE FINDINGS AND PURPOSES, TO DEFINE "COOPERATING COMMITTEE," TO CLARIFY REPRESENTATION ON THE COOPERATING COMMITTEE, TO PROVIDE ADDITIONAL POWERS OF THE COMMITTEE AND TO REVISE EXISTING POWERS OF THE COMMITTEE, TO REVISE OBJECTIVES OF THE PARTICIPATING JURISDICTIONS, TO PROVIDE A NEW ARTICLE IX RELATING TO FUNDING, TO PROVIDE A NEW ARTICLE X RELATING TO SELECTION OF DESIGNATED REPRESENTATIVES, TO CORRECT A CODIFIER'S ERROR AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 49-1901, Idaho Code, be, and the same is hereby amended to read as follows:

49-1901. ENACTMENT OF MULTISTATE AGREEMENT. The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

ARTICLE I

Findings and Purposes

SECTION 1. Findings. The participating jurisdictions find that:

(a) The expanding regional economy depends on expanding transportation capacity;

(b) Highway transportation is the major mode for movement of people and goods in the western states;

(c) Uniform application in the west of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption and related transportation costs, which are necessary to permit increased productivity;

(d) A number of western states have already, to the fullest extent possible, adopted substantially the 1964 Bureau of Public Roads recommended vehicle size and weight standards; and

(e) ~~The 1956 provision of federal law, (23 U.S.C. 127), though long outmoded, remains in effect--depriving--states--of--interstate--matching money--if--vehicle--weights--and--widths--are increased, even though the interstate system is more than eighty per cent (80%) complete; and~~

~~(f)~~ The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

SECTION 2. Purposes. The purposes of this agreement are to:

(a) Adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(b) Establish a system authorizing the operation of vehicles traveling between two (2) or more participating jurisdictions at more adequate size and weight standards.

(c) Promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement.

(d) Secure uniformity insofar as possible, of ~~administration~~ administrative procedures in the enforcement of recommended vehicle size and weight standards.

(e) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

(f) ~~In recognition of desire for a degree of national uniformity of size--and--weight--regulations, it is the further objective to encourage development of broad, uniform size and weight standards--on--a--national basis,--and further that procedures adopted under this agreement be compatible with national standards~~ Facilitate communication between legislators, state transportation administrators and commercial industry representatives in addressing the emerging highway transportation issues in participating jurisdictions.

ARTICLE II

Definitions

SECTION 1. As used in this agreement:

(a) "Cooperating committee" means a body composed of the designated representatives from the participating jurisdictions.

(b) "Designated representative" means a legislator or other person authorized under article X to represent the jurisdiction.

(~~b~~c) "Jurisdiction" means a state of the United States or the District of Columbia.

(~~c~~d) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards which operates in two (2) or more participating jurisdictions.

ARTICLE III

General Provisions

SECTION 1. Qualifications for Membership. Participation in this agreement is open to jurisdictions which subscribe to the findings, purposes and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

SECTION 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

SECTION 3. Effect of Headings. Article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

SECTION 4. Vehicle Laws and Regulations. This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

SECTION 5. Interpretation. The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

SECTION 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, article III. Any amendment shall be placed in writing and become a part hereof.

SECTION 7. Restrictions, Conditions or Limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition or limitation on the general terms of this agreement, if any.

SECTION 8. Additional Jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV

Cooperating Committee

SECTION 1. Each participating jurisdiction shall have two (2) designated representatives. Pursuant to section 2, article III, the designated representatives of the participating jurisdictions shall constitute ~~a~~ the cooperating committee which shall have the power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters.

(b) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules or regulations which would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

(d) Recommend improvements in highway operations, in vehicular safety, and in state administration of highway transportation laws.

(e) Perform functions necessary to facilitate the purposes of this agreement.

SECTION 2. Each designated representative of a participating jurisdiction shall be entitled to one (1) vote only. No action of the committee shall be ~~binding~~ approved unless a majority of the total number of votes cast by the designated representatives of participating jurisdictions are in favor thereof.

SECTION 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice chairman and a secretary.

SECTION 4. The committee shall submit annually to the legislature of each participating jurisdiction~~,--no-later-than-November-1,~~ a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable. ~~Copies-of-all-such-reports-shall-be-made-available-to-the-Transportation Committee-of-the-Western-Conference,-Council-of-State--Governments,--and to-the-Western-Association-of-State-Highway-Officials.~~

ARTICLE V

Objectives of the Participating Jurisdictions

SECTION 1. Objectives. The participating jurisdictions hereby declare that:

(a) It is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation of a vehicle or combination of vehicles in regular operation on all ~~S~~state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of 20,000 pounds, a tandem-axle weight not in excess of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$$W = 500\ ((LN/N-1) + 12N + 36)$$

where W = maximum weight in pounds carried on any group of two or more axles computed to nearest 500 pounds.

L = distance in feet between the extremes of any group of two or more consecutive axles.

N = number of axles in group under consideration.

(b) It is the further objective of the participating jurisdictions that ~~in-the-event~~ the operation of a vehicle or combination of vehicles in interstate commerce according to the provisions of subsection (a) of this section ~~would--result-in-withholding-or-forfeiture-of-federal-aid funds-pursuant-to-section-127,-title-23,-U.S.--Code,--the--operation--of such-vehicle-or-combination-of-vehicles-at-axle-and-gross-weights-within the--limits--set--forth-in-subsection-(a)-of-this-section-will~~ be authorized under special permit authority by each participating jurisdiction ~~which--could--legally-issue-such-permits-prior-to-July-1,-1956,-provided all-regulations-and-procedures-related-to-such-issuance-in-effect-as--of July-1,-1956,-are-adhered-to~~ for vehicle combinations in excess of statutory weight of 80,000 pounds and/or statutory lengths.

(c) ~~The--objectives--of--subsections--(a)--and--(b)-of-this-section relate-to-vehicles-or-combinations-of-vehicles-in-regular-operation,-and the-authority-of-any-participating-jurisdiction-to-issue-special-permits for-the-movement-of-any--vehicle--or--combinations--of--vehicles--having dimensions--and/or--weights-in-excess-of-the-maximum-statutory-limits-in each-participating-jurisdiction-will-not-be-affected.~~

~~(d)~~ It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated rep-

resentatives, to meet and cooperate in the consideration of vehicle size and weight related matters including, but not limited to, the development of: uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent.

(~~e~~d) ~~In recognition of the limited prospects of federal revision of section 127, title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal aid highway funds, it is the further objective of the participating jurisdictions to~~ The cooperating committee may recommend that the participating jurisdictions jointly secure congressional approval of this agreement and, specifically of the vehicle size and weight standards set forth in subsection (a) of this section.

(e) It is the further objective of the participating jurisdictions to:

(1) Establish transportation laws and regulations to meet regional needs and to promote an efficient, safe and compatible transportation network;

(2) Develop standards that facilitate the most efficient and environmentally sound operation of vehicles on highways, consistent with and in recognition of principles of highway safety;

(3) Establish programs to increase productivity and reduce congestion, fuel consumption and related transportation costs and enhance air quality through the uniform application of state vehicle regulations and laws.

ARTICLE VI

Entry Into Force and Withdrawal

SECTION 1. This agreement shall enter into force when enacted into law by any two (2) or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, article III.

SECTION 2. Any participating jurisdiction may withdraw from this agreement by cancelling the same but no such withdrawal shall take effect until thirty (30) days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

ARTICLE VII

Construction and Severability

SECTION 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

SECTION 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE VIII
Filing of Documents

SECTION 1. A copy of this agreement, its amendments, and rules or regulations promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

ARTICLE IX
Funding

SECTION 1. Funds for the administration of this agreement, including participation in the cooperating committee and the actual expenses of the designated representatives, shall be budgeted or expensed as determined appropriate.

ARTICLE X
Selection of Designated Representatives

SECTION 1. The process for selecting the designated representatives to the cooperating committee shall be established by law under this section.

SECTION 2. The persons authorized to represent the state of Idaho as the designated representatives to the committee shall be the chairman of the senate transportation committee and the chairman of the house transportation and defense committee, or a legislator or a state agency official that the chairman may assign.

SECTION 3. The transportation chairman in each house shall also designate one (1) alternate designated representative who shall also be a legislator or state agency official to serve in his absence.

Approved March 18, 2005.

CHAPTER 65
(H.B. No. 16)

AN ACT
RELATING TO POWERS AND DUTIES OF THE STATE BOARD OF EDUCATION; AMENDING SECTIONS 33-2211, 33-3006 AND 33-3405, IDAHO CODE, TO PROVIDE CONSISTENCY IN LANGUAGE RELATING TO POWERS OF THE BOARD REGARDING REMOVAL OF EMPLOYEES.

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

SECTION 1. That Section 33-2211, Idaho Code, be, and the same is hereby amended to read as follows:

33-2211. POWERS OF STATE BOARD FOR PROFESSIONAL-TECHNICAL EDUCATION. The state board for professional-technical education shall have the power:

1. To adopt rules for its own government and the government of the Eastern Idaho Technical College;

2. To employ professional and nonprofessional persons and to prescribe their qualifications;

3. To acquire and hold, and to dispose of, real and personal property, and to construct, repair, remodel and remove buildings;

4. To contract for the acquisition, purchase or repair of buildings, in the manner prescribed for trustees of school districts;

5. To dispose of real and personal property in the manner prescribed for trustees of school districts;

6. To convey and transfer real property of the college upon which no buildings used for instruction are situated, to nonprofit corporations, school districts, community college housing commissions, counties or municipalities, with or without consideration; to rent real or personal property for the use of the college, its students or faculty, for such terms as may be determined by the state board for professional-technical education; and to lease real or personal property of the college not actually in use for instructional purposes on such terms as may be determined by the state board for professional-technical education;

7. To acquire, hold, and dispose of, water rights;

8. To accept grants or gifts of money, materials, or property of any kind from any governmental agency, or from any person, firm, or association, on such terms as may be determined by the grantor;

9. To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program; to accept grants from any source for the conduct of such program, and to conduct such program on, or off, campus;

10. To employ a president of the college and, with his advice, to appoint such assistants, instructors, specialists and other employees as are required for the operation of the college; to fix salaries and prescribe duties; and to remove the president or ~~any~~ other employees ~~for cause~~ in accordance with the policies and rules of the state board of education;

11. With the advice of the president, to prescribe the courses and programs of study, the requirements for admission, the time and standards for completion of such courses and programs, and to grant certificates or associate of applied science degrees for those students entitled thereto;

12. To employ architects or engineers in planning the construction, remodeling or repair of any building or property and, whenever no other agency is designated by law so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof;

13. To have at all times, general supervision and control of all property, real and personal, appertaining to the college, and to insure the same.

SECTION 2. That Section 33-3006, Idaho Code, be, and the same is hereby amended to read as follows:

33-3006. GENERAL POWERS OF BOARD OF TRUSTEES. The board of trustees of the Idaho State University shall have the following powers:

1. To adopt rules and regulations for its own government and for that of the university.

2. To employ a president of the university and, with his advice, to appoint such assistants, deans, instructors, specialists and other employees as are required for the operation of the university; to fix salaries and prescribe duties; and to remove the president or ~~any~~ other employees ~~for cause~~ in accordance with the policies and rules of the state board of education.

3. With the advice of the president, to prescribe the courses and

programs of study, the requirements for admission, the time and standard for graduation, and to grant academic degrees to those students entitled thereto.

4. To accept grants or gifts of money, materials or property of any kind from any governmental agency, or from any person, firm or association, on such terms as may be determined by the grantor.

5. To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program, to accept grants or gifts from any source for the conduct of such program; and to conduct such program on or off campus.

6. To employ architects or engineers in planning the construction, remodeling or repair of any building or property and, whenever no other agency is designated by law so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof.

7. To have at all times, general supervision and control of all property, real and personal, appertaining to the university, and to insure the same.

SECTION 3. That Section 33-3405, Idaho Code, be, and the same is hereby amended to read as follows:

33-3405. GENERAL POWERS OF BOARD. The board of trustees of the Idaho School for the Deaf and the Blind shall have the following powers:

1. To adopt rules and regulations for its own government and that of the school;

2. To employ a superintendent of the school, and, with his advice, to appoint such assistants, instructors, specialists and other employees as are required for the operation of the school; to fix salaries and prescribe duties; and to remove the superintendent or ~~any~~ other employees ~~for cause~~ in accordance with the policies and rules of the state board of education;

3. With the advice of the superintendent, to prescribe the course of study, the textbooks to be used, and for those pupils who complete the requirements for grade twelve (12), the time and standard of graduation;

4. To have at all times, general supervision and control of all property, real and personal, appertaining to the school, and to insure the same;

5. To employ architects or engineers in planning the construction, remodeling or repair of any building and, whenever no other agency is designated so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof;

6. To expend moneys appropriated, or otherwise placed to the credit of the school for the maintenance and operation thereof, and to account for the same as prescribed by law;

7. To provide for the conveyance of pupils to and from the school, the expense of such conveyance being a lawful use of the moneys available to the board of trustees.

Approved March 21, 2005.

CHAPTER 66
(H.B. No. 89)

AN ACT
RELATING TO INSURANCE; AMENDING SECTION 41-5602, IDAHO CODE, TO REVISE TIME PERIODS APPLICABLE TO NOTIFICATION REQUIREMENTS.

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

SECTION 1. That Section 41-5602, Idaho Code, be, and the same is hereby amended to read as follows:

41-5602. PROMPT PAYMENT OF CLAIMS. (1) Except as otherwise specifically provided in this chapter, an insurer shall process a claim for payment for health care services rendered by a practitioner or facility to a beneficiary in accordance with this section.

(2) If a beneficiary, practitioner or facility submits an electronic claim to an insurer within thirty (30) days of the date on which service was delivered, an insurer shall pay or deny the claim not later than thirty (30) days after receipt of the claim.

(3) If a beneficiary, practitioner or facility submits a paper claim for payment to an insurer within forty-five (45) days of the date on which service was delivered, an insurer shall pay or deny the claim not later than forty-five (45) days after receipt of the claim.

(4) If an insurer denies the claim or needs additional information to process the claim, the insurer shall notify the practitioner or facility and the beneficiary in writing within thirty (30) days of receipt of ~~the~~ an electronic claim or within forty-five (45) days of receipt of a paper claim. The notice shall state why the insurer denied the claim.

(5) If the claim was denied because more information was required to process the claim, the notice shall specifically describe all information and supporting documentation needed to evaluate the claim for processing. If the practitioner or facility submits the information and documentation identified by the insurer within thirty (30) days of receipt of the written notice, the insurer shall process and pay the claim within thirty (30) days of receipt of the additional information or, if appropriate, deny the claim.

(6) Any claim submitted pursuant to this chapter shall use the current procedural terminology (CPT) code in effect, as published by the American medical association, the international classification of disease (ICD) code in effect, as published by the United States department of health and human services, or the healthcare common procedural coding system (HCPCS) code in effect, as published by the United States centers for medicaid and medicare services (CMS).

(7) This chapter shall not apply to claims submitted under policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, medicare supplement, disability income insurance, student health benefits only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issued for a period of twelve (12) months or less.

Approved March 21, 2005.

CHAPTER 67
(H.B. No. 90)

AN ACT

RELATING TO LIFE INSURANCE; AMENDING SECTION 41-2005, IDAHO CODE, TO RAISE THE STATUTORY LIMIT ON THE AMOUNT OF CREDIT LIFE INSURANCE THAT CAN BE WRITTEN UNDER A GROUP INSURANCE POLICY, TO MAKE TECHNICAL CORRECTIONS AND TO CORRECT CODIFIER ERRORS.

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

SECTION 1. That Section 41-2005, Idaho Code, be, and the same is hereby amended to read as follows:

41-2005. DEBTOR GROUPS. The lives of a group of individuals may be insured under a policy issued to a creditor, or to a trustee or trustees or agent designated by two (2) or more creditors, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one (1) or more subsidiary corporations, and the debtors of one (1) or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five ~~per-cent~~ percent (75%) of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred (100) persons yearly, or may reasonably be expected to receive at least one hundred (100) new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five ~~per-cent~~ percent (75%) of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes ~~or~~ of debtors determined by age.

(4) The amount of insurance on the life of ~~the~~ a debtor shall at no time exceed the amount owed by him to the creditor, or ~~seventy-five~~ one hundred fifty thousand dollars ($~~7~~150,000), whichever is less.

(5) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

Approved March 21, 2005.

CHAPTER 68
(H.B. No. 95)

AN ACT

RELATING TO THE STATE BOARD OF CORRECTION; AMENDING SECTION 20-225, IDAHO CODE, TO INCREASE THE MAXIMUM FEE THAT MAY BE REQUIRED FOR THE PAYMENT OF SUPERVISION COSTS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 20-225, Idaho Code, be, and the same is hereby amended to read as follows:

20-225. PAYMENT FOR COST OF SUPERVISION. Any person under state probation or parole supervision shall be required to contribute not more than ~~forty~~ fifty dollars ($~~4~~50.00) per month as determined by the board of correction. Costs of supervision are the direct and indirect costs incurred by the department of correction to supervise probationers and parolees, including tests to determine drug and alcohol use, books and written materials to support rehabilitation efforts, and monitoring of physical location through the use of technology. Any failure to pay such contribution shall constitute grounds for the revocation of probation by the court or the revocation of parole by the commission for pardons and parole. The division of probation and parole in the department of correction may exempt a person from the payment of all or any part of the foregoing contribution if it finds any of the following factors to exist:

(1) The offender has diligently attempted but been unable to obtain employment.

(2) The offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination acceptable to the division of probation and parole.

Money collected as a fee for services will be placed in the probation and parole receipts ~~account~~ revenue fund, which is hereby created in the dedicated fund in the state treasury, and utilized to provide supervision for clients. Moneys in the probation and parole receipts ~~account~~ revenue fund may be expended only after appropriation by the legislature.

Approved March 21, 2005.

CHAPTER 69
(H.B. No. 96)

AN ACT

RELATING TO THE NATIONAL CRIME PREVENTION AND PRIVACY COMPACT; AMENDING CHAPTER 30, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-3012, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS, TO PROVIDE FOR ENACTMENT, TO PROVIDE AN OVERVIEW, TO DEFINE TERMS, TO SET FORTH PURPOSES, TO PROVIDE FOR RESPONSIBILITIES OF COMPACT PARTIES, TO PROVIDE FOR AUTHORIZED RECORD DISCLOSURES, TO SET FORTH RECORD REQUEST PROCEDURES, TO ESTABLISH THE COMPACT COUNCIL, TO PROVIDE FOR RATIFICATION, TO SET FORTH MISCELLANEOUS PROVISIONS, TO PROVIDE FOR RENUNCIATION, TO PROVIDE SEVERABILITY AND TO PROVIDE FOR THE ADJUDICATION OF DISPUTES; AND AMENDING CHAPTER 30, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-3013, IDAHO CODE, TO AUTHORIZE THE DIRECTOR OF THE IDAHO STATE POLICE TO APPOINT A COMPACT OFFICER.

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

SECTION 1. That Chapter 30, 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 67-3012, Idaho Code, and to read as follows:

67-3012. NATIONAL CRIME PREVENTION AND PRIVACY COMPACT. (1) Findings. The legislature finds that there is a need to improve the quality and completeness of criminal history records made available to a state when it conducts national fingerprint-based record checks for applicant or noncriminal justice purposes. Criminal history records automated and held at the state level are the most complete and accurate sources for fingerprint-based records checks for authorized agencies or organizations screening persons seeking positions of trust. Ratification of the "National Crime Prevention and Privacy Compact" will provide direct access to criminal history records maintained in other member states.

(2) Enactment. The national crime prevention and privacy compact is hereby enacted into law and entered into with all other jurisdictions legally joined therein in the form substantially as follows:

The contracting parties agree to the following:

Overview

(a) In general. This compact organizes an electronic information sharing system among the federal government and the states to exchange criminal history records for noncriminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment.

(b) Obligations of parties. Under this compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal government and to party states for authorized purposes. The FBI shall also manage the federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I
DEFINITIONS

In this compact:

(1) Attorney general. The term "attorney general" means the attorney general of the United States.

(2) Compact officer. The term "compact officer" means:

(A) With respect to the federal government, an official so designated by the director of the FBI; and

(B) With respect to a party state, the chief administrator of the state's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) Council. The term "council" means the compact council established under article VI.

(4) Criminal history records. The term "criminal history records":

(A) Means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) Does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) Criminal history record repository. The term "criminal history record repository" means the state agency designated by the governor or other appropriate executive official or the legislature of a state to perform centralized recordkeeping functions for criminal history records and services in the state.

(6) Criminal justice. The term "criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) Criminal justice agency. The term "criminal justice agency":

(A) Means:

(i) Courts; and

(ii) A governmental agency or any subunit thereof that:

(I) Performs the administration of criminal justice pursuant to a statute or executive order; and

(II) Allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) Includes federal and state inspectors general offices.

(8) Criminal justice services. The term "criminal justice services" means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) Criterion offense. The term "criterion offense" means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) Direct access. The term "direct access" means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) Executive order. The term "executive order" means an order of the president of the United States or the chief executive officer of a state that has the force of law and that is promulgated in accordance with applicable law.

(12) FBI. The term "FBI" means the federal bureau of investigation.

(13) Interstate identification system. The term "interstate identification index system" or "III system":

(A) Means the cooperative federal-state system for the exchange of criminal history records; and

(B) Includes the national identification index, the national fingerprint file and, to the extent of their participation in such system, the criminal history record repositories of the states and the FBI.

(14) National fingerprint file. The term "national fingerprint file" means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III system.

(15) National identification index. The term "national identification index" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III system.

(16) National indices. The term "national indices" means the national identification index and the national fingerprint file.

(17) Nonparty state. The term "nonparty state" means a state that has not ratified this compact.

(18) Noncriminal justice purposes. The term "noncriminal justice purposes" means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) Party state. The term "party state" means a state that has ratified this compact.

(20) Positive identification. The term "positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III system. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) Sealed record information. The term "sealed record information" means:

(A) With respect to adults, that portion of a record that is:

(i) Not available for criminal justice uses;

(ii) Not supported by fingerprints or other accepted means of positive identification; or

(iii) Subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and

(B) With respect to juveniles, whatever each state determines is a sealed record under its own law and procedure.

(22) State. The term "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II
PURPOSES

The purposes of this compact are to:

(1) Provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) Require the FBI to permit use of the national identification index and the national fingerprint file by each party state, and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under article VI;

(3) Require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under article VI;

(4) Provide for the establishment of a council to monitor III system operations and to prescribe system rules and procedures for the effective and proper operation of the III system for noncriminal justice purposes; and

(5) Require the FBI and each party state to adhere to III system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III
RESPONSIBILITIES OF COMPACT PARTIES

(a) FBI responsibilities. The director of the FBI shall:

(1) Appoint an FBI compact officer who shall:

(A) Administer this compact within the department of justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to article V(c);

(B) Ensure that compact provisions and rules, procedures, and standards prescribed by the council under article VI are complied with by the department of justice and the federal agencies and other agencies and organizations referred to in article III(a)(1)(A); and

(C) Regulate the use of records received by means of the III system from party states when such records are supplied by the FBI directly to other federal agencies;

(2) Provide to federal agencies and to state criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in article IV, including:

(A) Information from nonparty states; and

(B) Information from party states that is available from the FBI through the III system, but is not available from the party state through the III system;

(3) Provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) Modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in article V.

(b) State responsibilities. Each party state shall:

(1) Appoint a compact officer who shall:

(A) Administer this compact within that state;

(B) Ensure that compact provisions and rules, procedures, and standards established by the council under article VI are complied with in the state; and

(C) Regulate the in-state use of records received by means of the III system from the FBI or from other party states;

(2) Establish and maintain a criminal history record repository, which shall provide:

(A) Information and records for the national identification index and the national fingerprint file; and

(B) The state's III system-indexed criminal history records for noncriminal justice purposes described in article IV;

(3) Participate in the national fingerprint file; and

(4) Provide and maintain telecommunications links and related equipment necessary to support the services set forth in this compact.

(c) Compliance with III system standards. In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III system rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation.

(d) Maintenance of record services.

(1) Use of the III system for noncriminal justice purposes authorized in this compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.

ARTICLE IV
AUTHORIZED RECORD DISCLOSURES

(a) State criminal history record repositories. To the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records (excluding sealed records) to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general and that authorizes national indices checks.

(b) Criminal justice agencies and other governmental or nongovernmental agencies. The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), and state criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general, that authorizes national indices checks.

(c) Procedures. Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each compact officer shall establish procedures, consistent with this compact, and with rules, procedures, and standards established by the council under article VI, which procedures shall protect the accuracy and privacy of the records, and shall:

(1) Ensure that records obtained under this compact are used only by authorized officials for authorized purposes;

(2) Require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) Ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.

ARTICLE V
RECORD REQUEST PROCEDURES

(a) Positive identification. Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Submission of state requests. Each request for a criminal history record check utilizing the national indices made under any approved state statute shall be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another state criminal history record repository or the FBI.

(c) Submission of federal requests. Each request for criminal history record checks utilizing the national indices made under federal authority shall be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which such request originated. Direct access to the national identification

index by entities other than the FBI and state criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) Fees. A state criminal history record repository or the FBI:

(1) May charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) May not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) Additional search.

(1) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a state criminal history record repository under paragraph (1) of this subsection, the FBI positively identifies the subject as having a III system-indexed record or records:

(A) The FBI shall so advise the state criminal history record repository; and

(B) The state criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

ARTICLE VI
ESTABLISHMENT OF COMPACT COUNCIL

(a) Establishment.

(1) In general. There is established a council to be known as the "compact council," which shall have the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes.

(2) Organization. The council shall:

(A) Continue in existence as long as this compact remains in effect;

(B) Be located, for administrative purposes, within the FBI; and

(C) Be organized and hold its first meeting as soon as practicable after the effective date of this compact.

(b) Membership. The council shall be composed of fifteen (15) members, each of whom shall be appointed by the attorney general, as follows:

(1) Nine (9) members, each of whom shall serve a two (2) year term, who shall be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that, in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states shall be eligible to serve on an interim basis.

(2) Two (2) at-large members, nominated by the director of the FBI, each of whom shall serve a three (3) year term, of whom:

(A) One (1) shall be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

(B) One (1) shall be a representative of the noncriminal justice agencies of the federal government.

(3) Two (2) at-large members, nominated by the chairman of the council, once the chairman is elected pursuant to article VI(c), each of whom shall serve a three (3) year term, of whom:

(A) One (1) shall be a representative of state or local criminal justice agencies; and

(B) One (1) shall be a representative of state or local noncriminal justice agencies.

(4) One (1) member, who shall serve a three (3) year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One (1) member, nominated by the director of the FBI, who shall serve a three (3) year term, and who shall be an employee of the FBI.

(c) Chairman and vice chairman.

(1) In general. From its membership, the council shall elect a chairman and a vice chairman of the council, respectively. Both the chairman and vice chairman of the council:

(A) Shall be a compact officer, unless there is no compact officer on the council who is willing to serve, in which case the chairman may be an at-large member; and

(B) Shall serve a two (2) year term and may be reelected to only one (1) additional two (2) year term.

(2) Duties of vice chairman. The vice chairman of the council shall serve as the chairman of the council in the absence of the chairman.

(d) Meetings.

(1) In general. The council shall meet at least once each year at the call of the chairman. Each meeting of the council shall be open to the public. The council shall provide prior public notice in the federal register of each meeting of the council, including the matters to be addressed at such meeting.

(2) Quorum. A majority of the council or any committee of the council shall constitute a quorum of the council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) Rules, procedures, and standards. The council shall make available for public inspection and copying at the council office within the FBI, and shall publish in the federal register, any rules, procedures, or standards established by the council.

(f) Assistance from FBI. The council may request from the FBI such reports, studies, statistics, or other information or materials as the council determines to be necessary to enable the council to perform its duties under this compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) Committees. The chairman may establish committees as necessary to carry out this compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII
RATIFICATION OF COMPACT

This compact shall take effect upon being entered into by two (2) or more states as between those states and the federal government. Upon subsequent entering into this compact by additional states, it shall become effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing state.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

(a) Relation of compact to certain FBI activities. Administration of this compact shall not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the federal advisory committee act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) No authority for nonappropriated expenditures. Nothing in this compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Relating to public law 92-544. Nothing in this compact shall diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof, under the departments of state, justice, and commerce, the judiciary, and related agencies appropriation act, 1973 (public law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX
RENUNCIATION

(a) In general. This compact shall bind each party state until renounced by the party state.

(b) Effect. Any renunciation of this compact by a party state shall:

(1) Be effected in the same manner by which the party state ratified this compact; and

(2) Become effective one hundred eighty (180) days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

ARTICLE X
SEVERABILITY

The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state, or to the constitution of the United States, or the applicability thereof to any gov-

ernment, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this compact is held contrary to the constitution of any party state, all other portions of this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.

ARTICLE XI
ADJUDICATION OF DISPUTES

(a) In general. The council shall:

(1) Have initial authority to make determinations with respect to any dispute regarding:

(A) Interpretation of this compact;

(B) Any rule or standard established by the council pursuant to article VI; and

(C) Any dispute or controversy between any parties to this compact; and

(2) Hold a hearing concerning any dispute described in paragraph (1) of this subsection at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. Such decision shall be published pursuant to the requirements of article VI(e).

(b) Duties of FBI. The FBI shall exercise immediate and necessary action to preserve the integrity of the III system, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the council holds a hearing on such matters.

(c) Right of appeal. The FBI or a party state may appeal any decision of the council to the attorney general, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

SECTION 2. That Chapter 30, Title 67, Idaho Code, be, and the same hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-3013, Idaho Code, and to read as follows:

67-3013. APPOINTMENT OF COMPACT OFFICER. The director of the Idaho state police shall appoint an Idaho state police employee as compact officer for the purpose of complying with article III of the national crime prevention and privacy compact, as set forth in section 67-3012, Idaho Code.

Approved March 21, 2005.

CHAPTER 70
(H.B. No. 102)

AN ACT

RELATING TO ALL-TERRAIN VEHICLES AND MOTORCYCLES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE CODE REFERENCES; AND AMENDING SECTION 49-426, IDAHO CODE, TO AUTHORIZE THE IDAHO TRANSPORTATION BOARD TO DESIGNATE SECTIONS OF STATE HIGHWAYS OVER WHICH ALL-TERRAIN VEHICLES AND MOTORCYCLES WHICH ARE NOT REGISTERED UNDER MOTOR VEHICLE LAW MAY CROSS.

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 shall be:

Vehicles one (1) and two (2) years old $48.00
Vehicles three (3) and four (4) years old $36.00
Vehicles five (5) and six (6) years old $36.00
Vehicles seven (7) and eight (8) years old $24.00
Vehicles over eight (8) years old $24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers 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 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 twenty-four dollars ($24.00).

(3) For all motorcycles and all-terrain vehicles operated upon the public highways the annual fee shall be nine dollars ($9.00). For operation of an all-terrain vehicle or motorcycle off the public highways, the fee specified in section 67-7122, Idaho Code, shall be paid. Registration exemptions provided in section 49-426(2), ~~and~~ (3) <u>and (4),</u> Idaho

Code, apply to all-terrain vehicles and motorcycles used for the purposes described in subsections (2), ~~and~~ (3) and (4) of section 49-426, Idaho Code.

(4) 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.

(5) Registration fees shall not be subject to refund.

(6) 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.

(7) 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 for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416, 49-418 and 49-418D, 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 49-416A, 49-417, 49-417A, 49-417B, 49-417C, 49-418A, 49-418B, 49-418C, 49-419, 49-419A, 49-419B, 49-419C, 49-419D, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, 49-420E and 49-420G, 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, unless otherwise specified by law.

SECTION 2. That Section 49-426, Idaho Code, be, and the same is hereby amended to read as follows:

49-426. EXEMPTIONS FROM OPERATING FEES. The provisions of this chapter with respect to operating fees shall not apply to:

(1) Motor vehicles owned or leased by the United States, the state, a city, a county, any department thereof, any political subdivision or municipal corporation of the state, any taxing district of the state, any state registered nonprofit subscription fire protection unit, or any organization, whether incorporated or unincorporated, organized for the operation, maintenance, or management of an irrigation project or irrigation works or system or for the purpose of furnishing water to its members or shareholders, but in other respects shall be applicable.

(2) Farm tractors, implements of husbandry, those manufactured homes which qualify for an exemption under the provisions of section 49-422, Idaho Code, road rollers, wheel mounted tar buckets, portable concrete and/or mortar mixers, wheel mounted compressors, tow dollies,

portable toilet trailers, street sweepers, and similar devices as determined by the department which are temporarily operated or moved upon the highways need not be registered under the provisions of this chapter, nor shall implements of husbandry be considered towed units under registration of vehicle combinations as defined in section 49-108(2), Idaho Code. In addition, self-propelled wheelchairs, three-wheeled bicycles, wheelchair conveyances, golf carts, lawn mowers, and scooters operated by persons who by reason of physical disability are otherwise unable to move about as pedestrians shall be exempt from registration requirements under the provisions of this chapter. Motorcycles and all-terrain vehicles need not be registered under the provisions of this chapter if they are:

(a) Being used exclusively in connection with agricultural, horticultural, dairy and livestock growing and feeding operations or used exclusively for snow removal purposes. Travel upon the public highways shall be limited to travel between farm or ranch locations. Motorcycles and all-terrain vehicles used for this purpose shall meet the requirements of section 49-619, Idaho Code; or

(b) Used exclusively on unpaved highways located on state public lands or federal public lands which are not part of the highway system of the state of Idaho, a county, highway district or city, provided the registration requirements of section 49-402 or section 67-7122, Idaho Code, are met.

(3) Any political subdivision of the state of Idaho may, but only after sufficient public notice is given and a public hearing held, adopt local ordinances designating highways or sections of highways under its jurisdiction upon which unregistered all-terrain vehicles and motorcycles may be operated. No controlled access highways shall be designated under this subsection. The requirements of title 18 and chapters 6, 8, 12, 13 and 14, title 49, Idaho Code, shall apply to the operation of any unregistered motorcycle and all-terrain vehicle upon such designated highways. Costs related to the posting of signs on such designated highways or sections of highways indicating the ordinance are eligible for reimbursement through the motorbike recreation account created in section 67-7126, Idaho Code.

(4) The Idaho transportation board may designate sections of state highways over which all-terrain vehicles and motorcycles not registered under this chapter 4 may cross. The requirements of title 18, and chapters 6, 8, 12, 13 and 14, title 49, Idaho Code, shall apply to the operation of unregistered all-terrain vehicles and motorcycles when using designated crossings on state highways.

Approved March 21, 2005.

CHAPTER 71
(H.B. No. 111)

AN ACT

RELATING TO THE IDAHO INDIVIDUAL HIGH RISK REINSURANCE POOL; AMENDING SECTION 41-5510, IDAHO CODE, TO REVISE ELIGIBILITY PROVISIONS FOR COVERAGE UNDER THE POOL PLAN.

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

SECTION 1. That Section 41-5510, Idaho Code, be, and the same is hereby amended to read as follows:

41-5510. ELIGIBILITY. (1) Any individual eligible person, who is and continues to be a resident shall be eligible for coverage under an individual basic, standard, catastrophic A or catastrophic B health benefit plan if evidence is provided that:

(a) Such person has been rejected by one (1) individual carrier on the basis of health status or claims experience; or

(b) An individual carrier refuses to issue a health benefit plan providing coverage substantially similar to coverage offered under an equivalent pool plan except at a rate exceeding the rate for the pool plan; or

(c) Such person is a federally eligible individual; or

(d) Such person is legally domiciled in Idaho on the date of application to the pool and is eligible for the credit for health insurance costs under section 35 of the Internal Revenue Code of 1986. In addition, if such person maintained creditable health insurance coverage for an aggregate period of three (3) months as of the date on which the individual seeks to enroll in pool coverage, not counting any period prior to a sixty-three (63) day break in coverage:

(i) The preexisting condition limitation set forth in section 41-5208, Idaho Code, shall not apply; and

(ii) The requirement for exhaustion of any available coverage under title X of the consolidated omnibus budget reconciliation act of 1986, public law 99-272 (COBRA) or state continuation benefits is waived.

(2) A rejection or refusal by a carrier offering only stop loss, excess of loss or reinsurance coverage with respect to an applicant under subsection (1) of this section shall not constitute sufficient evidence for purposes of subsection (1) of this section.

(3) Each resident dependent of a person who is eligible for coverage under the pool shall also be eligible for coverage under the pool.

(4) A person shall not be eligible for coverage under a pool plan if:

(a) The person is not a federally eligible individual and has or obtains health insurance coverage substantially similar to or more comprehensive than a pool plan, or would be eligible to have such coverage at a rate not exceeding the rate for the pool plan if the person elected to obtain it;

(b) The person is determined to be eligible for health care benefits under medicaid;

(c) The person has previously terminated pool plan coverage unless twelve (12) months have lapsed since such termination; provided however, that this provision shall not apply with respect to an applicant who is a federally eligible individual;

(d) The person is an inmate or resident of a state or other public institution, or a state, local or private correctional facility; provided however, that this provision shall not apply with respect to an applicant who is a federally eligible individual.

(5) Notwithstanding any other provision of this chapter, eligibility for continuation of coverage under COBRA shall not render a person ineligible for coverage under a pool plan.

(6) Coverage shall cease:

(a) On the first day of the month following the date a person is no longer a resident of this state;

(b) On the first day of the month following the date a person requests coverage to end;

(c) Upon the death of the covered person;

(d) At the option of the board, thirty (30) days after the plan makes any inquiry concerning the person's eligibility or place of residence to which the person does not reply.

(67) A person who ceases to meet the eligibility requirements of this section may be terminated on the first day of the month following the date when the individual becomes ineligible.

Approved March 21, 2005.

CHAPTER 72
(H.B. No. 112)

AN ACT

RELATING TO RECIPROCAL INSURERS; AMENDING SECTIONS 41-2918 AND 41-2926, IDAHO CODE, TO DELETE LANGUAGE APPLICABLE TO DOMESTIC RECIPROCAL INSURERS WHICH EXCLUSIVELY INSURE MEMBERS WHO ARE GOVERNMENTAL ENTITIES.

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

SECTION 1. That Section 41-2918, Idaho Code, be, and the same is hereby amended to read as follows:

41-2918. FINANCIAL CONDITION -- METHOD OF DETERMINING. In determining the financial condition of a reciprocal insurer the director shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for ninety (90) days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than ninety (90) days shall be allowed as assets.

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

~~(8)--A domestic reciprocal insurer, which exclusively--insures--members who are governmental entities, as defined in subsections 1, 2 and 3 of--section--6-902, Idaho Code, shall establish a loss-paying fund in an amount sufficient to meet the requirements of the reinsurer for the purpose of purchasing excess of aggregate reinsurance. A loss--paying--fund is--defined--for--the--purpose of this title as funds set aside or maintained for the purpose of paying claims, claims costs including--adjustment--costs,--litigation--fees--and court costs and other related costs. Excess of aggregate reinsurance is defined--for--the--purposes--of--this title--as--insurance--coverage provided by a reinsurer wherein the reinsurer assumes the loss above the retentions or loss paying fund--of--the reinsured.--Its--purpose--is--to--limit--aggregate loss over a specified period of time.~~

~~The excess of aggregate reinsurance shall carry at--least--a--thirty (30)--day written cancellation clause. If the reinsurer elects to cancel the excess of aggregate reinsurance contract, a copy of the cancellation notice must be forwarded immediately to the director of--the--department of insurance of the state of Idaho.~~

SECTION 2. That Section 41-2926, Idaho Code, be, and the same is hereby amended to read as follows:

41-2926. NONASSESSABLE POLICIES. (1) Nongovernmental entities. If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the total surplus required in section 41-313, Idaho Code, as to such insurer, upon application of the attorney and as approved by the subscribers' advisory committee the director shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the director shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The director shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

~~(4)--Governmental---entities.---If--a--domestic--reciprocal--insurer licensed to do business in this state as such and insuring only--governmental entities of this state has a loss paying fund as required by section--41-2918(8),--Idaho--Code, the director shall issue his certificate authorizing the insurer to extinguish any contingent--liability--of--the~~

~~member-under-its-policy-or-policies-and-to-omit-provisions-imposing-contingent--liability--in--all-policies-delivered-or-issued-for-delivery-in this-state.~~

Approved March 21, 2005.

CHAPTER 73
(H.B. No. 114)

AN ACT

RELATING TO INSURANCE PRACTICES; AMENDING CHAPTER 13, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1325, IDAHO CODE, TO SET FORTH REQUIREMENTS FOR INSURANCE PRODUCERS WHO BORROW MONEY, SECURITIES OR ANYTHING OF VALUE FROM CLIENTS OR CUSTOMERS.

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

SECTION 1. That Chapter 13, 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 41-1325, Idaho Code, and to read as follows:

41-1325. BORROWING MONEY FROM CLIENTS. (1) An insurance producer who borrows money, securities or anything of value from a client or customer, unless the client or customer is a person engaged in the business of loaning funds or is an immediate family member of the insurance producer, shall complete a written loan agreement that sets forth the parties to the loan, the purpose of the loan, the amount of the loan and the terms of the loan. All parties to the loan must sign the loan agreement acknowledging the transaction and must receive a copy of the loan agreement. The insurance producer shall keep a record of the loan transaction until the loan is paid back in full. Any release of the debt shall be in writing and signed by all parties to the release.

(2) As used in this section, the term "immediate family member" means a parent, mother-in-law, father-in-law, husband, wife, sister, brother, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or a son or daughter.

Approved March 21, 2005.

CHAPTER 74
(H.B. No. 115)

AN ACT

RELATING TO INSURANCE FRAUD; AMENDING SECTION 41-291, IDAHO CODE, TO REVISE THE DEFINITION FOR "AUTHORIZED AGENCIES" AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 41-292, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO THE DISCLOSURE OF INFORMATION BY INSURERS RELATING TO POSSIBLE FRAUD AND TO MAKE TECHNICAL CHANGES; AND AMENDING SECTION 41-295, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO THE INVESTIGATION SECTION OF THE DEPARTMENT OF INSURANCE.

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 sections 41-290 through and including ~~section~~ 41-298, Idaho Code:

(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, Idaho~~ Any law enforcement agency of this state; ~~police;~~

(b) ~~The~~ Any prosecuting attorney who may be responsible for prosecution in the ~~county~~ jurisdiction where the fire or fraud occurred;

(c) The attorney responsible for the prosecution in the ~~county~~ jurisdiction where the fire or fraud occurred as designated by the attorney general;

(d) The department of insurance, which includes the state fire marshal.

(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~~ chapter, 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, the state insurance fund, and any self-insured as contemplated by title 72, Idaho Code.

SECTION 2. That Section 41-292, Idaho Code, be, and the same is hereby amended to read as follows:

41-292. DISCLOSURE OF INFORMATION BY INSURERS. (1) The director of the department of insurance, state fire marshal or any authorized agency may, in writing, require the insurance company at interest to release to the requesting agency any or all relevant information or evidence deemed important to the authorized agency, director or state fire marshal which the company may have in its possession, relating to the loss in question. Relevant information may include, without limitation herein:

(a) Pertinent insurance policy information relevant to a loss under investigation and any application for such a policy;

(b) Policy premium payment records which are available;

(c) History of previous claims made by the insured;

(d) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.

(2) (a) When an insurance company has facts to support a belief that a loss in which it has an interest may be of other than accidental cause, then, for the purpose of notification and for having such loss investigated, the company shall, in writing, notify the director of the department of insurance, or the state fire marshal, ~~and--any--other--authorized--agency~~ and provide any or all material developed from the company's inquiry into the loss.

(b) When an insurance company provides the director of the department of insurance or the state fire marshal with notice of a loss, it shall be sufficient notice for the purpose of this ~~act~~ chapter.

(c) Nothing in section 41-292(1), Idaho Code, shall abrogate or impair the rights or powers created under section 41-292(2), Idaho Code.

(3) The director of the department of insurance, the state fire marshal or ~~the~~ an authorized agency provided with information pursuant to section 41-248, 41-258, 41-290 or 41-292(1) or (2), Idaho Code, and in furtherance of its own purposes, may release or provide such information to any of the other authorized agencies.

(4) Any insurance company providing information to an authorized agency or agencies pursuant to section 41-258, 41-290 or 41-292(1) or (2), Idaho Code, shall have the right to request relevant information relative to the loss in question and to receive, within a reasonable time, not to exceed thirty (30) days, the information requested, if the information is not otherwise privileged by law.

(5) In the absence of fraud or malice, no person shall be subject to civil liability for libel, slander or any other relevant tort cause of action by virtue of filing reports or furnishing other information

required by this ~~statute~~ chapter or required by the director of the department of insurance under the authority granted in this ~~statute~~ chapter, and no civil cause of action of any nature shall arise against such person:

(a) For any information relating to suspected fraudulent insurance acts furnished to or received from ~~law enforcement officials~~ authorized agencies, their agents and employees; or

(b) For any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this chapter; or

(c) For any such information furnished in reports to the department of insurance, ~~frauds bureau,~~ national association of insurance commissioners, national insurance crime bureau or any organization established to detect and prevent fraudulent insurance acts, their agents, employees or designees, nor shall the director or any employee of the department of insurance, ~~frauds bureau,~~ acting without malice in the absence of fraud, be subject to civil liability for libel, slander ~~of~~ or any other relevant tort and no civil cause of action of any nature shall arise against such person by virtue of the publication of any report or bulletin related to the official activities of the department of insurance. ~~frauds--bureau.~~ Nothing herein is intended to abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

(6) For purposes of subsection (5) of this section, there shall exist a rebuttable presumption that the person has acted without fraud or malice.

SECTION 3. 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, documents, 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, or other prosecutor having jurisdiction of any such violation. The attorney general, ~~or~~ county prosecutor, or other 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. Any restitution payments received pursuant to this section shall be deposited in the insurance administrative account as provided in section 41-401, 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.~~

Approved March 21, 2005.

CHAPTER 75
(H.B. No. 116)

AN ACT

RELATING TO INSURERS; AMENDING SECTION 41-335, IDAHO CODE, TO REMOVE LANGUAGE REQUIRING THAT CERTAIN INSURERS ATTACH AFFIDAVITS TO THEIR ANNUAL STATEMENTS; REPEALING SECTION 41-339, IDAHO CODE, REQUIRING AFFIDAVITS OF COMPLIANCE; AND AMENDING SECTION 41-4807, IDAHO CODE, TO DELETE A CODE REFERENCE.

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

SECTION 1. That Section 41-335, Idaho Code, be, and the same is hereby amended to read as follows:

41-335. ANNUAL STATEMENT. (1) Each authorized insurer shall annually on or before March 1, or within any extension of time therefor, not to exceed thirty (30) days, which the director for good cause may have granted, file with the director a full and true statement of its financial condition, transactions and affairs as of the preceding December 31. Unless otherwise required by the director, the statement is to be prepared in accordance with the national association of insurance commissioners' (NAIC) annual statement instructions and the NAIC's accounting practices and procedures manual, utilizing the version of the manual effective January 1, 2004, and any subsequent revisions that are adopted for use by the director by rule, administrative order or bulletin, and is to be submitted on the NAIC annual statement blank form, and any

statement, form or other information relating to the compensation of any officer, director or employee will be deemed confidential. At the seasonable request of a domestic insurer the director shall furnish to the insurer the blank form of annual statement to be used by it. The statement shall be verified by the oath of the insurer's president or vice president, and secretary or actuary as applicable, or if a reciprocal insurer, by the oath of the attorney in fact or its like officers if a corporation.

(2) The statement of an alien insurer shall be verified by its United States manager or other officer duly authorized, and shall relate only to the insurer's transactions and affairs in the United States unless the director requires otherwise. If the director requires a statement as to the insurer's affairs throughout the world, the insurer shall file such statement with the director as soon as reasonably possible.

(3) ~~An insurer which is subject to section 41-337, Idaho Code, (resident agent, countersignature law) shall attach to its annual statement the affidavit required under section 41-339, Idaho Code.~~

~~(4)~~ Any insurance company licensed to do business in this state which neglects to file or fails to file in the time prescribed by statute its annual statement or supplemental summary statement requested by the director shall be subject to a penalty of twenty-five dollars ($25.00) per day for each day in default. This penalty will be in addition to any administrative penalty which may be assessed pursuant to sections 41-327 and 41-324, Idaho Code.

(~~5~~4) Each domestic insurer authorized to do business in this state shall annually, on or before March 1 of each year, file with the NAIC its annual financial statement in a form prescribed by the director along with any additional filings prescribed by the director for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by this code. Any amendments or addenda to the annual statement shall also be filed with the NAIC.

(~~6~~5) At time of filing, the insurer shall pay to the director the fee for filing its statement as prescribed by rule of the department of insurance.

(~~7~~6) The financial statements filed with the director pursuant to this section, with the exception of information relating to officer, director, or employee compensation referred to in subsection (1) of this section, are public records and available to the public, notwithstanding the exemptions from disclosure provided in chapter 3, title 9, Idaho Code.

SECTION 2. That Section 41-339, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 41-4807, Idaho Code, be, and the same is hereby amended to read as follows:

41-4807. COUNTER SIGNATURES NOT REQUIRED. A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned as otherwise provided in sections 41-337~~,~~ and 41-338, ~~and 41-339,~~ Idaho Code.

Approved March 21, 2005.

CHAPTER 76
(H.B. No. 117)

AN ACT

RELATING TO ANNUITY SALES; AMENDING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1940, IDAHO CODE, TO SET FORTH REQUIREMENTS FOR RECOMMENDATIONS OF ANNUITY SALES INVOLVING SENIOR CONSUMERS, TO DEFINE "SENIOR CONSUMER," TO REQUIRE THAT CERTAIN INFORMATION BE OBTAINED, TO RELEASE INSURANCE PRODUCERS AND INSURERS FROM OBLIGATIONS BASED UPON SPECIFIED ACTIONS BY SENIOR CONSUMERS, TO EXEMPT CERTAIN RECOMMENDATIONS FROM APPLICATION, TO PROVIDE FOR THE PROMULGATION OF RULES AND TO PROVIDE THAT NO PRIVATE CAUSE OF ACTION IS CREATED.

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

SECTION 1. That Chapter 19, 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 41-1940, Idaho Code, and to read as follows:

41-1940. SUITABILITY OF ANNUITY SALES TO SENIOR CONSUMERS. (1) In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in an insurance transaction or a series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to the senior consumer's investments and other insurance products and as to the senior consumer's age, financial situation and needs.

(2) For purposes of this section, "senior consumer" means a person sixty-five (65) years of age or older. In the event of a joint purchase by more than one (1) party, the purchaser will be considered a senior consumer if any of the parties is sixty-five (65) years of age or older.

(3) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

(a) The senior consumer's financial status;

(b) The senior consumer's tax status;

(c) The senior consumer's investment objectives; and

(d) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.

(4) Neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a senior consumer under this section related to any recommendation if a senior consumer:

(a) Refuses to provide relevant information requested by the insurer or insurance producer;

(b) Decides to enter into an insurance transaction that is not based upon a recommendation of the insurer or insurance producer; or

(c) Fails to provide complete and accurate information.

(5) This section shall not apply to recommendations involving:

(a) Direct response solicitations where there is no recommendation

based upon information collected from the senior consumer;

(b) Contracts used to fund employee retirement or benefit plans established or maintained by an employer;

(c) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(d) Contracts or transactions exempted pursuant to rules promulgated by the director, where the director has determined the protections of this law are not necessary.

(6) The director may promulgate rules pursuant to this section for the protection of senior consumers in annuity transactions.

(7) Nothing in this section shall be construed to create or imply a private cause of action for a violation of this section or rules promulgated pursuant to this section.

Approved March 21, 2005.

CHAPTER 77
(H.B. No. 118)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-231, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO HEARINGS AND APPEALS; REPEALING SECTION 41-233, IDAHO CODE, APPLICABLE TO STAYS OF ACTION; AMENDING SECTION 41-235, IDAHO CODE, TO PROVIDE FOR FOURTEEN DAYS OF ADVANCE NOTICE, TO DELETE LANGUAGE REFERENCING HEARINGS HELD FOR CONSIDERATION OF RULES AND REGULATIONS OF THE DIRECTOR OR OTHER SPECIFIED MATTERS AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTIONS 41-239, 41-242 AND 41-246, IDAHO CODE, APPLICABLE TO HEARING PROCEDURES, METHODS OF APPEAL AND APPEALS TO THE SUPREME COURT; AMENDING SECTION 41-1016, IDAHO CODE, TO REVISE A NOTICE REQUIREMENT; AMENDING SECTION 41-1301, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 41-1320, IDAHO CODE, APPLICABLE TO SERVICE OF NOTICES AND PROCESSES; AMENDING SECTION 41-1321, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO PROCEDURES RELATED TO UNDEFINED PRACTICES; REPEALING SECTION 41-1322, IDAHO CODE, APPLICABLE TO APPEALS BY INTERVENORS; AMENDING SECTION 41-1417, IDAHO CODE, TO REVISE NOTICE REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1426, IDAHO CODE, TO DELETE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1432, IDAHO CODE, TO REVISE A NOTICE REQUIREMENT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1434, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO HEARING PROCEDURES; REPEALING SECTION 41-1435, IDAHO CODE, APPLICABLE TO APPEALS FROM A DIRECTOR'S ORDER; AMENDING SECTIONS 41-1440 AND 41-1610, IDAHO CODE, TO REVISE NOTICE REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1614, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION AND TO REVISE A NOTICE REQUIREMENT; AMENDING SECTION 41-1619, IDAHO CODE, TO DELETE A CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-1620, IDAHO CODE, TO REVISE A NOTICE REQUIREMENT; AMENDING SECTION 41-1621, IDAHO CODE, TO REVISE A NOTICE REQUIREMENT, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 41-1622 AND 41-1623, IDAHO CODE,

TO REVISE NOTICE REQUIREMENTS; REPEALING SECTION 41-1625, IDAHO CODE, APPLICABLE TO HEARINGS AND APPEALS; AMENDING SECTION 41-2309, IDAHO CODE, TO REVISE A NOTICE REQUIREMENT AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 41-2315, IDAHO CODE, RELATING TO JUDICIAL REVIEW; AND AMENDING SECTION 41-2316, IDAHO CODE, TO REVISE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-231, Idaho Code, be, and the same is hereby amended to read as follows:

41-231. HEARINGS AND APPEAL -- SCOPE OF PROVISIONS. ~~Sections 41-232--41-246~~ Except as otherwise provided in title 41, Idaho Code, and to the extent not inconsistent therewith, chapter 52, title 67, Idaho Code, shall apply as to all hearings and as to all appeals from the director relative to any matter treated in this code~~;-except,-that-such sections-shall-not-apply-as-to-chapters-14-(property--insurance--rates),-15--(casualty--and-surety-rates),-16-(workmen's-compensation-rates),-and-17-(insurance-examining-bureaus)~~.

SECTION 2. That Section 41-233, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 41-235, Idaho Code, be, and the same is hereby amended to read as follows:

41-235. NOTICE OF HEARING. (1) Except where a longer period of notice is provided by other provisions of this code relative to particular matters, not less than ~~ten~~ fourteen (1~~0~~4) days in advance the director shall give notice of the time and place of the hearing, stating the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which hearing is held, the director shall give such notice to all persons whose pecuniary interests are to be directly and immediately affected by such hearing.

(2) If any such hearing ~~is-to-be-held-for--consideration--of--rules and--regulations-of-the-director,-or-for-the-consideration-of-other-matters-which-under-subsection-(1)-above~~ would otherwise require separate notices to more than one hundred (100) persons, in lieu of the notice required under such subsection the director may give notice of the hearing by publishing the notice in at least three (3), but not to exceed five (5), daily newspapers, at least once each week during the four (4) weeks immediately preceding the week in which the hearing is to be held. The director shall select such newspapers, as to location and circulation, as he deems necessary to give adequate opportunity of notice to such persons as should receive notice of the hearing. The published notice shall state the time and place of the hearing and shall specify the matters to be considered thereat. At the time of first publication the director shall mail to every advisory organization which has filed with him pursuant to section 41-1425, Idaho Code, a copy of the published notice if the proposed hearing would affect any interest of the members of such advisory organization.

(3) All such notices, other than published notices, shall be given as provided in section 41-212, Idaho Code.

SECTION 4. That Sections 41-239, 41-242 and 41-246, Idaho Code, be, and the same are hereby repealed.

SECTION 5. That Section 41-1016, Idaho Code, be, and the same is hereby amended to read as follows:

41-1016. ADMINISTRATIVE PENALTY -- SUSPENSION, REVOCATION, REFUSAL OF LICENSE. (1) The director may impose an administrative penalty not to exceed one thousand dollars ($1,000), for deposit in the general fund of the state of Idaho, and may suspend for not more than twelve (12) months or may revoke or refuse to issue or continue any license issued under this chapter, chapter 27, title 41, Idaho Code (title insurance), chapter 11, title 41, Idaho Code (adjusters), or any surplus lines broker license if, after ~~a hearing held on~~ not less than twenty-one (20~~1~~) days' notice of ~~such~~ the opportunity for a hearing and of the charges against the licensee given as provided in section 41-212(3), Idaho Code, to the licensee and to any appointing insurers represented (as to a producer who is appointed as an agent), the director finds that as to the licensee any one (1) or more of the following causes or violations exist:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(b) Violating any provision of title 41, Idaho Code, department rule, subpoena or order of the director or of another state's insurance director;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(e) Misrepresenting the terms of an actual or proposed insurance contract or application for insurance or misrepresenting any fact material to any insurance transaction or proposed transaction;

(f) Being convicted of or pleading guilty to any felony, or to a misdemeanor which evidences bad moral character, dishonesty, a lack of integrity and financial responsibility, or an unfitness and inability to provide acceptable service to the consuming public;

(g) Admitting or being found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others, in the conduct of business in this state or elsewhere;

(i) Having an insurance license denied, suspended or revoked in any other state, province, district or territory;

(j) Forging another's name on an application for insurance or on any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from an individual who is not licensed;

(m) Failing to comply with an administrative or court order imposing a child support obligation, provided however, that nothing in this provision shall be deemed to abrogate or modify chapter 14, title 7, Idaho Code; or

(n) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax.

(2) The director shall, without hearing, suspend for not more than twelve (12) months, or shall revoke or refuse to continue any license issued under this chapter to a nonresident where the director has received a final order of suspension, revocation or refusal to continue from the insurance regulatory official or court of jurisdiction of the licensee's home state. If cause under this provision exists after the expiration of the twelve (12) months, successive suspensions may be imposed by the director without hearing.

(3) In the event that the director denies or refuses to renew an application for a license, the director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the director within twenty-one (21) days for a hearing before the director to determine the reasonableness of the director's action. The hearing shall be held pursuant to chapter 2, title 41, and chapter 52, title 67, Idaho Code.

(4) The license of a business entity may be suspended, revoked or refused if the director finds, after hearing, that the violation of an individual licensee, who is registered to or acting on behalf of the business entity, was known or should have been known by one (1) or more of the owners, officers or managers acting on behalf of the business entity and that the violation was not reported to the director and no corrective action was taken.

(5) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine or administrative penalty pursuant to subsection (1) of this section or any other applicable section.

(6) The director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by title 41, Idaho Code, against any person who is under investigation for or charged with a violation of title 41, Idaho Code, or department rule, even if the person's license or registration has been surrendered, has lapsed by operation of law, or if the person has never been licensed.

SECTION 6. That Section 41-1301, Idaho Code, be, and the same is hereby amended to read as follows:

41-1301. PURPOSES OF TRADE PRACTICES LAW. The purpose of sections 41-1301 through 41-132~~2~~1, Idaho Code, is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in the act of congress of March 9, 1945 (Public Law 15, 79th Congress [ch. 20, 59 U.S. Stat. at Large 33]), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

SECTION 7. That Section 41-1320, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Section 41-1321, Idaho Code, be, and the same is hereby amended to read as follows:

41-1321. PROCEDURES AS TO UNDEFINED PRACTICES. (1) Whenever the director has reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not expressly prohibited or defined in this chapter, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon ~~to be held at a time and place fixed in the notice, which shall not be less than twenty (20) days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings~~ as provided for in chapter 2, title 41, ~~of this~~ Idaho Ccode, or seek any other relief authorized by title 41, Idaho Code. ~~The director shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person.~~

~~(2) If such report charges a violation of this chapter and if such method of competition, act or practice has not been discontinued, the director may, through counsel, at any time after thirty (30) days after the service of such report cause a petition to be filed in the District Court of Ada county, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.~~

~~(3) A transcript of the proceedings before the director, including all evidence taken and the report and findings, shall be filed with such petition. If either party applies to the court for leave to adduce additional evidence and shows, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceeding before the director, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as may seem proper to the court. The director may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.~~

~~(4) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the director with respect thereto is to the interest of the public and that the findings of the director are supported by the weight of the evidence, the court shall issue its orders enjoining and restraining the continuance of such method of competition, act or practice.~~

SECTION 9. That Section 41-1322, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Section 41-1417, Idaho Code, be, and the same is hereby amended to read as follows:

41-1417. ADMISSION OF SUBSCRIBERS -- SERVICES NONDISCRIMINATORY. (1) Subject to rules ~~and regulations~~ which have been approved by the director as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance or subdivision thereof, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules ~~and regulations~~ shall be given to subscribers.

(2) Each rating organization shall furnish its rating services without discrimination to its members and subscribers.

(3) The reasonableness of any rule ~~or regulation~~ in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the director at a hearing ~~held~~ upon ~~at least ten (10) days' written~~ notice to the rating organization and to the subscriber or insurer in accordance with chapter 2, title 41, Idaho Code. If the director finds that such rule ~~or regulation~~ is unreasonable in its application to subscribers, he shall order that the rule ~~or regulation~~ shall not be applicable to subscribers. If a rating organization fails to grant or reject an insurer's application for subscribership within thirty (30) days after it was made, the insurer may request a review by the director as if the application had been rejected. If the director finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

SECTION 11. That Section 41-1426, Idaho Code, be, and the same is hereby amended to read as follows:

41-1426. JOINT UNDERWRITING OR JOINT REINSURANCE. (1) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other applicable provisions of this chapter, or chapter 16 (~~workmen's~~worker's compensation rates), title 41, Idaho Code, and, with respect to joint reinsurance to sections as follows:

(a) Section 41-1427 (examination of rating, advisory, and joint reinsurance organizations);

(b) Section 41-1432 (penalties); and

(c) Section 41-1434 (hearing procedure)~~; and~~

~~(d) Section 41-1435 (appeal from the director)~~.

(2) If, after a hearing, the director finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the applicable provisions of this chapter, or chapter 16, title 41, Idaho Code, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with such provisions, and requiring the discontinuance of such activity or practice.

SECTION 12. That Section 41-1432, Idaho Code, be, and the same is hereby amended to read as follows:

41-1432. PENALTIES FOR VIOLATIONS OR NONCOMPLIANCE. (1) Violations of this chapter, or of chapter 16 (~~workmen's~~worker's compensation rates), title 41, Idaho Code, shall be subject to the penalties provided by section 41-117 (general penalty), Idaho Code.

(2) After a hearing ~~thereon of which not less than ten (10) days' written notice specifying the alleged noncompliance has been given the rating organization or insurer~~ in accordance with chapter 2, title 41, Idaho Code, the director may suspend or revoke any insurer which has failed to comply with an order of the director within the time limited by the order, or within any extension of time which the director may grant. The director shall not so suspend or revoke for failure to comply with his order until the time prescribed for an appeal from such order has expired or if an appeal has been taken, until such order has been affirmed. The director may determine when the suspension or revocation shall become effective, and, subject to section 41-329, Idaho Code, as to an insurer's certificate of authority, any suspension order shall remain in effect for the period fixed by him unless he modifies or rescinds the suspension or until the order upon which the suspension is based is modified, rescinded or reversed.

SECTION 13. That Section 41-1434, Idaho Code, be, and the same is hereby amended to read as follows:

41-1434. HEARING PROCEDURE. (1) An insurer, rating organization, or insurance examining bureau aggrieved by an order or decision of the director made without a hearing, may, within thirty (30) days after notice of the order to the insurer, organization or bureau, make written request to the director for a hearing thereon. The director shall hear such party or parties ~~within twenty (20) days after receipt of such request and shall give not less than ten (10) days' written notice of the time and place of the hearing. The hearing shall be concluded within fifteen (15) days from the commencement thereof, provided however, that the director upon application with notice to the interested parties and for good cause shown, may grant additional time, not exceeding fifteen (15) days. Within twenty (20) days after the conclusion of such hearing the director shall affirm, reverse or modify his previous action, specifying his reasons therefor, and shall give a copy of such order or decision to all interested parties.~~

~~(2) The order shall contain specific findings of fact by the director in relation to the matter before him, such findings to be supported by a preponderance of the evidence. Any party may file with the director proposed findings of fact, to be accepted or rejected by the director.~~

~~(3) Pending such hearing and decision thereon the director may suspend or postpone the effective date of his previous action.~~

~~(4) Nothing contained in this chapter or in chapter 16 (workmen's compensation rates), shall require the observance at any hearing before the director of formal rules of pleading or evidence, except that the right of any person to invoke such rules and the rule of exclusion of witnesses is preserved~~ in accordance with chapter 2, title 41, Idaho Code.

SECTION 14. That Section 41-1435, Idaho Code, be, and the same is hereby repealed.

SECTION 15. That Section 41-1440, Idaho Code, be, and the same is hereby amended to read as follows:

41-1440. HEARINGS. (1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may himself or by his authorized representative make written request of the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. If the request is not granted within thirty (30) days after it is made, the requestor may treat it as rejected. Any person aggrieved by the refusal of an insurer or rating organization to grant the review requested, or by the failure or refusal to grant all or part of the relief requested, may file a written complaint and request for hearing with the director, specifying the grounds relied upon. If the director has already disposed of the issue as raised by a similar complaint, he may deny the hearing. If the director believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he also finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in subsection (2)~~,~~ of this section.

(2) If after examination of an insurer, rating organization, advisory organization, or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in subsection (1)~~,~~ of this section, the director has good cause to believe that such insurer, organization, group or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is ~~wilful~~ willful, give notice in writing to such insurer, organization, group or association stating therein in what manner and to what extent noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten (10) days thereafter, in which the noncompliance may be corrected. Notices under this section shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless a hearing is held under subsection (3)~~,~~ of this section.

(3) If the director has good cause to believe that such noncompliance is ~~wilful~~ willful, or if within the period prescribed by the director in the notice required by subsection (2)~~,~~ of this section, the insurer, organization, group or association does not make such changes as may be necessary to correct the noncompliance specified by the director or establish to the satisfaction of the director that such specified noncompliance does not exist, then the director may hold a public hearing in connection therewith~~;--and-within-a-reasonable-period-of-time,-which-shall-be-not-less-than-ten-(10)-days-before-the-date-of-such-hearing,-he-shall-mail-written-notice-specifying-the-matters-to--be--considered-at-such-hearing-to-such-insurer,-organization,-group-or-association~~ in accordance with chapter 2, title 41, Idaho Code. If no notice has been given as provided in subsection (2)~~,~~ of this section, the notice shall state in what manner and to what extent noncompliance is alleged to exist. The hearing shall not consider any subject not specified in the notice required by subsection (2)~~,~~ of this section.

(4) If after a hearing pursuant to subsection (3) of this section, the director finds:

(a) That any rate, rating plan or rating system violates the applicable provisions of this chapter, he may issue an order to the insurer, or rating organization, group or association which has been the subject of the hearing specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the applicable provisions of this chapter other than the provisions dealing with rates, rating plans or rating systems, he may issue an order to such insurer, organization, group or association which has been the subject of the hearing specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter.

(c) That any such violation by an insurer or rating organization which has been the subject of hearing was ~~wilful~~ willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been a subject of the hearing.

(d) That any rating organization has ~~wilfully~~ willfully engaged in any fraudulent or dishonest act or practice, he may suspend or revoke, in whole or in part, the license of such organization in addition to any other penalty provided in this chapter.

(5) Except as otherwise provided in this chapter, all proceedings in connection with the denial, suspension or revocation of a license or certificate of authority shall be conducted in accordance with the provisions of chapters 2 and 3, ~~of this~~ title 41, Idaho Code, and the director shall have all the powers granted to him therein.

SECTION 16. That Section 41-1610, Idaho Code, be, and the same is hereby amended to read as follows:

41-1610. SUBSEQUENT DISAPPROVAL OF FILING. If any time subsequent to the applicable review period provided for in section 41-1608(2), Idaho Code, the director finds that a filing does not meet the requirements of this chapter, he shall after a hearing held ~~upon not less than ten (10) days' written notice, specifying the matters to be considered at such hearing~~ in accordance with chapter 2, title 41, Idaho Code, to every rating organization which made the filing, issue an order specifying in what respects he finds that the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. Copies of the order shall be sent to every such rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

SECTION 17. That Section 41-1614, Idaho Code, be, and the same is hereby amended to read as follows:

41-1614. DEVIATIONS. (1) Every member of a rating organization shall adhere to the filings made on its behalf by such organization except that any such insurer may make written application to the director for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance or for a class of insurance which is found by the director to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance (a) comprised of a group of manual classifications which is treated as a separate unit for rate-making purposes, or (b) for which separate expense provisions are included in the filings of the rating organization. Such applications shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization.

(2) The director shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them ~~not--less-than-ten-(10)-days'-written~~ notice thereof in accordance with chapter 2, title 41, Idaho Code. In the event the director is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In permitting or denying such modification with respect to ~~workmen's~~ worker's compensation insurance the director shall give consideration to the operating methods and expense provisions of the insurer as compared with the expense provisions included in the rating system filed by such rating organization.

(3) The director shall issue an order permitting the modification for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory.

(4) Each deviation permitted to be filed shall be effective for a period of one (1) year from the date of such permission unless terminated sooner with the approval of the director.

SECTION 18. That Section 41-1619, Idaho Code, be, and the same is hereby amended to read as follows:

41-1619. OTHER PROVISIONS APPLICABLE. Subject to the express provisions of this chapter, the following sections of chapter 14, title 41, Idaho Code, shall, to the extent so applicable, also apply as to this chapter:

(1) Section 41-1421 (technical services).

(2) Section 41-1425 (advisory organizations).

(3) Section 41-1426 (joint underwriting or joint reinsurance).

(4) Section 41-1427 (examination of rating, advisory, and joint reinsurance organizations).

(5) Section 41-1428 (recording, reporting of loss and expense experience).

(6) Section 41-1429 (interchange of data, consultation).

(7) Section 41-1431 (false, misleading information).

(8) Section 41-1432 (penalties for violations, noncompliance).

(9) Section 41-1433 (rules and regulations).

(10) Section 41-1434 (hearing procedure).
~~(11) Section 41-1435 (appeal from the director).~~

SECTION 19. That Section 41-1620, Idaho Code, be, and the same is hereby amended to read as follows:

41-1620. RATING ORGANIZATIONS. (1) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the director for license as a rating organization for such kinds of insurance or subdivisions thereof which are subject to this chapter as are specified in its application, and shall file therewith: (a) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business; (b) a list of its members and subscribers; (c) the name and address of a resident of this state upon whom notices or orders of the director or process affecting such rating organization may be served; and (d) a statement of its qualifications as a rating organization. If the director finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the director within sixty (60) days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for one (1) year unless sooner suspended or revoked by the director. The fee for the license shall be as provided by rule pursuant to section 41-401, Idaho Code. Licenses issued pursuant to this section may be suspended or revoked by the director, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the director promptly of every change in: (a) its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business; (b) its list of members and subscribers; and (c) the name and address of the resident of this state designated by it upon whom notices or orders of the director or process affecting such rating organization may be served.

(2) Subject to rules and regulations which have been approved by the director as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the director at a hearing held upon ~~at least ten (10) days' written~~ notice to such rating organization and to such subscriber or insurer in accordance with chapter 2, title 41, Idaho Code. If the director finds that such rule or regulation

is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty (30) days after it was made, the insurer may request a review by the director as if the application had been rejected. If the director finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

(3) Every member of or subscriber to a rating organization shall adhere to the rating organization's manuals of classifications, rules, rates, rating plans and any modifications of any of the foregoing, except to the extent that the rules of such rating organizations permit departures therefrom.

(4) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

SECTION 20. That Section 41-1621, Idaho Code, be, and the same is hereby amended to read as follows:

41-1621. APPEAL BY MINORITY. (1) Any member of or subscriber to a rating organization may appeal to the director from the action or decision of the rating organization in approving or rejecting any proposed change in or addition to the filings of the rating organization and the director shall, after a hearing held upon ~~not less than ten (10) days' written~~ notice to the ~~appellant~~ appellant and to the rating organization in accordance with chapter 2, title 41, Idaho Code, issue an order approving the action or decision of the rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member ~~of~~ or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in section 41-1603(2), Idaho Code, from the system of expense provisions included in a filing made by the rating organization, the director shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal the director shall apply the standards set forth in sections 41-1603 and ~~5~~41-1604, Idaho Code.

SECTION 21. That Section 41-1622, Idaho Code, be, and the same is hereby amended to read as follows:

41-1622. INFORMATION TO INSUREDS -- REVIEW OF INSURED'S COMPLAINT. (1) Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request

therefor and upon payment of such reasonable charges as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(2) Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty (30) days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty (30) days after written notice of such action, appeal to the director, who, after a hearing held upon ~~not less than ten (10) days' written~~ notice to the appellant and to such rating organization or insurer in accordance with chapter 2, title 41, Idaho Code, may affirm or reverse such action.

SECTION 22. That Section 41-1623, Idaho Code, be, and the same is hereby amended to read as follows:

41-1623. APPEAL FROM FILING. (1) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the director for a hearing thereon, provided, however, that the insurer or rating organization that made the filing shall not be authorized to proceed under this section. Such application shall specify the grounds to be relied upon by the applicant. If the director finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall~~, within thirty (30) days after receipt of such application,~~ hold a hearing upon ~~not less than ten (10) days' written~~ notice to the applicant and to every insurer and rating organization which made the filing in accordance with chapter 2, title 41, Idaho Code.

(2) If, after such hearing, the director finds that the filing does not meet the requirements of the law he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of law, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of the order shall be sent to the applicant and to every such insurer and rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

SECTION 23. That Section 41-1625, Idaho Code, be, and the same is hereby repealed.

SECTION 24. That Section 41-2309, Idaho Code, be, and the same is hereby amended to read as follows:

41-2309. FILING, APPROVAL AND WITHDRAWAL OF FORMS. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders delivered or issued for

delivery in this state and the schedule of premium rates pertaining thereto shall be filed with the director.

(2) The director shall within thirty (30) days after the filing of any such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the premium rates charged or to be charged are excessive in relation to benefits, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the coverage, or are contrary to any provision of this code or of any rule ~~or regulation~~ promulgated thereunder. In determining whether to disapprove any such forms the director shall give due consideration to past and prospective loss experience within and outside this state, to underwriting practice and judgment to the extent appropriate, and to all other relevant factors within and outside this state.

(3) If the director notifies the insurer that the form is disapproved, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the director shall specify the reason for his disapproval and state that a hearing will be granted within twenty (20) days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement or rider, shall be issued or used until the expiration of thirty (30) days after it has been so filed, unless the director shall give his prior written approval thereto.

(4) The director may, at any time after a hearing held ~~not less than twenty (20) days~~ after ~~written~~ notice to the insurer in accordance with chapter 2, title 41, Idaho Code, withdraw his approval of any such form on any ground set forth in subsection (2) ~~above~~ of this section. The written notice of such hearing shall state the reason for the proposed withdrawal.

(5) The insurer shall not issue such forms or use them after the effective date of such withdrawal.

(6) If a group policy of credit life insurance or credit disability insurance: (a) has been delivered in this state before the effective date of this code, or (b) has been or is delivered in another state before or after the effective date of this code, the insurer shall be required to file only the group certificate and notice of proposed insurance as specified in subsections (2) and (4) of section 41-2308, Idaho Code, and such forms shall be approved by the director if they conform with the requirements specified in such subsections and if the schedules of premium rates applicable to the insurance evidenced by such certificate or notice are not in excess of the insurer's schedules of premium rates on file with the director; provided, however, the premium rate in effect on existing group policies may be continued until the first policy anniversary date following the date this code becomes effective.

(7) Any order or final determination of the director under the provisions of this section shall be subject to judicial review as provided in chapter 2, ~~of this~~ title 41, Idaho Code.

SECTION 25. That Section 41-2315, Idaho Code, be, and the same is hereby repealed.

SECTION 26. That Section 41-2316, Idaho Code, be, and the same is hereby amended to read as follows:

41-2316. PENALTIES. In addition to any other penalty provided by law, any person who violates an order of the director after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Idaho a sum not to exceed two hundred ~~and~~ fifty dollars ($250) which may be recovered in a civil action, except that if such violation is found to be ~~wilful~~ willful, the amount of such penalty shall be a sum not to exceed one thousand dollars ($1,000). The director, in his discretion, may revoke or suspend the license or certificate of authority of the person guilty of such violation. Such order for suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review as provided in ~~section 41-2315~~ chapter 52, title 67, Idaho Code.

Approved March 21, 2005.

CHAPTER 78
(H.B. No. 119)

AN ACT

RELATING TO THE DEPARTMENT OF INSURANCE; AMENDING SECTION 41-213, IDAHO CODE, TO PROVIDE FURTHER ENFORCEMENT AUTHORITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1237, IDAHO CODE, TO REVISE A NOTICE PROVISION, TO PROVIDE THAT THE DIRECTOR MAY ORDER THE INSURER TO DESIST A PROHIBITED PRACTICE, TO REMOVE LANGUAGE REFERENCING FINDINGS BASED UPON HEARINGS AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 41-1319, IDAHO CODE, APPLICABLE TO DESIST ORDERS FOR PROHIBITED PRACTICES; AMENDING SECTION 41-1327, IDAHO CODE, TO REVISE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 41-4805, IDAHO CODE, TO REVISE A CODE REFERENCE.

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

SECTION 1. That Section 41-213, Idaho Code, be, and the same is hereby amended to read as follows:

41-213. ENFORCEMENT. (1) The director may institute such suits or other lawful proceedings as he may deem necessary for the enforcement of any provision of ~~this~~ title 41, Idaho Ceode. If the director believes that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of title 41, Idaho Code, any other law the director has authority to enforce, or any rule or order of the director, the director may, in accordance with the procedures set forth in title 41, Idaho Code, and chapter 52, title 67, Idaho Code:

(a) Issue an order requiring the person to cease and desist from any prohibited act or practice;

(b) Issue an order affecting a person's license for such reasons as set forth in title 41, Idaho Code;

(c) Issue an order imposing an administrative penalty as provided in title 41, Idaho Code; and

(d) Initiate any action in district court for the same relief or any relief authorized by title 41, Idaho Code.

(2) If the director believes that any person is violating or about to violate any provision of ~~this~~ title 41, Idaho Code, or any order or requirement of the director issued or promulgated pursuant to authority expressly granted the director by any provision of ~~this~~ title 41, Idaho Code, or by other law, the director may bring an action against such person in the name of the people of the state of Idaho in a district court of this state to enjoin such person from continuing such violation or doing any act in furtherance thereof. In the action the court may enter such order or judgment granting such preliminary or final injunction as the court determines to be proper.

(3) If the director has reason to believe that any person has violated any provision of ~~this~~ title 41, Idaho Code, or any provision of other law as applicable to insurance operations, for which criminal prosecution is provided and would be in order, he shall give the information relative thereto to the attorney general or county attorney having jurisdiction of any such violation. The attorney general or county attorney shall promptly institute such action or proceedings against such person as the information may require or justify.

(4) Whenever the director may deem it necessary, he shall employ counsel, or call upon the attorney general of this state for legal counsel and such assistance as may be necessary.

SECTION 2. That Section 41-1237, Idaho Code, be, and the same is hereby amended to read as follows:

41-1237. MISREPRESENTATION -- ACTION AND PENALTIES. (1) If within ~~thirty~~ twenty-one (~~30~~21) days following the giving of the notice provided for in section 41-1236, ~~of this act~~ Idaho Code, the insurer has not ceased such dissemination, and if the director has reason to believe that such insurer is soliciting, issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or performing any other transaction in connection with such insurance, and that a proceeding by him in respect to such matters would be ~~to~~ in the interest of the public, he shall ~~take action--against--such~~ order the insurer ~~under--the provisions of section 41-1319 (~~to desist ~~order for~~ the prohibited practices~~)-of this code~~.

(2) If ~~upon such hearing~~ the director finds that the insurer has misrepresented as referred to in section 41-1236, ~~of this act~~ Idaho Code, he shall by order on such hearing require the insurer to cease and desist from such violation, and shall mail a copy of the order by registered or certified mail to the insurer at its principal place of business last of record with the director and to the insurance supervisory officer of the insurer's domiciliary state or province. Each violation thereafter of such desist order shall subject the insurer to a penalty of two thousand dollars ($2,000), to be recovered by a civil action brought against the insurer by the director. Service of process upon the insurer in such action may be made upon the director pursuant to section 41-1207, ~~of this~~ Idaho Code, or in any other lawful manner.

SECTION 3. That Section 41-1319, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 41-1327, Idaho Code, be, and the same is hereby amended to read as follows:

41-1327. VIOLATIONS -- PENALTY. Any person who violates any provision of this chapter as to which a penalty is not expressly provided, or who violates a cease and desist order issued by the director under section 41-~~1319~~213, Idaho Code, after such order has become final, shall be subject to penalties as prescribed by or referred to in section 41-117, Idaho Code (general penalty).

SECTION 5. That Section 41-4805, Idaho Code, be, and the same is hereby amended to read as follows:

41-4805. RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE. Risk retention groups chartered in states other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before transacting any insurance business or offering any insurance policies in this state, a risk retention group shall submit to the director of this state:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the date of chartering, the risk retention group's principal place of business, and such other information including information concerning its membership as the director of this state may require to verify that the risk retention group is qualified as defined in subsection (11) of section 41-4803, Idaho Code;

(b) A copy of its plan of operations or feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which was defined in the product liability risk retention act of 1981 before October 27, 1986, and was offered before such date by any risk retention group which had been chartered and operating for not less than three (3) years before such date;

(c) A statement of registration which designates the director as its agent for the purpose of receiving service of legal documents or process against the risk retention group.

(2) Any risk retention group doing business in this state shall submit the following financial information to the director:

(a) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist operating under criteria established by the national association of insurance commissioners;

(b) A copy of each examination of the risk retention group as certified by the director or public official conducting the examination;

(c) Upon request by the director, a copy of any audit performed with respect to the risk retention group; and

(d) Such information as may be required to verify the group's continuing qualification as a risk retention group as defined in subsection (11) of section 41-4803, Idaho Code.

(3) All risk retention groups operating in this state, and all pre-

miums paid for any coverage within this state to any risk retention group, shall be subject to the same premium tax provisions, including any interest, fines, and penalties for nonpayment, as are applicable to foreign admitted insurers. To the extent any agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of any risk retention group not chartered in this state. To the extent any agents or brokers are not utilized, or agents or brokers that are utilized fail to pay said premium tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report to the director all premiums paid to it for risks insured within this state.

(4) Any risk retention groups and its agents and representatives are subject to and shall comply with the provisions of section 41-1329, Idaho Code (unfair claim settlement practices).

(5) Any risk retention group formed in this state shall comply with and be subject to chapter 13, title 41, Idaho Code (trade practices and frauds). The director may issue orders enjoining prohibited practices in accordance with section 41-~~1319~~213, Idaho Code, or section 41-1321, Idaho Code, or may apply directly to the district court for Ada county, state of Idaho, for such injunctive relief as he deems appropriate.

(6) Any risk retention group must submit to an examination by the director of this state to allow him to determine the group's financial condition if the director of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the director of this state. Any such examination shall be coordinated to avoid unjustified repetition or duplication and shall be conducted in an expeditious manner.

(7) Any policy issued by a risk retention group shall contain in 10 point or larger type on the front page and the declaration page, the following notice:

NOTICE

This policy has been issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(8) In addition to other restrictions that may be applicable, the following acts by a risk retention group are hereby prohibited:

(a) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

(b) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group whose members are all insurance companies.

(10) No risk retention group may offer any insurance policy or insurance coverage that has been declared unlawful by the Idaho supreme court or is in conflict with chapter 5 or chapter 25, title 41, Idaho Code.

(11) A risk retention group not chartered in this state and doing

business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by another state's insurance director if there has been a finding of financial impairment after an examination pursuant to subsection (6) of this section.

Approved March 21, 2005.

CHAPTER 79
(H.B. No. 120)

AN ACT

RELATING TO THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 57, TITLE 41, IDAHO CODE, TO PROVIDE A PREAMBLE, TO PROVIDE THAT THE DIRECTOR OF THE IDAHO DEPARTMENT OF INSURANCE SHALL SERVE AS IDAHO'S REPRESENTATIVE ON THE INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION, TO PROVIDE FOR ADOPTION OF THE COMPACT, TO SET FORTH PURPOSES, TO DEFINE TERMS, TO PROVIDE FOR THE ESTABLISHMENT OF THE COMMISSION, TO PROVIDE FOR VENUE, TO PROVIDE FOR POWERS OF THE COMMISSION, TO PROVIDE FOR THE ORGANIZATION OF THE COMMISSION, TO PROVIDE FOR MEETINGS AND ACTS OF THE COMMISSION, TO PROVIDE FOR RULES AND OPERATING PROCEDURES, TO SET FORTH PROVISIONS RELATING TO COMMISSION RECORDS AND ENFORCEMENT, TO PROVIDE FOR DISPUTE RESOLUTION, TO PROVIDE FOR PRODUCT FILING AND APPROVAL, TO PROVIDE FOR THE REVIEW OF COMMISSION DECISIONS REGARDING FILINGS, TO SET FORTH PROVISIONS RELATING TO THE FINANCES OF THE COMMISSION, TO PROVIDE THAT ANY STATE IS ELIGIBLE TO BECOME A COMPACTING STATE, TO PROVIDE FOR THE EFFECTIVE DATE OF THE COMPACT, TO PROVIDE FOR AMENDMENTS TO THE COMPACT, TO PROVIDE FOR WITHDRAWAL, DEFAULT AND TERMINATION, TO PROVIDE FOR SEVERABILITY AND CONSTRUCTION AND TO SET FORTH THE BINDING EFFECT OF THE COMPACT AND OTHER LAWS.

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

SECTION 1. That Title 41, Idaho Code, be, and same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 57, Title 41, Idaho Code, and to read as follows:

CHAPTER 57
INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

41-5701. PREAMBLE. Pursuant to terms and conditions of this chapter, the state of Idaho seeks to join with other states and establish the interstate insurance product regulation compact, and thus become a member of the interstate insurance product regulation commission. The director of the department of insurance is hereby designated to serve as the representative of this state to the interstate insurance product regulation commission.

41-5702. INTERSTATE INSURANCE PRODUCT REGULATION COMPACT. The "Interstate Insurance Product Regulation Compact" is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

ARTICLE I
PURPOSES

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

(1) To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

(2) To develop uniform standards for insurance products covered under the compact;

(3) To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one (1) or more compacting states;

(4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

(5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

(6) To create the "Interstate Insurance Product Regulation Commission"; and

(7) To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

ARTICLE II
DEFINITIONS

For purposes of this compact:

(1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

(2) "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.

(3) "Compacting state" means any state which has enacted this compact legislation and which has not withdrawn pursuant to article XIV, section (1) of this compact, or been terminated pursuant to article XIV, section (2) of this compact.

(4) "Commission" means the "Interstate Insurance Product Regulation Commission" established by this compact.

(5) "Commissioner" means the chief insurance regulatory official of a state including, but not limited to, commissioner, superintendent, director or administrator.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.

(7) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this act.

(8) "Member" means the person chosen by a compacting state as its representative to the commission, or his or her designee.

(9) "Noncompacting state" means any state which is not at the time a compacting state.

(10) "Operating procedures" means procedures promulgated by the commission implementing a rule, uniform standard or a provision of this compact.

(11) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an insurer is authorized to issue.

(12) "Rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to article VII of this compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

(13) "State" means any state, district or territory of the United States of America.

(14) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.

(15) "Uniform standard" means a standard adopted by the commission for a product line, pursuant to article VII of this compact, and shall include all of the product requirements in aggregate; provided, that each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable or against public policy as determined by the commission.

ARTICLE III
ESTABLISHMENT OF THE COMMISSION AND VENUE

(1) The compacting states hereby create and establish a joint public agency known as the "Interstate Insurance Product Regulation Commission." Pursuant to article IV, the commission will have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards; provided, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the state where filed.

(2) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

(4) Venue is proper and judicial proceedings by or against the com-

mission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

ARTICLE IV
POWERS OF THE COMMISSION

The commission shall have the following powers:

(1) To promulgate rules, pursuant to article VII of this compact, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(2) To exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission, provided that a compacting state shall have the right to opt out of such uniform standard pursuant to article VII, to the extent and in the manner provided in this compact, and, provided further, that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' (NAIC) long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the NAIC long-term care insurance model act or long-term care insurance model regulation adopted by the NAIC require amending of the uniform standards established by the commission for long-term care insurance products;

(3) To receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;

(4) To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

(5) To exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

(6) To promulgate operating procedures, pursuant to article VII of this compact, which shall be binding in the compacting states to the extent and in the manner provided in this compact;

(7) To bring and prosecute legal proceedings or actions in its name as the commission; provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

(9) To establish and maintain offices;

(10) To purchase and maintain insurance and bonds;

(11) To borrow, accept or contract for services of personnel, including, but not limited to, employees of a compacting state;

(12) To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

(13) To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety;

(14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;

(15) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

(16) To remit filing fees to compacting states as may be set forth in the bylaws, rules or operating procedures;

(17) To enforce compliance by compacting states with rules, uniform standards, operating procedures and bylaws;

(18) To provide for dispute resolution among compacting states;

(19) To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact;

(20) To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;

(21) To establish a budget and make expenditures;

(22) To borrow money;

(23) To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws;

(24) To provide and receive information from, and to cooperate with law enforcement agencies;

(25) To adopt and use a corporate seal; and

(26) To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

ARTICLE V
ORGANIZATION OF THE COMMISSION

(1) Membership, Voting and Bylaws.
(a) Each compacting state shall have and be limited to one (1) member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.
(b) Each member shall be entitled to one (1) vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds (2/3) of the members vote in favor thereof.
(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to:

(i) Establishing the fiscal year of the commission;

(ii) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;

(iii) Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees; and (ii) governing any general or specific delegation of any authority or function of the commission;

(iv) Providing reasonable procedures for calling and conducting meetings of the commission that consists of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the commission must make public: (i) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed; and (ii) votes taken during such meeting;

(v) Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

(vi) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(vii) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(viii) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and/or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

(2) Management Committee, Officers and Personnel.

(a) A management committee comprising no more than fourteen (14) members shall be established as follows:

(i) One (1) member from each of the six (6) compacting states with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;

(ii) Four (4) members from those compacting states with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(iii) Four (4) members from those compacting states with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws including, but not limited to:

(i) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(ii) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard; provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds (2/3) of the members of the management committee;

(iii) Overseeing the offices of the commission; and

(iv) Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other

staff as may be authorized by the commission.

(3) Legislative and Advisory Committees.

(a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two (2) advisory committees, one (1) of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(4) Corporate Records of the Commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

(5) Qualified Immunity, Defense and Indemnification.

(a) The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

ARTICLE VI
MEETINGS AND ACTS OF THE COMMISSION

(1) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(2) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

ARTICLE VII
RULES AND OPERATING PROCEDURES: RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

(1) Rulemaking Authority. The commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this act, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

(2) Rulemaking Procedure. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the model state administrative procedure act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee(s) in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) Effective Date and Opt Out of a Uniform Standard. A uniform standard shall become effective ninety (90) days after its promulgation by the commission or such later date as the commission may determine; provided, however, that a compacting state may opt out of a uniform standard as provided in this article. "Opt out" shall be defined as any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure or amendment.

(4) Opt Out Procedure. A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must: (a) give written notice to the commission no later than ten (10) business days after the uniform standard is promulgated, or at the time the state becomes a compacting state; and (b) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in

the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this act; and (ii) the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

(5) Effect of Opt Out. If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time as the opt out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under article XIV of this compact for withdrawals.

(6) Stay of Uniform Standard. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen (15) days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety (90) days, unless affirmatively extended by the commission; provided, a stay may not be permitted to remain in effect for more than one (1) year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

(7) Not later than thirty (30) days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure; provided, that the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the

petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

ARTICLE VIII
COMMISSION RECORDS AND ENFORCEMENT

(1) The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals' and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(2) Except as to privileged records, data and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data or information to the commission; provided, that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that, except as otherwise expressly provided in this act, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in article XIV of this compact.

(4) The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard or requirement of the compact relating to the content of an advertisement not approved or certified to the commis-

sion, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing or disclosure of requests for authorization or records of the commission's action on such requests.

ARTICLE IX
DISPUTE RESOLUTION

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two (2) or more compacting states, or between compacting states and noncompacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

ARTICLE X
PRODUCT FILING AND APPROVAL

(1) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this act shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision herein to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

ARTICLE XI
REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

(1) Not later than thirty (30) days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with article III, section (4) of this compact.

(2) The commission shall have authority to monitor, review and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in section (1) above.

ARTICLE XII
FINANCE

(1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in article VII of this compact.

(4) The commission shall be exempt from all taxation in and by the compacting states.

(5) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(6) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request, provided however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals' and insurers' proprietary information, including trade secrets, shall remain confidential.

(7) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

ARTICLE XIII
COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(1) Any state is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by two (2) compacting states; provided, the commission shall become effective for purposes of adopting uniform standards for reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after twenty-six (26) states are compacting states or, alternatively, by states representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

ARTICLE XIV
WITHDRAWAL, DEFAULT AND TERMINATION

(1) Withdrawal.

(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in paragraph (e) of this section.

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within ten (10) days after its receipt of notice thereof.

(e) The withdrawing state is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extends beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or

advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(2) Default.

(a) If the commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules or operating procedures; then, after notice and hearing as set forth in the bylaws, all rights, privileges and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to section (1) of this article.

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3) Dissolution of Compact.

(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one (1) compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XV
SEVERABILITY AND CONSTRUCTION

(1) The provisions of this compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XVI
BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) Other Laws.
(a) Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in paragraph (b) of this section.
(b) For any product approved or certified to the commission, the rules, uniform standards and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state including, but not limited to, maintaining any actions or proceedings, as authorized by law.
(c) All insurance products filed with individual states shall be subject to the laws of those states.
(2) Binding Effect of this Compact.
(a) All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.
(b) All agreements between the commission and the compacting states are binding in accordance with their terms.
(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.
(d) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Approved March 21, 2005.

CHAPTER 80
(H.B. No. 128)

AN ACT

RELATING TO DEATH INVESTIGATIONS; REPEALING SECTION 19-4301, IDAHO CODE, APPLICABLE TO DEATH INVESTIGATIONS BY COUNTY CORONERS; AND AMENDING CHAPTER 43, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-4301, IDAHO CODE, TO PROVIDE FOR THE INVESTIGATION OF DEATHS BY CORONERS, SHERIFFS AND CHIEFS OF POLICE.

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

SECTION 1. That Section 19-4301, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 43, 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 19-4301, Idaho Code, and to read as follows:

19-4301. COUNTY CORONER TO INVESTIGATE DEATHS. (1) When a county coroner is informed that a person has died, the county coroner shall investigate that death if:

(a) The death occurred as a result of violence, whether apparently by homicide, suicide or by accident;

(b) The death occurred under suspicious or unknown circumstances; or

(c) The death is of a stillborn child or any child if there is a reasonable articulable suspicion to believe that the death occurred without a known medical disease to account for the stillbirth or child's death.

(2) If a death occurs that is not attended by a physician and the cause of death cannot be certified by a physician, the coroner must refer the investigation of the death to the sheriff of the county or the chief of police of the city in which the incident causing the death occurred or, if such county or city is unknown, to the sheriff or chief of police of the county or city where the body was found. The investigation shall be the responsibility of the sheriff or chief of police. Upon completion of the investigation, a written report shall be provided to the coroner of the county in which the death occurred or, if such county is unknown, to the coroner of the county where the body was found.

(3) A coroner in the county where the incident causing the death occurred or, if such county is unknown, the coroner in the county where the body was found, may conduct an inquest if there are reasonable grounds to believe as a result of the investigation that the death occurred as provided in subsection (1) of this section.

(4) If an inquest is to be conducted, the coroner shall summon six (6) persons qualified by law to serve as jurors for the inquest.

(5) Nothing in this section shall be construed to affect the tenets of any church or religious belief.

Approved March 21, 2005.

CHAPTER 81
(H.B. No. 136)

AN ACT

RELATING TO FIRE INSURANCE; AMENDING SECTION 41-2401, IDAHO CODE, TO PROVIDE PROOF OF MAILING OF NOTICE OF CANCELLATION OF A FIRE INSURANCE POLICY, OR OF INTENTION NOT TO RENEW, OR OF REASONS FOR CANCELLATION OR NONRENEWAL TO THE NAMED INSURED AT HIS ADDRESS SHALL BE SUFFICIENT PROOF OF NOTICE.

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

SECTION 1. That Section 41-2401, Idaho Code, be, and the same is hereby amended to read as follows:

41-2401. STANDARD FIRE POLICY. (1) No fire insurer shall issue any fire insurance policy covering on property or interest therein in this state, other than on the form known as the New York standard as revised in 1943, except as follows:

(a) An insurer may print on or in its policy its name, location, date of incorporation, plan of operation, whether stock, mutual, reciprocal or organized under special charter provisions, and if mutual or reciprocal whether on cash premium or assessment plan; and if it be a stock company, the amount of its paid up capital stock, the names of its officers and agents, the number and date of the policy, and, if it is issued by an agent, the words, "this policy shall not be valid until countersigned by the duly authorized agent of the company at ...."; and, if a mutual or reciprocal insurer, the policy must state the contingent liability, if any, of its policyholders, members, or subscribers for payment of losses and expenses not provided for by its cash funds.

(b) An insurer may print or use in its policies printed forms of description and specifications of the property insured.

(c) An insurer insuring against damage by lightning may print in the clause enumerating the perils insured against the additional words, "also any damage by lightning whether fire ensues or not," and in the clause providing for an apportionment of loss in case of other insurance the words, "whether by fire, lightning or both."

(d) A domestic insurer may print in its policies any provisions which it is authorized or required by the law to insert therein, and any foreign insurer may, with the approval of the director, so print any provision required by its charter or deed of settlement, or by the laws of its own state or country, not contrary to the laws of this state; but the director shall require any provision which, in his opinion modifies the contract of insurance in such a way as to affect the question of loss, to be appended to the policy by an endorsement or rider as hereinafter provided.

(e) The blanks in the standard form may be completed in print or in writing.

(f) An insurer may print upon policies issued in compliance with the preceding provisions of this section the words, "Idaho standard policy."

(g) An insurer may write upon the margin or across the face of the policy, or write or print in type not smaller than nonpareil upon a slip, slips, rider or riders to be attached thereto, provisions adding to or relating to those contained in the standard form; and all such slips, riders, endorsements and provisions must be signed by the officers or agents of the insurer so using them.

(h) If the policy be made by a mutual, reciprocal or other insurer having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance such regulations shall apply to and form a part of the policy as the same may be written or printed upon, attached or appended thereto.

(i) Every policy shall have legibly inscribed upon its face and filing back suitable words to designate whether the insurer making such insurance be a stock, mutual or reciprocal insurer, provided, that any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.

(j) Every fire policy shall contain language that provides for a thirty (30) day written notice to the insured prior to cancellation of the policy. Proof of mailing of notice of cancellation, or of intention not to renew, or of reasons for cancellation or nonrenewal to the named insured at his address shall be sufficient proof of notice.

(k) Every fire policy shall provide that it becomes effective at 12:01 a.m. of the standard time of the place where the property covered by the insurance is located, on the effective date of the policy.

(2) An insurer issuing the standard fire policy is authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under the policy; but nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination.

(3) The standard fire policy is not mandatory for vehicle insurance, or for marine insurance, or inland marine insurance as the same is defined pursuant to section 41-1401(2), Idaho Code, or for insurance on growing crops.

(4) Any policy or contract otherwise subject to the provisions of subsection (1) hereof, which includes either on an unspecified basis as to the coverage or for a single premium coverage against the peril of fire and substantial coverage against other perils need not comply with the provisions of subsection (1) hereof, provided:

(a) Such policy or contract shall afford coverage, with respect to the peril of fire, not less than the coverage afforded by such standard fire policy,

(b) The provisions in relation to mortgagee interests and obligations in such standard fire policy shall be incorporated therein without change,

(c) Such policy or contract is complete as to all of its terms without reference to the standard form of fire insurance policy or any other policy, and

(d) The director is satisfied that such policy or contract complies with the provisions hereof.

Approved March 21, 2005.

CHAPTER 82
(H.B. No. 141)

AN ACT

RELATING TO ELECTRICAL CONTRACTORS AND JOURNEYMEN; AMENDING SECTION 54-1003A, IDAHO CODE, TO REQUIRE ELECTRICAL CONTRACTORS AND SPECIALTY ELECTRICAL CONTRACTORS TO PROVIDE PROOF OF LIABILITY INSURANCE AND PROOF OF WORKER'S COMPENSATION INSURANCE, IF APPLICABLE, PRIOR TO BEING ISSUED A LICENSE; AND AMENDING SECTION 54-1013, IDAHO CODE, TO REQUIRE ELECTRICAL CONTRACTORS AND SPECIALTY ELECTRICAL CONTRACTORS TO PROVIDE PROOF OF LIABILITY INSURANCE AND PROOF OF WORKER'S COMPENSATION INSURANCE, IF APPLICABLE, PRIOR TO BEING ISSUED A LICENSE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 54-1003A, Idaho Code, be, and the same is hereby amended to read as follows:

54-1003A. DEFINITIONS. (1) Electrical Contractor. Except as provided in section 54-1016, Idaho Code, any person, partnership, company, firm, association or corporation engaging in, conducting, or carrying on the business of installing wires or equipment to carry electric current or installing apparatus to be operated by such current, or entering into agreements to install such wires, equipment or apparatus, shall for the purpose of this act be known as an electrical contractor. An electrical contractor, prior to being issued a license, shall be required to provide proof of liability insurance in the amount of three hundred thousand dollars ($300,000) and proof of worker's compensation insurance if applicable.

(2) Journeyman Electrician. Except as provided in section 54-1016, Idaho Code, and subsections (3), (4), (5) and (6) of this section, any person who personally performs or supervises the actual physical work of installing electric wiring or equipment to convey electric current, or apparatus to be operated by such current, shall, for the purpose of this act, be known as a journeyman electrician.

(3) Apprentice Electrician. Any person who, for the purpose of learning the trade of journeyman electrician, engages in the installation of electric wiring, equipment, or apparatus while under the constant on-the-job supervision of a qualified journeyman electrician shall, for the purpose of this act, be known as an apprentice electrician.

(4) Maintenance Electrician. Any person who is regularly employed to service, maintain or repair electrical apparatus, or to make minor repairs or alterations to existing electrical wires or equipment located on his employer's premises shall, for the purpose of this act, be known as a maintenance electrician.

(5) Master Electrician. A person who has the necessary qualifications, training, experience and technical knowledge to plan, layout or design the installation of electrical wiring or equipment, or to supervise such planning, layout, or design, and who performs or supervises such planning, layout or design, shall, for the purpose of this act, be known as a master electrician.

(6) Specialty Electrician. A person having the necessary qualifications, training, experience and technical knowledge to install, alter, repair and supervise the installing, altering or repairing of special classes of electrical wiring, apparatus or equipment within categories adopted by the board. Specialty electricians shall perform work only within the scope of the specialty category for which the person is licensed.

(7) Specialty Electrical Contractor. Except as provided in section 54-1016, Idaho Code, any person, partnership, company, firm, association or corporation engaging in, conducting or carrying on the business of installing, altering or repairing special classes of electrical wiring, apparatus or equipment within categories adopted by the board or entering into agreements to perform such specialty work, shall for the purpose of this act be known as a specialty electrical contractor. Specialty electrical contractors shall perform work only within the scope of the specialty category for which the contractor is licensed. A specialty electrical contractor, prior to being issued a license, shall be required to provide proof of liability insurance in the amount of three hundred thousand dollars ($300,000) and proof of worker's compensation insurance if applicable.

(8) Specialty Electrical Trainee. Any person who, for the purpose of learning the trade of a specialty electrician, engages in the installation of electrical wiring, equipment or apparatus while under the constant on-the-job supervision of a qualified specialty electrician shall, for the purpose of this act, be known as a specialty electrical trainee.

SECTION 2. That Section 54-1013, Idaho Code, be, and the same is hereby amended to read as follows:

54-1013. RENEWAL OF LICENSES. (1) A license once issued under this ~~act~~ chapter, unless revoked or suspended as herein provided, may be renewed at any time during the final month of the licensing period on the payment of the renewal fee herein specified, proof of satisfaction of the continuing education requirements as established by the electrical board, and provided that all outstanding civil penalties, and permit or other fees, have been paid in full, and all outstanding correction notices have been satisfactorily resolved. For electrical contractors and specialty electrical contractors, proof of liability insurance in the amount of three hundred thousand dollars ($300,000) shall also be required, and proof of worker's compensation insurance shall be required if applicable.

(2) Any license which has expired may be revived at any time within one (1) year from the first day of the final month of the licensing period, by payment of the revival fee herein specified, together with all outstanding civil penalties, and permit or other fees and penalties, and upon proof that outstanding correction notices have been satisfactorily resolved. For electrical contractors and specialty electrical contractors, proof of liability insurance in the amount of three hundred

thousand dollars ($300,000) shall also be required, and proof of worker's compensation insurance shall be required if applicable.

(3) Certificates of competency issued prior to July 1, 1961, shall, for the purpose of this ~~act~~ chapter, be considered as licenses and may be renewed or revived as herein provided.

Approved March 21, 2005.

CHAPTER 83
(H.B. No. 144)

AN ACT

RELATING TO HIGHWAY CONSTRUCTION DANGER ZONES; AMENDING SECTION 49-104, IDAHO CODE, TO DELETE THE DEFINITION "CONSTRUCTION DANGER ZONE"; AMENDING SECTION 49-124, IDAHO CODE, TO PROVIDE A DEFINITION FOR "WORK ZONE" AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 49-657, IDAHO CODE, TO PROVIDE PROPER TERMINOLOGY.

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

SECTION 1. That Section 49-104, Idaho Code, be, and the same is hereby amended to read as follows:

49-104. DEFINITIONS -- C.

(1) "Cancellation of driver's license" means the annulment or termination by formal action of the department of a person's driver's license because of some error or defect in the driver's license or because the licensee is no longer entitled to the driver's license. The cancellation of a driver's license is without prejudice and after compliance with requirements, the individual may apply for a new driver's license at any time after cancellation.

(2) "Caravaning" means the transportation of any motor vehicle into, out of, or within the state operating on its own wheels or in tow for the purpose of sale or offer of sale by any agent, dealer, manufacturer's representative, purchaser, or prospective purchaser, regardless of residence unless the motor vehicle is licensed by the state of Idaho, or is owned by an automobile dealer, duly licensed as a dealer by this state. It shall also be considered as the transportation of property for hire by a motor vehicle upon the highways of this state.

(3) "Certificate of liability insurance" means a certificate of liability insurance issued by an insurance company authorized to do business in this state or a certificate of liability insurance issued by the department of insurance which demonstrates current insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by accident and arising out of the operation, maintenance or use of a motor vehicle described in the certificate in an amount not less than that required by section 49-1212, Idaho Code, and also demonstrates the current existence of any other coverage required by title 41, Idaho Code, or a certificate of self-insurance issued pursuant to law for each motor vehicle to be registered. A certificate of liability insurance shall contain the information required by the department of insurance, including the name

and address of the owner of the motor vehicle and a description of the motor vehicle including identification number if there is one, or a statement that all vehicles owned by a person or entity are covered by insurance, the inception date of coverage, and the name of the insurer. "Certificate of liability insurance" may also include the original contract of liability insurance or a true copy, demonstrating the current existence of the liability insurance described above.

(4) "Certification of safety compliance" means that a motor carrier certifies as part of its registration process that it has knowledge of the federal regulations and rules promulgated by the Idaho transportation department and the Idaho state police applicable to motor carriers.

(5) "Commercial coach." (See section 39-4105, Idaho Code)

(6) "Commercial driver's license" means any class A, class B or class C driver's license as defined in section 49-105, Idaho Code.

(7) "Commercial driver license information system (CDLIS)" is the information system established to serve as a clearinghouse for locating information related to the licensing and identification of motor vehicle drivers.

(8) "Commercial driver training school" means a business enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically, or both, to operate or drive motor vehicles, and charging a consideration or tuition for such services.

(9) "Commercial vehicle" or "commercial motor vehicle." (See "Vehicle," section 49-123, Idaho Code)

(10) "Compliance review" means an on-site examination of motor carrier operations, which may be at the carrier's place of business, including driver's hours of service, vehicle maintenance and inspection, driver qualifications, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and such other related safety and transportation records to determine safety fitness.

(11) ~~"Construction--danger-zone" means a construction or maintenance area that is located on or adjacent to a highway and marked by appropriate warning signs.~~

~~(12)~~ "Controlled substance" means any substance so classified under section 102(6) of the controlled substances act (21 U.S.C. 802(6)), and includes all substances listed on schedules I through V, of 21, CFR part 1308, as they may be revised from time to time.

(13~~2~~) "Conviction" means the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment. A conviction for purposes of this title shall also include an infraction judgment.

(14~~3~~) "Crosswalk" means:

(a) That part of a highway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable highway; and in the absence of a sidewalk on one side of the highway, that part of a highway included within the extension of the lateral lines of the existing sidewalk at right angles to the centerline.

(b) Any portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

SECTION 2. That Section 49-124, Idaho Code, be, and the same is hereby amended to read as follows:

49-124. DEFINITIONS -- W.

(1) "Wheelchair, motorized." (See "Motorized ~~W~~wheelchair," section 49-114, Idaho Code)

(2) "Wholesaler" means a dealer who sells used vehicles to Idaho dealers.

(3) "Work zone" means a construction or maintenance area that is located on or adjacent to a highway and marked by appropriate warning signs.

(4) "Wrecker" means a motor vehicle designed and used primarily for towing other vehicles that may be disabled. A wrecker engaged in a motor vehicle recovery operation and which is blocking part or all of one (1) or more lanes of traffic shall be designated an emergency vehicle.

SECTION 3. That Section 49-657, Idaho Code, be, and the same is hereby amended to read as follows:

49-657. ~~CONSTRUCTION--DANGER~~ WORK ZONE SPEED LIMITS -- PENALTY. (1) No person shall operate a vehicle in excess of the posted maximum speed limit established for a highway ~~construction-danger~~ work zone when the ~~construction-danger~~ work zone is designated by appropriately placed signs indicating: ~~construction-danger~~ the work zone; the reduced speed limit; and notice of an enhanced penalty for exceeding the reduced speed limit.

(2) Violation of the provisions of this section shall be an infraction punishable by a fixed penalty of fifty dollars ($50.00).

Approved March 21, 2005.

CHAPTER 84
(H.B. No. 155)

AN ACT

RELATING TO THE CERTIFIED SHORTHAND REPORTERS ACT; AMENDING SECTION 54-3102, IDAHO CODE, TO CLARIFY A DEFINITION; AMENDING SECTION 54-3108, IDAHO CODE, TO REVISE EXAMINATION REQUIREMENTS, TO DELETE LANGUAGE EXEMPTING CERTAIN APPLICANTS FROM EXAMINATION REQUIREMENTS AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 54-3109, IDAHO CODE, TO UPDATE REFERENCES AND TO DELETE LANGUAGE PROVIDING FOR EXPERIENCE QUALIFICATIONS AS ESTABLISHED BY RULE; AMENDING SECTION 54-3110, IDAHO CODE, TO INCREASE THE MAXIMUM REINSTATEMENT FEE AND TO PROVIDE FOR A FEE FOR EXAMINATION PREPARATION MATERIALS; AND AMENDING SECTION 54-3111, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO THE CONDUCT OF EXAMINATIONS.

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

SECTION 1. That Section 54-3102, Idaho Code, be, and the same is hereby amended to read as follows:

54-3102. DEFINITIONS. Unless otherwise expressly stated, when used in this act the following words and phrases shall have the following meanings:

(a) "Shorthand reporting" means the making of written symbols or abbreviations in shorthand or machine shorthand writing of a verbatim record of any oral court proceedings, deposition, or proceedings before any grand jury, referee, or court commissioner, contemporaneous with the event.

(b) "Certified shorthand reporter" or its abbreviation "C.S.R." means any person holding a valid regular or temporary certificate as a shorthand reporter as provided in this act.

(c) "Board" means the state certified shorthand reporters board.

(d) "Official court reporter" means the official court reporter of a federal district court in the state or the district court reporter of any state district court, but does not include any reporter of the magistrates division of any state district court.

(e) "Freelance reporter" means any shorthand reporter engaged in the practice of shorthand reporting as defined in this act who is not an official court reporter.

(f) "Available" means physically present at the time and place indicated or that the person could be physically present at the time and place indicated if a specific request was made.

SECTION 2. That Section 54-3108, Idaho Code, be, and the same is hereby amended to read as follows:

54-3108. QUALIFICATIONS -- ~~CERTIFICATION WITHOUT~~ REQUIRED EXAMINATION -- RENEWAL OF CERTIFICATES. (1) Applicants for certification must take and pass the Idaho certified shorthand reporter examination. Alternatively, applicants for certification must provide proof, satisfactory to the board, of having passed one (1) of the following examinations within the two (2) years prior to the date of the application:

(a) The registered professional reporter (RPR) examination;

(b) The registered merit reporter (RMR) examination;

(c) The registered diplomate reporter (RDR) examination; or

(d) The certified realtime reporter (CRR) examination.

(2) Any applicant who is a citizen of the United States of good moral character, having graduated from an accredited high school or having had an equivalent education, ~~and having passed a reporters' examination as herein provided~~ shall be entitled to receive a certificate as a certified shorthand reporter upon payment of the fees required by this act. All applications shall be in such form as prescribed by the board and filed with the board at least thirty (30) days prior to the announced date of the reporters' examination. The board in its discretion may make such additional investigation and inquiry, or require additional information from the applicant, as it shall deem necessary in determining the qualifications of the applicant. The board shall thereupon notify the applicant as to whether his application to take the reporters' examination is accepted.

~~(b) Any applicant who was an official court reporter within the state of Idaho upon the effective date of this act and any freelance reporter who has been in the active practice of shorthand reporting for at least one (1) year within the state of Idaho immediately preceding the effective date of this act shall not be required to take or pass the~~

~~reporters'-examination-but-shall-be--entitled--to--a--regular--certified shorthand--reporter-certificate-upon-filing-a-proper-application-showing that-he-possesses-the-other-required-qualifications-and-upon-paying--the fees-required-by-this-chapter.~~

(~~c~~3) All regular certified shorthand reporter certificates shall be issued for a period of one (1) year and shall be renewable upon payment of the renewal fee prescribed in section 54-3110, Idaho Code, for an additional period of one (1) year.

SECTION 3. That Section 54-3109, Idaho Code, be, and the same is hereby amended to read as follows:

54-3109. QUALIFICATIONS FOR TEMPORARY CERTIFICATION -- RENEWAL. (1) A temporary certified shorthand reporter certificate may be issued to an applicant who pays the fees required by the provisions of this chapter and who:

(a) Is of good moral character; and

(b) Has graduated from an accredited high school or has an equivalent education; and

(~~c~~i) Is currently licensed in good standing in another state as a certified shorthand reporter, or its equivalent, or has otherwise demonstrated his proficiency by a certificate from an agency of another state~~,~~; or

(ii) H~~h~~as graduated from a national ~~shorthand~~ court reporters association (N~~S~~CRA) approved school.~~;-and~~

~~(d)--Meets--the--experience-qualifications-that-the-board-may-establish-by-rule.~~

(2) The application shall be upon such form as prescribed by the board and the board may in its discretion make additional investigation and inquiry, or require further information from the applicant, as it shall deem necessary in order to make a determination of the qualifications of the applicant.

(3) All temporary certified shorthand reporter certificates shall be issued for a period of one (1) year and may be renewable for a single additional period of one (1) year upon the payment of the fees prescribed in section 54-3110, Idaho Code, and upon a showing of just cause.

SECTION 4. That Section 54-3110, Idaho Code, be, and the same is hereby amended to read as follows:

54-3110. FEES. The board shall be entitled to charge and collect the following fees:

(a) The sum of fifty dollars ($50.00) as an application fee for any temporary or regular certificate.

(b) The sum of fifty dollars ($50.00) as an examination fee for the administration of the reporters' examination to any applicant.

(c) A sum not to exceed seventy-five dollars ($75.00) as a renewal fee for any regular or temporary certificate.

(d) A sum not to exceed ~~forty~~ one hundred dollars ($~~40.~~100) as a reinstatement fee for any application for reinstatement of a temporary or regular certificate which has been revoked or suspended.

(e) The failure to renew a certificate annually as provided in this section and sections 54-3108 and 54-3109, Idaho Code, shall not deprive

such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the due date shall be increased twenty percent (20%) for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the renewal fee for each year delinquent.

(f) A sum not to exceed twenty dollars ($20.00) as a fee for examination preparation materials.

SECTION 5. That Section 54-3111, Idaho Code, be, and the same is hereby amended to read as follows:

54-3111. EXAMINATIONS. ~~(a)~~ The board shall ~~hold~~ conduct the Idaho certified shorthand reporter examination at least ~~one (1) reporters' examination during each~~ once every year ~~and~~ may ~~hold such~~ conduct additional examinations. ~~as are necessary.~~ The secretary shall give public notice of the time and place of each examination at least one hundred twenty (120) days in advance of the date set for the examination and any person desiring to take the reporters' examination must file his application with the board at least thirty (30) days prior to the date of the examination.

~~(b) The preparation, administration and grading of the examination shall be governed by rules prescribed by the board, but the board may, in its discretion, engage the national shorthand reporters association to conduct such examination under supervision of the board. Upon determining the results of the examination, the board shall notify each examinee as to whether he passed or failed the examination by written notice mailed to the applicant by certified mail to his address indicated in his application.~~

Approved March 21, 2005.

CHAPTER 85
(H.B. No. 181)

AN ACT

RELATING TO SIZE OF MOTOR VEHICLES AND LOAD RESTRICTIONS; AMENDING SECTION 49-1010, IDAHO CODE, TO PROVIDE A RESTRICTION ON THE ALLOWABLE LENGTH OF CERTAIN DROMEDARY COMBINATIONS TRANSPORTING CLASS 1 EXPLOSIVE MATERIALS AS SPECIFIED BY FEDERAL REGULATION AND TO SPECIFY THE ALLOWABLE OVERHANG OR EXTENSION OF A LOAD BEYOND THE END OF A VEHICLE.

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

SECTION 1. That Section 49-1010, Idaho Code, be, and the same is hereby amended to read as follows:

49-1010. SIZE OF VEHICLES AND LOADS. No vehicle shall exceed the dimensions specified below, except that certain devices determined by the board as necessary for the safe and efficient operation of motor vehicles, including energy conservation devices, shall be excluded from the calculation of width or length.

(1) The width of a vehicle, including any load thereon, except as noted below, shall not exceed ..... 8 1/2 feet.

(a) The limitations as to size of vehicles stated in this section shall not apply to farm tractors or to implements of husbandry, including any load thereon, or any trailer not wider than the implement of husbandry used in the transportation of implements of husbandry for agricultural operations, and including all equipment used in land leveling operations, when being incidentally operated upon the highway from one (1) farm operation to another during daylight hours.

(b) Notwithstanding the exemption from width limitation for farm tractors included in paragraph (a) of this subsection, the total outside width of any farm tractor being transported on the interstate system in this state,

except as permitted by section 49-1004, Idaho Code, shall not exceed ..... 9 feet.

(c) A farm tractor or implement of husbandry, when being incidentally transported upon the highway with a width in excess of the limits of paragraphs (a) and (b) of this subsection, must display one (1) red or fluorescent orange flag a minimum of twelve (12) by twelve (12) inches on the outermost left projection of the tractor or implement being transported.

(2) The height of a vehicle, including the load thereon, shall not exceed ..... 14 feet.

(3) The length of a vehicle, or vehicle combination, except as noted below shall not exceed:

(a) When a single motor vehicle ..... 45 feet.

(b) When a trailer or semitrailer, except as noted below ..... 48 feet.

1. Semitrailers operating on routes determined by the board to have severe curvature, deficient width and/or heavy traffic conditions shall be limited to an overall combination length not to exceed ..... 65 feet.

2. The length of a trailer tongue, or the length of the tongue of a converter gear used to convert a semitrailer to a trailer, shall be excluded from the calculation of a trailer length.

3. Semitrailers operating on routes which are a part of the national network as set forth in 23 CFR 658, on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network and state highways as set forth by policy and approved by the transportation board shall not exceed a length of ..... 53 feet.

(c) When a motor vehicle and one (1) or more trailers, except as noted in subsections (3)(b), (3)(d) and (3)(e) of this section ..... 75 feet.

(d) When a combination of semitrailer and trailer, or of two (2) semitrailers the length in such combination, including the connecting tongue and excluding the truck tractor except as noted below ..... 61 feet.

When the combination of semitrailer and trailer or of two (2) semitrailers including the connecting tongues exceeds sixty-one (61) feet, the length of such combination including the truck tractor ..... 75 feet.

(e) When a combination of a semitrailer and trailer, or of two (2) semitrailers operating on routes on the national network as set

forth in 23 CFR 658, and on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network, the length, including the connecting tongue and excluding the truck tractor, shall not exceed ..... 68 feet.

(f) When a dromedary tractor with semitrailer, stinger-steered by having the kingpin located five (5) feet to the rear of the centroid of the rear axle(s) ..... 75 feet.

(g) When a dromedary combination transporting class 1 explosive materials and/or any munitions-related security material as specified by the U.S. department of defense in compliance with 49 CFR 177.835. not meeting the stinger-steer requirement as defined in subsection (3)(f) of this section, up to ..... 75 feet.

(h) When a dromedary tractor with semitrailer, not meeting the stinger-steer requirement as defined in subsection (3)(f) of this section ..... 65 feet.

(~~h~~i) When an auto transporter or boat transporter, stinger-steered as defined in subsection (3)(f) of this section, excluding front and rear overhang of load ..... 75 feet.

(~~i~~j) When an auto transporter or boat transporter, not meeting the stinger-steer requirement as defined in subsection (3)(f) of this section, excluding front and rear overhang of load ..... 65 feet.

(~~j~~k) When a truck tractor with stinger-steered pole trailer or log dolly, connected by a reach or pole, or a combination used for transporting long loads such as poles, pipes, logs or structural members generally capable of sustaining themselves as beams between supporting bunks or connections ..... 75 feet.

(4) The overhang or extension of a load shall not extend:

(a) Beyond the front of a vehicle, more than ..... 4 feet.

(b) Beyond the ~~last axle~~ end of a vehicle, more than .... 150 feet.

(c) Beyond the left fender of a passenger vehicle, more than ..... 0 feet.

(d) Beyond the right fender of a passenger vehicle, more than ..... 6 inches.

(e) To the front and rear combined of an auto transporter or boat transporter, more than .....7 feet.

(5) Noncargo-carrying devices necessary for the safe and efficient operation of the vehicle, as determined by the board, shall not be included in measurement for length.

(6) No combination shall include more than three (3) units except when a saddlemount combination ..... 75 feet.

(7) Vehicle combinations consisting of not more than four (4) vehicle units with an overall length in excess of the limits of subsection (3) of this section and with an overall combination length not to exceed one hundred fifteen (115) feet, may be operated by permit on routes designated for such operations by the public highway agency having jurisdiction over that highway system, subject to the following restrictions as to lengths of cargo-carrying units:

(a) Truck tractor and two (2) trailing units ..... 95 feet.

(b) Truck tractor and three (3) trailing units ..... 95 feet.

(c) Truck and two (2) trailing units ..... 98 feet.

Approved March 21, 2005.

CHAPTER 86
(H.B. No. 190)

AN ACT

RELATING TO REIMBURSEMENT RATES UNDER MEDICAID; AMENDING CHAPTER 1, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-118, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND WELFARE SHALL IMPLEMENT A METHODOLOGY FOR REVIEWING AND DETERMINING REIMBURSEMENT RATES TO PRIVATE BUSINESSES PROVIDING DEVELOPMENTAL DISABILITY AGENCY SERVICES, MENTAL HEALTH SERVICES, SERVICE COORDINATION AND CASE MANAGEMENT SERVICES, RESIDENTIAL HABILITATION AGENCY SERVICES AND AFFILIATED RESIDENTIAL HABILITATION SPECIALIZED FAMILY HOME SERVICES ANNUALLY, TO PROVIDE REQUIREMENTS FOR THE METHODOLOGY, TO PROVIDE FOR A REPORT AND TO PROVIDE THE EFFECT OF THE REVIEW.

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

SECTION 1. That Chapter 1, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-118, Idaho Code, and to read as follows:

56-118. REIMBURSEMENT RATES. (1) The department shall implement a methodology for reviewing and determining reimbursement rates to private businesses providing developmental disability agency services, mental health services, service coordination and case management services, residential habilitation agency services and affiliated residential habilitation specialized family home services annually.

(2) In addition to any policy or federal statutory requirements, such methodology shall incorporate, at a minimum, the following:

(a) The actual cost of providing quality services, including personnel and total operating expenses, directly related to providing such services which shall be provided by the private business entities;

(b) Changes in the expectations placed on private business providers in delivering services;

(c) Inflationary effects on the private business providers' ability to deliver the service since the last adjustment to the rate;

(d) Comparison of rates paid in neighboring states for comparable services;

(e) Comparison of any rates paid for comparable services in other public or private capacities.

(3) A report of the results of this analysis and review shall be sent to the director, to the joint finance-appropriations committee and the health and welfare committees of the senate and the house of representatives by November 30 of each year. The department shall include in the report cost saving suggestions that private businesses shall provide. Any changes in reimbursement rates shall include estimated costs of implementation based on the current caseload forecasts and shall be submitted as part of the department's budget request required in section 67-3502, Idaho Code. Reimbursement rates included in appropriation bills enacted by the legislature shall become effective not later than July 1 of each year.

(4) The results of this annual review and analysis and subsequent rules do not guarantee a change in reimbursement rates, but shall be a fair and equitable process for establishing and reviewing such rates.

Approved March 21, 2005.

CHAPTER 87
(H.B. No. 235)

AN ACT

RELATING TO LICENSES FOR DRINKING WATER OPERATORS; AMENDING SECTION 54-2411, IDAHO CODE, TO PROVIDE REINSTATEMENT, FEE AND EXAMINATION REQUIREMENTS FOR A DRINKING WATER OPERATOR WHOSE LICENSE HAS BEEN CANCELED FOR A PERIOD OF MORE THAN TWO YEARS.

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

SECTION 1. That Section 54-2411, Idaho Code, be, and the same is hereby amended to read as follows:

54-2411. ANNUAL RENEWAL OF LICENSE. Every person licensed under the provisions of this chapter shall annually pay the prescribed renewal fee and certify compliance with continuing education requirements and provide such other information as the board may request. Any license canceled for failure to meet the renewal requirements may be reinstated according to section 67-2614, Idaho Code, except that in the case of a drinking water operator whose license has been canceled for a period of more than two (2) years, the person so affected shall be required to make application to the board, using the same forms and furnishing the same information and paying the same fee and successfully completing the same examination as is required of a person originally applying for a license of the same classification.

Approved March 21, 2005.

CHAPTER 88
(S.B. No. 1002)

AN ACT

RELATING TO SCHOOL TRANSPORTATION; AMENDING SECTION 33-1508, IDAHO CODE, TO REMOVE A REQUIREMENT THAT PERSONS OPERATING SCHOOL BUSES HAVE A VALID DRIVER'S PERMIT ISSUED BY THE BOARD OF TRUSTEES.

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

SECTION 1. That Section 33-1508, Idaho Code, be, and the same is hereby amended to read as follows:

33-1508. OPERATION OF SCHOOL BUSES. (1) All school buses shall at all times be operated in conformity with law and with rules of the Idaho state police and the state board of education.

(2) No school bus shall:

(a) Cross any railroad track, or enter or cross any arterial highway without first coming to a full stop. If any such crossing, intersection or access be obscured by trees, buildings or other objects, or because of wind, storm or fog, the school bus driver shall open such windows and doors as will permit him to determine when it is safe to proceed;

(b) Be operated at any time for the transportation of pupils by any person who does not have a current commercial driver's license (CDL) as specified in section 49-105, Idaho Code, ~~a valid driver's permit issued by the board of trustees,~~ and the minimum training for bus drivers as prescribed by the state board of education;

(c) Be operated at any time in excess of its maximum occupancy as determined by the manufacturer. Occupancy at no time shall exceed three (3) persons in a seat.

Approved March 21, 2005.

CHAPTER 89
(S.B. No. 1005)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1315, IDAHO CODE, TO REVISE DESCRIPTIVE LANGUAGE AND TO CLARIFY THE EFFECT OF PROSPECTIVE ONLY APPLICATION OF BENEFIT ENHANCEMENTS.

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

SECTION 1. That Section 59-1315, Idaho Code, be, and the same is hereby amended to read as follows:

59-1315. AMOUNT, TERMS AND CONDITIONS OF REVISED BENEFITS ARE TO BE PROSPECTIVE ONLY UNLESS OTHERWISE PROVIDED. As the amount, terms and conditions of benefits may be revised from time to time the application of such revisions shall be prospective only and not retrospective or retroactive unless otherwise provided by statute. Accordingly, unless otherwise provided, a member's benefits are determined based upon the terms of the plan on the date of the member's last contribution as an active member.

Approved March 21, 2005.

CHAPTER 90
(S.B. No. 1006)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1305, IDAHO CODE, TO INCLUDE INVESTMENT COMMITTEE MEMBERS FOR PURPOSES OF INDEMNIFICATION, TO PROVIDE THAT THE BOARD SHALL OBTAIN ALL AUDIT AND OTHER SERVICES IT DEEMS APPROPRIATE, TO PROVIDE FOR A

GENERAL INVESTIGATION EVERY FOUR YEARS, TO PROVIDE THAT THE BOARD SHALL ADOPT THE ASSUMPTIONS IN USE BY THE SYSTEM, TO PROVIDE THAT AN INDEPENDENT FINANCIAL AUDIT SHALL BE CONDUCTED ANNUALLY OR AS FREQUENTLY AS OTHERWISE DETERMINED BY THE BOARD AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. That Section 59-1305, Idaho Code, be, and the same is hereby amended to read as follows:

59-1305. POWERS AND DUTIES OF BOARD -- INDEMNIFICATION. (1) The board shall have the power and duty, subject to the limitations of this chapter, of managing the system. It shall have the powers and privileges of a corporation, including the right to sue and be sued in its own name as such board. Members of the retirement board, retirement system staff and retirement system mortgage and investment committee members who shall be found to be fiduciaries of the fund, jointly and individually, shall be indemnified from all claims, demands, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability losses and damages of any nature whatsoever that retirement board members, retirement system staff or retirement system mortgage and investment committee members shall or may at any time sustain by reason of any decision made in the scope or performance of their duties pursuant to the provisions of this section. The venue of all actions in which the board is a party shall be Ada ~~C~~county, Idaho.

(2) The board shall appoint an executive director to serve at its discretion. The executive director shall be the secretary to the board, bonded as is required by the board and shall perform such duties as assigned by the board. The executive director shall be authorized to designate a staff member as acting director or secretary in the director's absence.

(3) The board shall authorize the creation of whatever staff it deems necessary for sound and economical administration of the system. The executive director shall hire the persons for the staff who shall hold their respective positions subject to the rules of a merit system for state employees. The salaries and compensation of all persons employed for purposes of administering the system shall be fixed by the board and as otherwise provided by law.

(4) The board shall ~~arrange for~~ obtain all actuarial, audit, legal and medical ~~advisors~~ services it deems appropriate for the system. It shall cause a competent actuary who is a member of the academy of actuaries and who is familiar with public systems of pensions to be retained on a consulting basis. The actuary shall be the technical advisor of the board on matters regarding the operation of the system. During the first year of operation of the system and at least once every ~~three~~ four (~~3~~4) years thereafter, the actuary shall make a general investigation of the suitability of the actuarial tables used by the system. The board shall adopt the actuarial tables and assumptions in use by the system and may change the same in its sole discretion at any time. The actuary shall make an annual valuation of the liabilities and reserves of the system, and an annual determination of the amount of contributions required from the employers under this chapter, and certify the results thereof to the board. The actuary shall also perform such other duties as may be

assigned by the board. An independent financial audit shall be conducted annually or as frequently as otherwise determined by the board.

(5) The board shall establish the system's office or offices to be used for the meetings of the board and for the general purposes of the administrative personnel. The board shall provide for the installation of a complete and adequate system of accounts and records for administering this chapter. All books and records shall be kept in the system's offices.

(6) If the board determines that it has previously overpaid or underpaid benefits provided under this chapter or chapter 14, title 72, Idaho Code, it shall correct the prior error. In the event of prior underpayment, the board shall forthwith pay the amount of the underpayment together with regular interest thereon. In the event of prior overpayment, the board may offset future benefit payments by the amount of the prior overpayment together with regular interest thereon. Any such decision to offset future benefit payments shall be administratively and judicially reviewable as provided in section 59-1314, Idaho Code. Nothing herein contained shall be construed to limit the rights of a member or the board to pursue any other remedy provided by law.

Approved March 21, 2005.

CHAPTER 91
(S.B. No. 1007)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1303, IDAHO CODE, TO REVISE THE DEFINITIONS APPLICABLE TO POLICE OFFICER MEMBERSHIP STATUS FOR PURPOSES OF RETIREMENT.

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

SECTION 1. That Section 59-1303, Idaho Code, be, and the same is hereby amended to read as follows:

59-1303. ADDITIONAL DEFINITIONS FOR POLICE OFFICER STATUS. (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) Police officer membership status for retirement purposes may be fixed only by law, or by order of the retirement board.

(3) Members holding or filling the following positions or offices are designated by law as police officer members for retirement purposes during the time of their appointment to that position or during their term of office:

(a) (i) The director and deputy director of the Idaho state police.

(ii) Commissioned personnel of the Idaho state police holding positions which involve active law enforcement services, for which current POST certification is required to continue in employment in the position, POST ~~instructors~~ training coordinators, and Idaho state police training ~~instructors~~ coordinators.

(iii) Brand inspectors and brand inspector supervisors.

(iv) Employees of the Idaho state police serving in positions of personnel management, accounting, data processing, clerical services and in like general classifications found in departments throughout state government and not within the scope of active law enforcement service are not eligible for police officer member status.

(b) (i) County sheriffs;

(ii) Deputy county sheriffs holding positions for which current POST certification is necessary to continue in employment in the position, and the principal duties of which are active law enforcement service,~~;--deputy-county-sheriffs-holding--positions-which-require~~ accountability for the safety and safekeeping of persons confined in a ~~city-or~~ county confinement facility, or ~~whose-duties-require~~ active participation in county law enforcement activities pertaining to crime prevention or reduction.~~;-d~~Deputy sheriffs, even though POST certified or required to be POST certified, holding positions whose principal full-time duties are those of a telephone operator, dispatcher, clerk, stenographer, animal control officer, records specialist, or duties not within the scope of active law enforcement service are not eligible for police officer member status.

(c) (i) City police chiefs;

(ii) City police officers holding positions for which current POST certification is necessary to continue in employment in the position, and the principal duties of which are active law enforcement service~~;--city--police--officers-holding-positions which-require-accountability-for-the-safety-and-safekeeping--of persons--confined--in--a-city-or-county-confinement-facility~~ or ~~whose-duties-require~~ active participation in city law enforcement activities pertaining to crime prevention or reduction.~~;-p~~Police officers, even though POST certified or required to be POST certified, holding positions whose principal full-time duties are those of a telephone operator, dispatcher, clerk, stenographer, animal control officer, records specialist, or duties not within the scope of active law enforcement service are not eligible for police officer member status.

(d) Employees of the department of fish and game serving in a conservation officer position for which current POST certification is necessary to continue in employment in that position and which position has as its primary accountability the enforcement of wildlife protection laws and regulations.

(e) (i) The director of the department of correction, the deputy director for probation and parole, and wardens of institutions;

(ii) Employees of the department of correction accountable for the custody, safety, safekeeping or supervision of persons confined in a department confinement facility and whose work station is located within the confinement facility;

(iii) Probation and parole supervisors, probation and parole investigators, and probation and parole officers;

(iv) Correctional peace officer training instructors;

(v) Employees of the department of correction serving in positions of personnel management, accounting, data processing, clerical services and in like general classifications found in

departments throughout state government and not within the scope of active law enforcement service are not eligible for police officer member status.

(f) Employees of the adjutant general and military division of the state where military membership is a condition of employment.

(g) Magistrates of the district court; justices of the supreme court, judges of the court of appeals, and district judges who have made an election under section 1-2011, Idaho Code; and court employees designated by court order to have primary responsibility for court security or transportation of prisoners.

(h) ~~Paramedics and paramedic trainees~~ Employees whose primary function requires that they are certified by the Idaho department of health and welfare as an emergency medical technician-basic, an advanced emergency medical technician-ambulance, an emergency medical technician-intermediate, or an emergency medical technician-paramedic.

(i) Criminal investigators of the attorney general's office, and criminal investigators of a prosecuting attorney's office.

(j) The director of security and the criminal investigators of the Idaho state lottery.

(4) A member may be designated by the retirement board as a police officer member for retirement purposes if the position held is one in which the principal duties involve hazardous law enforcement duties.

(a) For purposes of this section, "hazardous law enforcement duties" means principal duties which:

(i) Will reasonably expect to increase the probability of early superannuation;

(ii) Are associated with life-threatening risk or present a position of peril either to the member or to others, or which can place the public safety in jeopardy; and

(iii) Either compel others to observe the law, pertain to crime prevention, or pertain to crime reduction, including police, courts, prosecution, correction, or rehabilitation.

(b) If continued employment in a position is conditioned on maintaining current POST certification, such condition shall be evidence to be considered that the employee is a police officer member for retirement purposes.

(i) After July 1, 1999, a requirement for POST certification for classified state employees may be made only by the administrator of the division of human resources pursuant to chapter 53, title 67, Idaho Code.

(c) Occasional assignments to hazardous law enforcement duties do not create a condition for designation as a police officer member for retirement purposes.

(5) Any employer or agency that believes that any employee, not specifically designated as a police officer by law, is incorrectly classified as a nonpolice officer member, may petition the retirement board for inclusion of that employee's position as one to be filled by a police officer member for retirement purposes. The petition shall be in writing and shall explain in detail the principal duties of the position and include written evidence which establishes that the criteria of subsection (4) are met. The board shall review the petition and evidence, together with such information and evidence as may be presented by the staff of the retirement system. The board may decide the matter based

upon the information supplied, may request additional information, or may request an oral presentation before the board. The decision of the board shall be final, but a similar petition may be resubmitted after six (6) months.

(6) On and after July 1, 1985, no active member shall be classified as a police officer for retirement purposes unless the employer shall have certified to the board, on a form provided by the board, that such member is an employee whose primary position with the employer is one designated as such within the meaning of this chapter, and the board shall have accepted such certification. Acceptance by the board of an employer's certification shall in no way limit the board's right to review and reclassify the position for retirement purposes based upon an audit or other relevant information presented to the board.

(7) An active member classified as a police officer for retirement purposes whose position is reclassified to that of a general member for retirement purposes as a result of a determination that the position does not meet the requirements of this chapter for police officer status for retirement purposes shall become a general member but shall not lose retirement benefits earned and accrued prior to the reclassification. If that member continues to be employed in that same position until retired, that member then will be deemed to be a police officer member for the purposes of retirement eligibility.

Approved March 21, 2005.

CHAPTER 92
(S.B. No. 1013)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-525A, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Section 20-525A, Idaho Code, be, and the same is hereby amended to read as follows:

20-525A. EXPUNGEMENT OF RECORD -- HEARING -- FINDINGS NECESSARY -- SPECIAL INDEX -- EFFECT OF ORDER. (1) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed a felony offense or having been committed to the department of juvenile corrections may, after the expiration of five (5) years from the date of termination of the continuing jurisdiction of the court, or, in case the juvenile was committed to the juvenile corrections center, five (5) years from the date of his release from the juvenile corrections center, or after reaching age eighteen (18), whichever occurs last, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and of the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(2) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed misdemeanor or status offenses only and not having been committed to the department of juvenile corrections may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(3) In any case where the prosecuting attorney has elected to utilize the diversion process or the court orders an informal adjustment pursuant to section 20-511, Idaho Code, the person may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(4) The court may not expunge a conviction for any of the following crimes from a juvenile's record:

(a) Administering poison with intent to kill (18-4014, Idaho Code);

(b) Aggravated battery (18-907, Idaho Code);

(c) Armed robbery (chapter 65, title 18, Idaho Code);

(d) Arson (chapter 8, title 18, Idaho Code);

(e) Assault with intent to commit a serious felony (18-909, Idaho Code);

(f) Assault with intent to murder (18-4015, Idaho Code);

(g) Assault or battery upon certain personnel, felony (18-915, Idaho Code);

(h) Forcible sexual penetration by use of a foreign object (18-6608, Idaho Code);

(i) Infamous crime against nature, committed by force or violence (18-6605, Idaho Code);

(j) Injury to child, felony (18-1501, Idaho Code);

(k) Kidnapping (18-4501, Idaho Code);

(l) Murder of any degree (18-4001 and 18-4003, Idaho Code);

(m) Rape, excluding statutory rape (18-6101 and 18-6108, Idaho Code);

(n) Ritualized abuse of a child (18-1506A, Idaho Code);

(o) Sexual exploitation of a child (18-1507, Idaho Code);

(p) Unlawful use of destructive device or bomb (18-3320, Idaho Code);

(q) Voluntary manslaughter (18-4006 1., Idaho Code);

(r) 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;

(s) A violation of the provisions of section 37-2732B, Idaho Code, related to drug trafficking or manufacturing of illegal drugs.

(5) If the court finds after hearing that the petitioner has not been adjudicated as a juvenile for any of the crimes identified in subsection (~~2~~4) of this section, and has not been convicted of a felony, or of a misdemeanor wherein violence toward another person was attempted or committed since the termination of the court's jurisdiction or his release from the juvenile corrections center, and that no proceeding involving such felony or misdemeanor is pending or being instituted against him, and if the court further finds to its satisfaction that the petitioner has been held accountable, is developing life skills necessary to become a contributing member of the community and that the expungement of the petitioner's record will not compromise public safety, it shall order all records in the petitioner's case in the custody of the court and all such records, including law enforcement investigatory reports and fingerprint records, in the custody of any other agency or official sealed; and shall further order all references to said adjudication, diversion or informal adjustment removed from all indices and from all other records available to the public. However, a special index of the expungement proceedings and records shall be kept by the court ordering expungement, which index shall not be available to the public and shall be revealed only upon order of a court of competent jurisdiction. Copies of the order shall be sent to each agency or official named in the order. Upon the entry of the order the proceedings in the petitioner's case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter be permitted only by the court upon petition by the person who is the subject of the records or by any other court of competent jurisdiction, and only to persons named in the petition.

Approved March 21, 2005.

CHAPTER 93
(S.B. No. 1014)

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-851, IDAHO CODE, TO REVISE THE DEFINITION FOR "SERIOUS CRIME" AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 19-851, Idaho Code, be, and the same is hereby amended to read as follows:

19-851. RIGHT TO REPRESENTATION BY COUNSEL -- DEFINITIONS. In this act, the term:

(a) "Detain" means to have in custody or otherwise deprive of freedom of action;

(b) "Expenses," when used with reference to representation under this act, includes the expenses of investigation, other preparation, and trial;

(c) "Needy person" means a person who, at the time his need is determined, is unable to provide for the full payment of an attorney and all other necessary expenses of representation;

(d) "Serious crime" includes:

(1) a felony;

(2) any misdemeanor or offense the penalty for which, excluding imprisonment for ~~non-payment~~ nonpayment of a fine, includes the possibility of confinement. ~~for more than six (6) months.~~

Approved March 21, 2005.

CHAPTER 94
(S.B. No. 1015)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-505, IDAHO CODE, TO CLARIFY THAT COURTS HAVE JURISDICTION FOR OFFENSES THAT OCCUR IN THE STATE OF IDAHO.

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

SECTION 1. That Section 20-505, Idaho Code, be, and the same is hereby amended to read as follows:

20-505. JURISDICTION. Subject to the prior jurisdiction of the United States, the court shall have exclusive, original jurisdiction over any juvenile and over any adult who was a juvenile at the time of any act, omission or status, in the county in which the juvenile resides, or in the county in which the act, omission or status allegedly took place, in the following cases:

(1) Where the act, omission or status occurs in the state of Idaho and is prohibited by federal, state, local or municipal law or ordinance by reason of minority only~~, regardless of where the same occurred~~;

(2) Where the act or omission occurs in the state of Idaho and is a violation of any federal, state, local or municipal law or ordinance which would be a crime if committed by an adult~~, regardless of where the same occurred~~;

(3) Concerning any juvenile where the juvenile comes under the purview of the interstate compact on juveniles as set forth in chapter 19, title 16, Idaho Code;

(4) This chapter shall not apply to juvenile violators of beer, wine or other alcohol and tobacco laws; except that a juvenile violator under the age of fourteen (14) years at the time of the violation may, at the discretion of the court, be treated under the provisions of this chapter;

(5) This chapter shall not apply to the violent juvenile offender, as defined in this chapter;

(6) This chapter shall not apply to juvenile violators of traffic, watercraft, fish and game, failure to obey a misdemeanor citation and criminal contempt laws; except that a juvenile violator under the age of fourteen (14) years at the time of such violation may, at the discretion of the court, be treated under the provisions of this chapter;

(7) This chapter shall not apply to juvenile sex offenders who violate the provisions of section 18-8414, Idaho Code.

Approved March 21, 2005.

CHAPTER 95
(S.B. No. 1016)

AN ACT

RELATING TO COURTS; AMENDING SECTION 1-102, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Section 1-102, Idaho Code, be, and the same is hereby amended to read as follows:

1-102. COURTS OF RECORD. The courts enumerated in ~~the--first--three (3)--subdivisions-of-the-preceding~~ section 1-101, Idaho Code, are courts of record.

Approved March 21, 2005.

CHAPTER 96
(S.B. No. 1023)

AN ACT

RELATING TO IDAHO STATE VETERANS HOMES; AMENDING SECTION 39-5503, IDAHO CODE, TO PROVIDE THAT IDAHO STATE VETERANS HOMES MAY PERMIT SMOKING IN DESIGNATED AREAS UNDER CERTAIN CONDITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 39-5503, Idaho Code, be, and the same is hereby amended to read as follows:

39-5503. PROHIBITIONS -- EXCEPTIONS. (1) No person shall smoke in a public place, publicly-owned building or office, or at a public meeting, except in the following which may contain smoking areas or be designated as smoking areas in their entirety:

(a) Bars;

(b) Retail businesses primarily engaged in the sale of tobacco or tobacco products;

(c) Bowling alleys;

(d) Buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or any facility that is rented or leased for private functions from which the public is excluded and for which arrangements are under the control of the sponsor of the function;

(e) Guest rooms in hotels, motels, bed and breakfast lodging facilities, and other similar lodging facilities, designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted;
(f) Theatrical production sites, if smoking is an integral part of the story in the theatrical production;
(g) Areas of owner-operated businesses, with no employees other than the owner-operators, that are not commonly open to the public;
(h) Any office or business, other than child care facilities, located within the proprietor's private home when all such offices and/or businesses occupy less than fifty percent (50%) of the total area within the private home; and
(i) Idaho state veterans homes, established pursuant to section 66-901, Idaho Code, that permit smoking in designated areas, provided that physical barriers and ventilation systems are used to reduce smoke in adjacent nonsmoking areas; and
(j) A designated employee breakroom established by a small business owner employing five (5) or fewer employees, provided that all of the following conditions are met:
(i) The breakroom is not accessible to minors;
(ii) The breakroom is separated from other parts of the building by a floor to ceiling partition;
(iii) The breakroom is not the sole means of entrance or exit to the establishment or its restrooms and is located in an area where no employee is required to enter as part of the employee's work responsibilities. For purposes of this paragraph, the term "work responsibilities" does not include custodial or maintenance work performed in a breakroom when it is unoccupied; and
(iv) "Warning: Smoking Permitted" signs are prominently posted in the smoking breakroom and properly maintained by the employer. The letters on such signs shall be at least one (1) inch in height.

(2) This section shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

(3) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment.

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 21, 2005.

CHAPTER 97
(S.B. No. 1050)

AN ACT

RELATING TO RATES OF TUITION FOR ATTENDANCE IN A SCHOOL DISTRICT; AMENDING SECTION 33-1405, IDAHO CODE, TO AUTHORIZE A SCHOOL DISTRICT BOARD OF TRUSTEES TO APPLY FOR AN EXEMPTION TO ANY PORTION OF A TUITION RATE CALCULATED PURSUANT TO THIS SECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 33-1405, Idaho Code, be, and the same is hereby amended to read as follows:

33-1405. RATES OF TUITION -- TUITION CERTIFICATES. The state department of education shall prepare and distribute all necessary forms; and shall issue to each school district, annually, a tuition certificate bearing a serial number, which certificate shall authorize the receiving district to charge and to bill for the tuition of its nonresident pupils where tuition has not been waived.

In determining tuition rates to be charged by any creditor school district, the state department of education shall compute the sum of that district's maintenance and operation costs, depreciation on its buildings, equipment, and other property, and the interest, if any paid by it on bonded debt or registered warrants. The said state department of education shall then compute what proportion of the sum of said costs, depreciation and interest is allocable to elementary schools, and what proportion is allocable to secondary schools, in the district. The proportion allocable to elementary schools shall then be divided by the average daily attendance of elementary school pupils, and the proportion allocable to secondary schools shall be divided by the average daily attendance of secondary school pupils, in the district, and the amount so determined shall be the gross per-pupil cost, elementary or secondary, as the case may be. The net per-pupil cost shall be the gross per-pupil cost less the per-pupil apportionment to the district of any foundation program funds.

Computations of tuition rates shall be made as of the school year next preceding the year for which tuition charges are determined and made.

Charges for tuition made by any creditor school district shall be its net per-pupil cost, as hereinabove defined; except that its gross per-pupil cost shall be charged where any pupil has transferred to the creditor district by transfer other than one prescribed by section 33-1403, Idaho Code, or where the home district of any pupil attending school in the creditor district is without the state of Idaho.

The board of trustees of a school district may request a waiver from the state board of education of any portion of the tuition rate determined pursuant to this section. A waiver request must be made for each individual student, and may be requested for up to four (4) years, subject to annual review by the local board of trustees. Waivers must be requested before April 1 of the year prior to the operative date.

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 21, 2005.

CHAPTER 98
(S.B. No. 1059)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-808, IDAHO CODE, TO SET FORTH SAFETY PROVISIONS FOR PERSONS TURNING A VEHICLE ONTO A HIGHWAY, MOVING A VEHICLE RIGHT OR LEFT UPON A HIGHWAY OR MERGING ONTO OR EXITING FROM A HIGHWAY.

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

SECTION 1. That Section 49-808, Idaho Code, be, and the same is hereby amended to read as follows:

49-808. TURNING MOVEMENTS AND REQUIRED SIGNALS. (1) No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal.

(2) A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. On controlled-access highways and before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is opportunity to give such a signal.

(4) The signals required on vehicles by section 49-809, Idaho Code, shall not be flashed on one (1) side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one (1) side only of a parked vehicle except as may be necessary for compliance with this section.

Approved March 21, 2005.

CHAPTER 99
(S.B. No. 1070)

AN ACT

RELATING TO PURPOSE TRUSTS; AMENDING CHAPTER 7, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW PART 6, CHAPTER 7, TITLE 15, IDAHO CODE, TO SET FORTH PROVISIONS APPLICABLE TO THE CREATION AND ENFORCEMENT OF PURPOSE TRUSTS.

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

SECTION 1. That Chapter 7, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW PART, to be known and designated as Part 6, Chapter 7, Title 15, Idaho Code, and to read as follows:

PART 6.
PURPOSE TRUSTS

15-7-601. PURPOSE TRUSTS. (1) A trust may be created for any purpose, charitable or noncharitable, under the terms of a trust agreement or will. A noncharitable trust so created is a purpose trust and shall exist to serve a purpose.

(2) A purpose trust does not need a beneficiary.

(3) A purpose trust shall be enforceable on the terms set forth in the trust agreement by the person named to enforce the trust; provided however, that the failure to name a person to enforce the trust shall not void the trust or otherwise cause it to be unenforceable.

(4) A person named to enforce a purpose trust may resign or be removed or replaced in accordance with the trust.

(5) If the person named to enforce the trust resigns, or is removed, or is unwilling or unable to act, and if no successor is named in accordance with the trust, the trustee shall forthwith apply to the court having jurisdiction of the purpose trust for directions or for a person to be appointed by the court to enforce the trust. The court having jurisdiction of the purpose trust shall be empowered to make an order appointing a person to enforce the trust on such terms as it sees fit and to designate how successors will be named.

(6) During any period of time when no person is named or acting to enforce a purpose trust, the court having jurisdiction of the purpose trust shall have the right to exercise all powers necessary to enforce the trust in order to serve the purpose for which it was created.

(7) Any interested person, as defined in section 15-1-201(24), Idaho Code, may bring an action under law or equity to enforce a purpose trust.

(8) Charitable trusts are not governed by this section.

(9) A purpose trust created prior to July 1, 2005, shall be valid and enforceable from the date of the trust's creation.

Approved March 21, 2005.

CHAPTER 100
(S.B. No. 1083)

AN ACT

RELATING TO SURPLUS REAL PROPERTY OF THE IDAHO TRANSPORTATION DEPARTMENT; AMENDING SECTION 58-335A, IDAHO CODE, TO AUTHORIZE THE SALE OR EXCHANGE OF SURPLUS REAL PROPERTY TO CERTAIN TAX-SUPPORTED LOCAL GOVERNMENT ENTITIES FOR LESS THAN THE APPRAISED VALUE IN ACCORDANCE WITH SPECIFIED CONDITIONS.

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

SECTION 1. That Section 58-335A, Idaho Code, be, and the same is hereby amended to read as follows:

58-335A. OTHER LANDS EXEMPT FROM ACT. The provisions of sections 58-331 through 58-335, Idaho Code, shall not apply to surplus real properties of the Idaho transportation department, with the exclusion of

office and maintenance yard sites. The Idaho transportation board shall promulgate rules to govern the sale of surplus real properties under this section, provided that in no case shall a property be sold or exchanged for a value less than that established through the appraisal process; and provided further that surplus real property may be offered for sale or exchange to any tax-supported agency or political subdivision of the state of Idaho, other than the state of Idaho or its agencies, in whose jurisdiction the property is located, at a negotiated price not to exceed the appraised value. Such surplus property sold or exchanged for less than the appraised value must be used in perpetuity exclusively for a public purpose which shall be stated in the deed of transfer. If the stated use shall cease, the property shall revert to the ownership of the Idaho transportation department.

For the purpose of acquiring highway rights-of-way, the Idaho transportation board is authorized to exchange surplus real property of the department for other parcels of real property. In exchanging real properties, the board shall cause both parcels of real property to be appraised, and either the owner or the department shall pay to the other the difference in value.

Before the department disposes of surplus property at public sale, if the property is valued at less than ten thousand dollars ($10,000), the department shall first notify any person who owns real property which is contiguous with the surplus property of the department that he has first option to purchase the surplus property for an amount not less than the established value. If more than one (1) adjoining owner wants to purchase the property, a private auction shall be held for such parties. If no owner of adjoining property exercises his option to buy, the department may proceed to public sale.

Approved March 21, 2005.

CHAPTER 101
(S.B. No. 1090)

AN ACT

RELATING TO MANDATORY INCOME WITHHOLDING FOR CHILD SUPPORT; AMENDING SECTION 32-1214B, IDAHO CODE, TO REVISE THE DEFINITION FOR THE TERM "PLAN ADMINISTRATOR" AND TO DEFINE THE TERM "PLAN SPONSOR."

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

SECTION 1. That Section 32-1214B, Idaho Code, be, and the same is hereby amended to read as follows:

32-1214B. DEFINITIONS. For the purposes of this chapter, the following definitions apply:

(1) "Child" means any child including an adopted minor child, of a participant in a health benefit plan, recognized under a medical child support order as having a right to enrollment under a health benefit plan.

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

(3) "Health benefit plan" means a group or individual health bene-

fit plan or combination of plans, other than public assistance programs, that provides medical care or benefits for a child.

(4) "Insurer" means every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or annuity.

(5) "Medical child support order" means any order, including those that meet the requirements of 29 U.S.C. section 1169, or notice issued by either a court or administrative agency that requires a plan administrator, or if none, the employer, to enroll an eligible child in a health benefit plan.

(6) "Obligee" means a party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child.

(7) "Obligor" means the parent ordered by the court to carry or provide health insurance benefits for the parties' minor child.

(8) "Party" means the department, grandparent or any person who is the custodian, other than the parent who owes a duty of medical support.

(9) "Plan administrator" means a person or entity, ~~including a state or local government agency or church, that assesses and collects premiums, accepts and processes claims, and pays benefits for medical care~~ designated under the terms of the health benefit plan or health insurance policy or related contract or agreement, responsible for the administration of plan duties. If no plan administrator is designated under the terms of the policy, contract or agreement, the plan administrator is the plan sponsor.

(10) "Plan sponsor" means an employer, employee organization, association, committee, joint board of trustees, or other similar group, including a state or local government agency or church, that establishes or maintains an employee benefit plan.

Approved March 21, 2005.

CHAPTER 102
(S.B. No. 1091)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CODE REFERENCE; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-416C, IDAHO CODE, TO ESTABLISH A SCIENCE AND TECHNOLOGY SPECIAL LICENSE PLATE PROGRAM; AMENDING CHAPTER 47, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4725, IDAHO CODE, TO PROVIDE FOR THE CREATION OF A SCIENCE AND TECHNOLOGY FUND; 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 shall be:

Vehicles one (1) and two (2) years old $48.00
Vehicles three (3) and four (4) years old $36.00
Vehicles five (5) and six (6) years old $36.00
Vehicles seven (7) and eight (8) years old $24.00
Vehicles over eight (8) years old $24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers 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 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 twenty-four dollars ($24.00).

(3) For all motorcycles and all-terrain vehicles operated upon the public highways the annual fee shall be nine dollars ($9.00). For operation of an all-terrain vehicle or motorcycle off the public highways, the fee specified in section 67-7122, Idaho Code, shall be paid. Registration exemptions provided in section 49-426(2) and (3), Idaho Code, apply to all-terrain vehicles and motorcycles used for the purposes described in subsections (2) and (3) of section 49-426, Idaho Code.

(4) 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.

(5) Registration fees shall not be subject to refund.

(6) 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.

(7) 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 for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416, 49-418 and 49-418D, 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 49-416A, 49-416C, 49-417, 49-417A, 49-417B, 49-417C, 49-418A, 49-418B, 49-418C, 49-419, 49-419A, 49-419B, 49-419C, 49-419D, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, 49-420E and 49-420G, 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, unless otherwise specified by law.

SECTION 2. 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 49-416C, Idaho Code, and to read as follows:

49-416C. SCIENCE AND TECHNOLOGY PLATES. (1) Any person who is the owner of a vehicle registered under the provisions of section 49-402 or 49-431(1), Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and, upon department approval, receive special science and technology license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of science and technology license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer for deposit to the office of science and technology fund created in section 67-4725, Idaho Code, and shall be used by the science technology division of the department of commerce for attracting science and technology companies to locate or to expand their operations in Idaho.

(3) 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. The owner may only display the plates on another vehicle upon receipt of the new registration from the department.

(4) The science and technology license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. The design and any slogan on the plate shall be acceptable to the director of the department of commerce and labor and shall be approved by the Idaho transportation 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 department of commerce and labor.

(5) Sample science and technology license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the office of science and technology fund, and shall be used by the office for attracting science and technology companies to locate or to expand their operations in Idaho.

SECTION 3. That Chapter 47, 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 67-4725, Idaho Code, and to read as follows:

67-4725. OFFICE OF SCIENCE AND TECHNOLOGY FUND. There is hereby created in the state treasury the office of science and technology fund. Moneys in the fund shall consist of funds received pursuant to section 49-416C, Idaho Code, grants, federal moneys, donations or funds from any other source. Moneys in the fund may be expended pursuant to appropriation. The fund balance in the fund may be appropriated annually to the office of science and technology. The treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.

SECTION 4. This act shall be in full force and effect on and after January 1, 2006.

Approved March 21, 2005.

CHAPTER 103
(S.B. No. 1141)

AN ACT

RELATING TO PEER REVIEW PROCEDURES FOR SKILLED NURSING FACILITIES; AMENDING SECTION 39-1392a, IDAHO CODE, TO DEFINE ADDITIONAL TERMS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 39-1392e, IDAHO CODE, TO INCLUDE REFERENCES TO SKILLED NURSING FACILITIES WITHIN PROCEDURES SPECIFIED.

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

SECTION 1. 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:

(1) "Emergency medical services personnel" means emergency medical services providers certified by the department of health and welfare pursuant to section 56-1011 et seq., Idaho Code, and ambulance-based clinicians as defined in the rules governing emergency medical services as promulgated by the department of health and welfare.

(2) "Group medical practice" means a partnership, corporation, lim-

ited 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.

(3) "Health care organization" means a hospital, in-hospital medical staff committee, medical society, managed care organization, licensed emergency medical service, ~~or~~ group medical practice, or skilled nursing facility.

(4) "Hospital" means a facility in Idaho licensed under sections 39-1301 through 39-1314, Idaho Code, and defined in section 39-1301(a)(1), Idaho Code.

(5) "In-hospital medical staff committees" means 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.

(6) "Licensed emergency medical service" means an ambulance service or a ~~non-transport~~ nontransport service licensed by the department of health and welfare pursuant to section 56-1011 et seq., Idaho Code.

(7) "Managed care organization" means a public or private person or organization which offers a managed care plan.

(8) "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.

(9) "Medical society" means any duly constituted, authorized 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.

(10) "Patient care records" means written or otherwise recorded, preserved and maintained records of the medical or surgical diagnostic, clinical, or therapeutic care of any patient treated by or under the direction of licensed professional personnel, including emergency medical services personnel, in every health care organization subject to this act, whether as an ~~in-patient~~ inpatient or ~~out-patient~~ outpatient of the health care organization.

(11) "Peer review" means the collection, interpretation and analysis of data by a health care organization for the purpose of bettering the system of delivery of health care or to improve the provision of health care or to otherwise reduce patient morbidity and mortality and improve the quality of patient care. Peer review activities by a health care organization include, without limitation:

(a) Credentialing, privileging or affiliating of health care providers as members of, or providers for, a health care organization;

(b) Quality assurance and improvement, patient safety investigations and analysis, patient adverse outcome reviews, and root-cause analysis and investigation activities by a health care organization; and

(c) Professional review action, meaning an action or recommendation of a health care organization which is taken or made in the conduct of peer review, that is based on the competence or professional conduct of an individual physician or emergency medical services personnel where such conduct adversely affects or could adversely affect the health or welfare of a patient or the physician's privileges, employment or membership in the health care organization or in the case of emergency medical services personnel, the emergency medical services personnel's scope of practice, employment or membership in the health care organization.

(12) "Peer review records" means all evidence of interviews, reports, statements, minutes, memoranda, notes, investigative graphs and compilations and the contents thereof, and all physical materials relating to peer review of any health care organization. "Peer review records" does not mean or include patient care records; provided however, that the records relating to the identification of which particular patient care records were selected for, or reviewed, examined or discussed in peer review by a health care organization and the methodology used for selecting such records shall be considered peer review records.

(13) "Skilled nursing facility" means a facility licensed under chapter 13, title 39, Idaho Code, to provide skilled care to recipients.

SECTION 2. 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, emergency medical services personnel, or a hospital or a skilled nursing facility arising out of a particular physician-patient, emergency medical services personnel-patient, or hospital-patient relationship, or skilled nursing facility-patient, or which concerns the sufficiency of the delivery of particular health care to a specific patient, any 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 or propriety of the health care involved, which concerns the subject patient while he was under the care or responsibility of a member of such health care organization or while he was a patient in such hospital or facility; 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 health care organization's actions in connection with the physician, emergency medical services personnel, or hospital or skilled nursing facility against whom such claim is asserted.

(b) Such a claimant shall likewise be entitled to inquire of such health care organization respecting the names and addresses of persons who such 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 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 or emergency medical services personnel consent thereto, and if privileged or confidential information regarding any other patient, physician, emergency medical services personnel, 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 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, emergency medical services personnel, 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 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 health care organization activity, then, in the defense thereof, confidentiality and privilege shall be deemed waived by the making of such claim, and such health care organization and the members of their staffs and committees shall be allowed to use and resort to such other-

wise 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, emergency medical services personnel, 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 21, 2005.

CHAPTER 104
(H.B. No. 125)

AN ACT

RELATING TO INCOME TAX CHECKOFFS AND THE IDAHO GUARD AND RESERVE FAMILY SUPPORT FUND; AMENDING SECTION 63-3067A, IDAHO CODE, TO PROVIDE FOR DESIGNATION BY INDIVIDUALS OF INCOME TAX OVERPAYMENTS AND DONATIONS TO THE IDAHO GUARD AND RESERVE FAMILY SUPPORT FUND; AND AMENDING CHAPTER 8, TITLE 57, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 57-820, IDAHO CODE, TO CREATE THE IDAHO GUARD AND RESERVE FAMILY SUPPORT FUND IN THE STATE TREASURY AND TO CONTINUOUSLY APPROPRIATE FUNDS TO THE IDAHO GUARD AND RESERVE FAMILY SUPPORT FUND, INC.

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

SECTION 1. That Section 63-3067A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067A. DESIGNATION BY INDIVIDUALS -- TRUST ACCOUNTS. (a) Every individual who:

(i) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (c) below; or

(ii) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (c) of this section.

(b) A designation under subsection (a) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(c) The trust accounts authorized to receive moneys designated under subsection (a) of this section are:

(i) The fish and game set-aside account created by section 36-111, Idaho Code;

(ii) The Idaho ag in the classroom account created by section 57-815, Idaho Code;

(iii) The drug enforcement donation account created by section 57-816, Idaho Code;

(iv) The children's trust fund created by section 39-6007, Idaho Code; and

(v) The United States olympic account created by section 57-817, Idaho Code, but no donation shall exceed five dollars ($5.00); and

(vi) The Idaho guard and reserve family support fund created by section 57-820, Idaho Code.

(d) Prior to the distribution of funds into any of the trust accounts specified in subsection (c) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars ($3,000) from each account for start-up costs during the first year of collections, and three thousand dollars ($3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

SECTION 2. That Chapter 8, Title 57, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 57-820, Idaho Code, and to read as follows:

57-820. THE IDAHO GUARD AND RESERVE FAMILY SUPPORT FUND. There is hereby created in the state treasury, the Idaho guard and reserve family support fund. Moneys in the fund shall be continuously appropriated to the "Idaho Guard and Reserve Family Support Fund, Inc." for support of members and families of members of the national guard and reserve who are residents of the state of Idaho or members of national guard or reserve units located in Idaho.

Approved March 22, 2005.

CHAPTER 105
(S.B. No. 1008)

AN ACT

RELATING TO THE IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2015, IDAHO CODE, TO PROVIDE THAT INDIVIDUALS APPLYING TO BE LICENSED DESIGNATED BROKERS OR BRANCH OFFICE MANAGERS MUST COMPLY WITH CERTAIN REQUIREMENTS; AMENDING SECTION 54-2016, IDAHO CODE, TO REVISE REQUIREMENTS APPLICABLE TO PRIMARY IDAHO LICENSES FOR LEGAL BUSINESS ENTITIES, SOLE PROPRIETORSHIPS AND BRANCH OFFICES; AND REPEALING SECTION 54-2017, IDAHO CODE, APPLICABLE TO RECIPROCAL IDAHO LICENSES.

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

SECTION 1. That Section 54-2015, Idaho Code, be, and the same is hereby amended to read as follows:

54-2015. INDIVIDUALS ACTIVELY LICENSED IN ANOTHER STATE OR JURISDICTION SEEKING PRIMARY IDAHO LICENSURE. (1) An individual who is currently and actively licensed as a real estate broker or salesperson in another state or jurisdiction at the time of application for a primary Idaho real estate license shall meet all qualifications listed in sec-

tion 54-2012, Idaho Code, for the type of license sought, except that the applicant shall not be required to furnish proof of the educational prerequisites described in subsection (1)(g) of section 54-2012, Idaho Code; provided however, an individual applying to be licensed as a designated broker of a business entity or sole proprietorship, or as a branch office manager of a licensed branch office, shall comply with the requirements of section 54-2016, Idaho Code. In addition, such applicant shall provide a current, certified license history from the other licensing state or jurisdiction, which history shall indicate any disciplinary action taken against the applicant's license by the other licensing state or jurisdiction, and the status and standing of the applicant's license in the other state or jurisdiction.

(2) An individual who holds an active license in good standing in another state or jurisdiction may, upon written request to the commission, obtain a certificate of waiver of the national portion of the exam required for Idaho licensure. A request for waiver shall indicate the individual's mailing address to which the commission is to deliver the certificate of waiver. The certificate of waiver shall be submitted with the application for exam as provided in subsection (4) of section 54-2014, Idaho Code.

(3) An individual who is currently and actively licensed in another state or jurisdiction that administers a real estate exam may be issued a primary Idaho license without further exam or proof of educational prerequisites pursuant to written agreement between Idaho and the other state or jurisdiction, provided that such other state or jurisdiction allows the issuance of real estate licenses in substantially the same manner as set forth in this subsection; provided however, an individual applying to be licensed as a designated broker of a business entity or sole proprietorship, or as a branch office manager of a licensed branch office, shall comply with the requirements of section 54-2016, Idaho Code, notwithstanding the terms of the agreement.

SECTION 2. That Section 54-2016, Idaho Code, be, and the same is hereby amended to read as follows:

54-2016. PRIMARY IDAHO LICENSES FOR LEGAL BUSINESS ENTITIES, SOLE PROPRIETORSHIPS AND BRANCH OFFICES -- ADDITIONAL REQUIREMENTS. (1) Legal business entities. Each legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed by the Idaho real estate commission to engage in the real estate business in Idaho and shall make proper application, pay all required fees, and meet all requirements listed below.

(a) Each legal business entity shall have a properly licensed individual designated broker, who shall be held responsible for the activities of the licensed entity.

(b) The individual designated broker shall, within five (5) years immediately prior to the designation, satisfactorily complete a commission-approved business conduct and office operations course.

(c) The individual designated broker shall also hold the following legal position within the licensed entity:

(i) Corporation -- an officer;

(ii) Partnership or limited partnership -- a general partner;

(iii) Limited liability company -- a member or manager.

The individual designated broker for any business entity shall have

full authority to act on behalf of the licensed business entity, and shall submit sufficient and satisfactory proof thereof with the application for license. Such proof shall include a list of the entity's officers, directors, members or managers, as reflected in the minutes, resolutions or other similar business documents of the entity. All acts of that individual as designated broker shall be considered acts of the licensed business entity. Nothing in this section is intended to create liability to a legal business entity for illegal or fraudulent acts by the individual broker performed solely on his own account.

(~~b~~d) A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required above, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(~~c~~e) One (1) individual may act as designated broker for more than one (1) licensed business entity, however, all entities shall have their main offices in the same physical location.

(~~d~~f) Satisfactory proof of mandatory errors and omissions insurance shall be provided for both the individual designated broker and the licensed business entity.

(~~e~~g) A legal business entity doing business under an assumed name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state.

(2) Sole proprietorships. An individual designated broker not licensed with a legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed as a sole proprietor. Each sole proprietorship seeking a real estate license shall meet all of the following requirements:

(a) A licensed sole proprietor doing business under an assumed business name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state;

(b) Satisfactory proof of mandatory errors and omissions insurance shall be provided for the licensed designated broker of a sole proprietorship;

(c) The individual designated broker shall have satisfactorily completed a commission-approved business conduct and office operations course within five (5) years immediately prior to the application for license.

(3) Multiple business names prohibited. A legal business entity or sole proprietorship shall be licensed under only one (1) business name.

(4) Branch offices. Each branch office in which trust funds and original transaction files are maintained shall be separately licensed in accordance with the following:

(a) The designated broker establishing the branch office shall submit an application, along with the required fee for the issuance or renewal of the branch office license.

(b) The designated broker shall designate in the application a branch manager, who shall be ~~a salesperson with at least two (2) years' experience or~~ an associate broker and who, within five (5) years immediately prior to the designation, shall have completed a commission-approved business conduct and office operations course, to regularly occupy and be responsible for the supervision of the branch office. Any salesperson acting as a branch manager on July 1, 2005, shall have until July 1, 2006, to obtain an associate broker's license. When a branch manager is a regular full-time employee or is engaged in a full-time activity at a location other than the place he is licensed to do business, a presumption will be made that the branch manager is unable to responsibly supervise the branch; provided however, the presumption may be overcome by evidence to the contrary which the commission determines to be satisfactory.

(c) A branch manager shall not be licensed to manage more than one (1) branch office at a time.

(d) A license issued to a branch office is valid and in effect only as long as the license of the designated ~~individual~~ broker remains in active status. The license certificate of the branch office shall be signed by the designated broker.

(e) No separate branch office license or manager is required for business locations other than the main office unless trust funds or original transaction records are kept at the branch.

(f) If a separate real estate trust account is maintained for a branch office, all records and related files for that account shall be maintained at the branch office.

(g) Each branch office or business location, whether separately licensed or not, shall conduct business only in the licensed name of the legal entity or sole proprietor.

(h) The current license certificates for the branch office, the branch manager, and for each sales associate conducting business from the branch office shall be prominently displayed or available for public inspection at the branch office.

SECTION 3. That Section 54-2017, Idaho Code, be, and the same is hereby repealed.

Approved March 23, 2005.

CHAPTER 106
(S.B. No. 1009)

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2013, IDAHO CODE, TO INCREASE THE MAXIMUM AMOUNT OF THE PREMIUM FOR ERRORS AND OMISSIONS INSURANCE OBTAINED BY THE COMMISSION.

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

SECTION 1. That Section 54-2013, Idaho Code, be, and the same is hereby amended to read as follows:

54-2013. ERRORS AND OMISSIONS INSURANCE. (1) Each licensee who is actively licensed under this chapter shall, as a condition to licensing, carry and maintain errors and omissions insurance to cover all licensed activities under the provisions of this chapter.

(2) The commission shall make the insurance required under the provisions of this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with chapter 57, title 67, Idaho Code. The exact premium shall be set by the commission by motion.

(3) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee.

(4) Each licensee shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

(5) The commission shall determine the terms and conditions of coverage required under the provisions of this section including, but not limited to, the minimum limits of coverage, the permissible deductible and the permissible exemptions.

(6) A licensee seeking to obtain or renew an active license shall certify to the commission that he is in compliance with the insurance requirements of this section. A licensee who elects not to participate in the insurance program administered by the commission shall obtain a certificate of coverage, signed by an authorized agent or employee of the insurance carrier, reflecting proof of insurance meeting the requirements established by the commission. Upon request by the commission the licensee shall produce the certificate for inspection.

(7) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, not to exceed ~~one~~ two hundred ~~forty~~ dollars ($~~1~~4200) per year, per licensee, the requirement of insurance coverage as provided in this section shall be void during the applicable contract period.

(8) The commission is also specifically empowered to charge and collect an administrative fee in addition to the premium paid from each licensee who obtains errors and omissions insurance through the commission contract, which fee shall not exceed ten dollars ($10.00) per licensee. This administrative fee shall be of an amount sufficient to raise that revenue required to administer the provisions of this section. The limit in subsection (7) of this section applies only to premium cost and not to any administrative fee charged.

Approved March 23, 2005.

CHAPTER 107
(S.B. No. 1010)

AN ACT

RELATING TO THE IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2004, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 54-2012, IDAHO CODE, TO REVISE THE MINIMUM REQUIREMENTS FOR AN INDIVIDUAL PRIMARY

IDAHO LICENSE; AMENDING SECTION 54-2016, IDAHO CODE, TO REQUIRE THAT CURRENT LICENSE CERTIFICATES FOR BRANCH OFFICES, BRANCH MANAGERS AND SALES ASSOCIATES BE PROMINENTLY DISPLAYED OR AVAILABLE FOR PUBLIC INSPECTION AT THE BRANCH OFFICE; AMENDING SECTION 54-2018, IDAHO CODE, TO REQUIRE THAT CONTINUING EDUCATION CREDIT HOURS BE OBTAINED PRIOR TO THE SUBMISSION OF LICENSE APPLICATIONS, TO PROVIDE FOR DISCIPLINARY ACTION BY THE COMMISSION, TO PROVIDE THAT THE COMMISSION MAY REQUEST PROOF OF CONTINUING EDUCATION COMPLIANCE, TO SPECIFY CONTINUING EDUCATION DOCUMENTATION REQUIREMENTS AND TO LIMIT APPLICATION; AMENDING SECTION 54-2019, IDAHO CODE, TO PROVIDE FOR THE INACTIVATION OF LICENSES BY THE COMMISSION; AMENDING SECTION 54-2023, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO CONTINUING EDUCATION REQUIREMENTS; AMENDING SECTION 54-2025, IDAHO CODE, TO REVISE CERTIFICATION REQUIREMENTS; AMENDING SECTION 54-2027, IDAHO CODE, TO REVISE THE DUTIES AND REQUIREMENTS OF CERTIFIED COURSE PROVIDERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2032, IDAHO CODE, TO REQUIRE CERTIFICATION OR COMMISSION APPROVAL FOR INDIVIDUALS TEACHING COURSES FOR CREDIT TOWARD COMMISSION CONTINUING EDUCATION CORE COURSE REQUIREMENTS; AMENDING SECTION 54-2033, IDAHO CODE, TO SET FORTH QUALIFICATIONS AND CERTIFICATION REQUIREMENTS FOR INDIVIDUALS WISHING TO TEACH CERTAIN COURSES; AMENDING SECTION 54-2036, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO CERTIFICATION OF COURSES AND COURSE CONTENT; AMENDING SECTION 54-2041, IDAHO CODE, TO REMOVE A REFERENCE TO TRUST FUND ACCOUNTS IN IDAHO; AMENDING SECTION 54-2042, IDAHO CODE, TO REMOVE THE REQUIREMENT THAT TRUST ACCOUNTS BE ESTABLISHED AT DEPOSITORIES LOCATED IN IDAHO AND TO REMOVE REFERENCES TO SUCH REQUIREMENT; AMENDING SECTION 54-2043, IDAHO CODE, TO REMOVE THE REQUIREMENT THAT INTEREST-BEARING TRUST ACCOUNTS BE CREATED AT DEPOSITORIES IN IDAHO; AMENDING SECTION 54-2056, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO TERMINATING OR CHANGING LICENSED BUSINESS RELATIONSHIPS; AND AMENDING SECTION 54-2062, IDAHO CODE, TO REVISE THE GROUNDS FOR DISCIPLINARY ACTION.

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

SECTION 1. That Section 54-2004, Idaho Code, be, and the same is hereby amended to read as follows:

54-2004. DEFINITIONS. As used in this chapter:

(1) "Accredited college or university" means an institution accredited by the regional accrediting associations, as reported in the most current publication of the accredited institutions of postsecondary education.

(2) "Active license" means the status of a real estate license that has not been inactivated, expired, terminated, suspended or revoked.

(~~2~~3) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (~~29~~31) of this section.

(~~3~~4) "Branch office" means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(~~4~~5) "Brokerage agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction.

(~~5~~6) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(~~6~~7) "Business name" means the name in which the brokerage company is licensed by the commission.

(~~7~~8) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

(~~8~~9) "Commission" means the Idaho real estate commission, unless the context clearly indicates a different meaning.

(10) "Commission core course" means, in reference to a real estate course offering, the course containing curriculum, identified by the commission, that stresses current trends in real estate practices and changes in laws in real estate related industries. A core course must contain no more than four (4) classroom hours of instruction.

(11) "Continuing education elective course" means a real estate course offering, other than the commission core course for which continuing education credit hours may be obtained as provided in section 54-2023, Idaho Code.

(~~9~~12) "Convicted" means a plea of nolo contendere or guilty, a jury verdict of guilty or a court decision of guilt whether or not a judgment or sentence has been imposed, withheld or suspended.

(~~10~~3) "Cooperative sale" means a transaction involving two (2) or more brokers.

~~(11) "Core course" means, in reference to a real estate course offering, a course containing curriculum, identified by the commission, that stresses current trends in real estate practices and changes in laws in real estate related industries. A core course must contain no more than four (4) classroom hours of instruction.~~

(~~12~~4) "Council" means the Idaho real estate education council.

(~~13~~5) "Dealer in options" means any person, firm, partnership, association or corporation who shall directly or indirectly take, obtain or use options to purchase, exchange, lease option or lease purchase real property or any interest therein for another or others whether or not the options shall be in his or its name and whether or not title to the property shall pass through the name of the person, firm, partnership, association or corporation in connection with the purchase, sale, exchange, lease option or lease purchase of the real property, or interest therein.

(~~14~~6) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(~~15~~7) "Distance learning course" means, in relation to a real estate course offering, a real estate course that is delivered, not as a live course, but through a medium in which the instructor and student are

separated by distance or time.

(~~16~~8) "Double contract" means two (2) or more written or unwritten contracts of sale, purchase and sale agreements, loan applications, or any other agreements, one (1) of which is not made known to the prospective loan underwriter or the loan guarantor, to enable the buyer to obtain a larger loan than the true sales price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain. An agreement or loan application is not made known unless it is disclosed in writing to the prospective loan underwriter or loan guarantor.

(~~17~~9) "Executive director" means the executive director of the Idaho real estate commission.

(~~18~~20) "Expired license" means the status of a license when the license period has expired and the license is not renewed or provisional license granted, and before the license is terminated.

(~~19~~21) "Fee or commission" means a payment, actual, promised or expected, as compensation for the performance of any act requiring a real estate license.

(~~20~~2) "Inactive license" means the status of a license that is not expired, terminated, suspended or revoked, and during which inactive period the license holder is not authorized to act as or associate with a designated broker.

(~~21~~3) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of conducting business.

(~~22~~4) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(~~23~~5) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(~~24~~6) "Live presentation" means, in reference to a real estate course offering, a real estate course that is personally presented by the instructor and personally attended by the student at the same facility.

(~~25~~7) "Main office" means the principal location where the real estate broker is licensed to transact business.

(~~26~~8) "Person" means and includes an individual, or any legal business entity.

(~~27~~9) "Primary Idaho license" means an Idaho real estate license that is not contingent upon continuance of a license in another state or jurisdiction.

(~~28~~30) "Provisional license" means an extension of the period of active licensure, beyond the licensee's expiration date, granted by the commission for the purpose of allowing the licensee to complete the continuing education requirements set forth in section 54-2023, Idaho Code, or for any other purpose allowed by this chapter.

(~~29~~31) "Real estate broker" means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or

any interest therein or business opportunity or interest therein for others;

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth;

(e) A dealer in options as defined in this section.

(~~30~~2) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (~~29~~31) of this section.

(~~31~~3) "Real estate settlement procedures act" means the real estate settlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq., and as in effect on January 1, 200~~1~~5.

(~~32~~4) "Reciprocal license" means an Idaho real estate license that is issued pursuant to the terms of a specific, written reciprocal agreement between Idaho and another state or jurisdiction, and that is contingent upon the licensee's maintaining a license in the other state or jurisdiction.

(~~33~~5) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(~~34~~6) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(~~35~~7) "Revoked license" means a license that has been permanently revoked by the issuing authority.

(~~36~~8) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

(~~37~~9) "State or jurisdiction" means and includes any of the fifty (50) states and any foreign jurisdiction that issue real estate licenses substantially similar to those provided for in this chapter.

(~~38~~40) "Successfully completed" means, in reference to a real estate course offering, completing all required course hours and, except where the licensee seeks continuing education credit for having regularly attended the live presentation of a course, passing a commission-approved final examination.

(~~39~~41) "Surrendered license" means a license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.

(~~40~~2) "Suspended license" means a license that has been temporarily suspended by the issuing authority.

SECTION 2. That Section 54-2012, Idaho Code, be, and the same is hereby amended to read as follows:

54-2012. MINIMUM REQUIREMENTS FOR AN INDIVIDUAL PRIMARY IDAHO LICENSE. (1) Requirements for all individual primary licenses. Unless a qualification is waived or modified by the commission for good cause and upon special consideration, and except as provided in section 54-2015, Idaho Code, each person seeking a primary Idaho real estate license as a salesperson, associate broker or designated broker shall meet all of the following minimum qualifications:

(a) Be an individual;

(b) Be eighteen (18) years of age or older;

(c) Furnish satisfactory proof that the applicant graduated from an accredited high school or its equivalent or holds a certificate of general education;

(d) Not have had a real estate or other professional or occupational license revoked, suspended, or surrendered, or the renewal refused, for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(e) Not have been convicted or completed any sentence of confinement for or on account of any misdemeanor involving fraud, misrepresentation or dishonest or dishonorable dealing, in a state or federal court, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(f) Not have been convicted of any felony in a state or federal court; provided that after a period of five (5) years from the date the person was convicted or completed any term of probation, sentence or confinement or period of parole, whichever is later, the applicant may make written request to the commission for an exemption review to determine the applicant's suitability for licensure, which the commission shall determine in accordance with the following:

(i) The exemption review shall consist of a review of any documents relating to the felony and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.

(ii) During the review, the commission shall consider the following factors or evidence:

1. The severity or nature of the felony;

2. The period of time that has passed since the felony under review;

3. The number or pattern of felonies or other similar incidents;

4. The circumstances surrounding the crime that would help determine the risk of repetition;

5. The relationship of the crime to the licensed practice of real estate; and

6. The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation.

(iii) The applicant shall bear the burden of establishing his current suitability for licensure.

(g) Complete all prelicense education requirements as provided for

in section 54-2022, Idaho Code, for a salesperson's or broker's license;

(h) Pass the commission-approved real estate licensing exam for a sales or broker license in the time and manner stated in section 54-2014, Idaho Code, and pay the required exam fees;

(i) Be fingerprinted for the purpose of a national criminal history check to determine whether the applicant is qualified for licensure, and pay all fees associated with the fingerprinting and background check services. If the fingerprints are returned to the commission as illegible the applicant shall, upon request from the commission, be fingerprinted again and file the new fingerprints with the commission. ~~All fees charged by the commission and the law enforcement agency for fingerprint services shall be paid by the applicant~~;

(j) Sign and file with the commission an irrevocable consent to service, appointing the commission's executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served, and consenting that any lawful process against the licensee that is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice, the executive director shall immediately mail a copy of the same by certified mail to the last known ~~business~~ address of the licensee. All licensees shall provide the commission a full and current mailing address and shall ~~immediately~~ notify the commission in writing of any change in mailing address within ten (10) business days of the change;

(k) If licensing as an active salesperson or associate broker, provide the name and physical address of the main business location of the designated broker with whom the applicant will be licensed, and the signature of that broker; or, if licensing as a designated broker, provide the name and physical address of the main business location. No Idaho sales associate may be licensed under or associated with more than one (1) Idaho broker at a time;

(l) Submit a properly completed application and all license, application and other fees listed in section 54-2020, Idaho Code, or as otherwise required by statute or rule; and

(m) Provide satisfactory proof of meeting the mandatory errors and omissions insurance requirement for real estate licensees, as stated in section 54-2013, Idaho Code.

(2) Additional requirements for broker and associate broker licenses. Applicants seeking a primary Idaho license as a broker or associate broker shall meet the additional following qualifications:

(a) Provide satisfactory evidence of having been actively engaged, on a full-time basis, for two (2) years as a licensed real estate salesperson within five (5) years immediately prior to the date upon which the individual makes application. Such evidence shall demonstrate the productiveness of the licensed activity to have been generally commensurate with that of other licensees practicing in a similar capacity. Listings, sales, options or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification.

(i) A broker or associate broker applicant may be required to furnish a report of listings and sales accomplished by the

applicant during two (2) or more years within the last five (5) years of licensure immediately prior to the application date;

(ii) This report shall be certified as correct by the broker or brokers with whom the applicant has been associated, provided however, that upon preapproval by the commission, the applicant may verify that the report is correct in an alternative manner;

(iii) The broker experience requirement may be modified or reduced, in whole or in part, at the discretion of the commission, based upon the applicant's educational background, or experience in related or affiliated business activities;

(iv) The commission in its discretion may make such additional investigation and inquiry relative to the applicant as it shall deem advisable;

(b) Designate a physical office location and a business name. The commission may refuse to issue a license to any person if the business name is the same as that of any person whose license has been suspended or revoked or is so similar as to be easily confused with another licensee's name by members of the general public. However, nothing in this subsection shall restrict an individual from obtaining a license in his or her own legal name.

(c) If currently licensed in Idaho as a salesperson and applying for a license as an Idaho broker or associate broker, the individual shall submit a new fingerprint card for processing ~~with the application~~ and pay associated fees.

SECTION 3. That Section 54-2016, Idaho Code, be, and the same is hereby amended to read as follows:

54-2016. PRIMARY IDAHO LICENSES FOR LEGAL BUSINESS ENTITIES, SOLE PROPRIETORSHIPS AND BRANCH OFFICES -- ADDITIONAL REQUIREMENTS. (1) Legal business entities. Each legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed by the Idaho real estate commission to engage in the real estate business in Idaho and shall make proper application, pay all required fees, and meet all requirements listed below.

(a) Each legal business entity shall have a properly licensed individual designated broker, who shall be held responsible for the activities of the licensed entity. The individual designated broker shall also hold the following legal position within the licensed entity:

(i) Corporation -- an officer;

(ii) Partnership or limited partnership -- a general partner;

(iii) Limited liability company -- a member or manager.

The individual designated broker for any business entity shall have full authority to act on behalf of the licensed business entity, and shall submit sufficient and satisfactory proof thereof with the application for license. Such proof shall include a list of the entity's officers, directors, members or managers, as reflected in the minutes, resolutions or other similar business documents of the entity. All acts of that individual as designated broker shall be considered acts of the licensed business entity. Nothing in this section is intended to create liability to a legal business entity

for illegal or fraudulent acts by the individual broker performed solely on his own account.

(b) A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required above, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(c) One (1) individual may act as designated broker for more than one (1) licensed business entity, however, all entities shall have their main offices in the same physical location.

(d) Satisfactory proof of mandatory errors and omissions insurance shall be provided for both the individual designated broker and the licensed business entity.

(e) A legal business entity doing business under an assumed name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state.

(2) Sole proprietorships. An individual designated broker not licensed with a legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed as a sole proprietor. Each sole proprietorship seeking a real estate license shall meet all of the following requirements:

(a) A licensed sole proprietor doing business under an assumed business name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state;

(b) Satisfactory proof of mandatory errors and omissions insurance shall be provided for the licensed designated broker of a sole proprietorship.

(3) Multiple business names prohibited. A legal business entity or sole proprietorship shall be licensed under only one (1) business name.

(4) Branch offices. Each branch office in which trust funds and original transaction files are maintained shall be separately licensed in accordance with the following:

(a) The designated broker establishing the branch office shall submit an application, along with the required fee for the issuance or renewal of the branch office license.

(b) The broker shall designate in the application a branch manager, who shall be a salesperson with at least two (2) years' experience or an associate broker, to regularly occupy and be responsible for the supervision of the branch office. When a branch manager is a regular full-time employee or is engaged in a full-time activity at a location other than the place he is licensed to do business, a presumption will be made that the branch manager is unable to responsibly supervise the branch; provided however, the presumption may be overcome by evidence to the contrary which the commission determines to be satisfactory.

(c) A branch manager shall not be licensed to manage more than one (1) branch office at a time.

(d) A license issued to a branch office is valid and in effect only as long as the license of the designated individual remains in active status. The license certificate of the branch office shall be signed by the designated broker.

(e) No separate branch office license or manager is required for business locations other than the main office unless trust funds or original transaction records are kept at the branch.

(f) If a separate real estate trust account is maintained for a branch office, all records and related files for that account shall be maintained at the branch office.

(g) Each branch office or business location, whether separately licensed or not, shall conduct business only in the licensed name of the legal entity or sole proprietor.

(h) The current license certificates for the branch office, the branch manager, and for each sales associate conducting business from the branch office shall be prominently displayed or available for public inspection at the branch office.

SECTION 4. That Section 54-2018, Idaho Code, be, and the same is hereby amended to read as follows:

54-2018. LICENSE RENEWALS -- INACTIVE LICENSES STATUS -- PERSONAL CHANGES -- EFFECTIVE DATES -- FEES NONREFUNDABLE. (1) Initial license period. Each new license shall be for a period of one (1) year plus the months up to and including the next birth date of the licensee, not to exceed a period of two (2) years, and shall expire on a date to coincide with the last day of the month of the birth date of the licensee. Corporations, partnerships, limited liability companies and other entities defined as "persons" in this chapter shall have established as the equivalent of a birth date, the birth date of its designated broker. Licensed branch offices shall have established as the equivalent of a birth date, the birth date of the designated broker for the branch office.

(2) License renewal. Each license shall be renewable for a period of two (2) years by timely submitting a completed application. Applications must be received at the commission office on or before 5 p.m. of the expiration date.

(a) If renewing an active license, the application shall include:

(i) Certification that the applicant has met the commission's continuing education requirements as set forth in section 54-2023, Idaho Code;

(ii) Certification that the applicant has met the mandatory errors and omissions insurance requirement for real estate licensees as set forth in section 54-2013, Idaho Code; and

(iii) Payment of all renewal fees established by this chapter or by the commission.

(b) If renewing an inactive license, the application shall include payment of all renewal fees established by this chapter or by the commission by rule.

(3) Late renewal. If the licensee fails to submit a completed application for renewal or pay the renewal fee on or before the expiration date, the commission may accept a later application or payment of the fee, subject to such conditions as the commission may require including, but not limited to, the assessment of a late fee; provided

that between the license expiration date and the date of renewal of the license, the rights of the licensee under such license shall be expired, and during such period of expiration it shall be unlawful for any licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions of real estate broker or real estate salesperson in section 54-2004, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not renewed within one (1) year of the expiration date shall be automatically terminated by the commission and may not be renewed.

(4) Active and inactive license status. A licensee who is a designated broker or associated with a designated broker shall hold an active license. A licensee who has paid all applicable fees, who is not associated with a designated broker and who holds a current license that is not revoked, suspended or terminated shall hold his license on inactive status. A licensee seeking to change from active license status to inactive license status shall have the broker submit a change of status application to the commission in the form and manner approved by the commission. During the period that his license is inactive, the licensee shall not engage in the business or act in the capacity of real estate broker, associate broker or salesperson. However, an inactive licensee may receive a referral fee for any referral made during the period his license was active. A licensee may activate an inactive license by meeting each of the following:

(a) If activating as a sales associate, associating with a designated Idaho broker and having the broker submit an application in the form and manner approved by the commission;

(b) If activating as a designated broker, establishing an office in the manner required by this chapter and submitting an application in the form and manner approved by the commission;

(c) Paying the required fee;

(d) Obtaining and maintaining a policy of errors and omissions insurance as required by section 54-2013, Idaho Code, and in accordance with the rules of the commission and certifying the same; and

(e) Successfully completing any continuing education requirements, as prescribed in section 54-2023, Idaho Code, and certifying the same for the current license period.

(5) Continuing education. A licensee shall not submit an application to renew a license on active status or to activate an inactive license without having obtained the continuing education credit hours required by section 54-2023, Idaho Code. A licensee who violates this subsection (5) shall be subject to disciplinary action by the commission.

(6) Time required. The commission may request satisfactory proof of continuing education compliance from any licensee who has certified to the commission that he has completed the requirement. The request shall state the time within which the proof must be received at the commission office, which time shall not be less than ten (10) business days.

(7) Satisfactory proof. Upon request from the commission, the licensee shall submit satisfactory proof of having met the continuing education requirement set forth in section 54-2023, Idaho Code. "Satisfactory proof" shall, for each course, consist of documentation:

(a) Identifying the licensee, the title of the course or challenge exam, the course certification number, the course provider, the number of classroom hours, the completion date of the course or chal-

lenge exam, and including:

(i) A transcript of the course taken;

(ii) A letter from the provider verifying successful completion of the course; or

(iii) A course completion certificate; and

(b) Identifying the course certification approval number to establish that the course is approved for continuing education credit as provided by section 54-2023, Idaho Code. The commission may, in its sole discretion, accept alternative documentation establishing that the course is approved for credit.

(8) Failure to submit proof. A licensee failing to submit satisfactory proof of completing the continuing education requirement after being requested to do so by the commission may have his license inactivated by the commission and shall not be entitled to reactivate the license unless and until he provides to the commission satisfactory proof that he meets the continuing education requirements of section 54-2023, Idaho Code. Nothing in this section shall limit the ability of the commission to investigate or discipline a licensee for violating subsection (5) of this section or for violating any other section of this chapter.

(9) Change in personal information. An individual licensee, whether active or inactive, shall provide written notice to the commission, in the form and manner approved by the commission, of any change of his personal name, address of personal residence or personal telephone number. Notice shall be provided within ten (10) days of the change. If the licensee has changed his personal name, he shall also submit legal proof of the change and the fee for issuing a new license certificate and, if an active licensee, he shall have the broker submit the written notice of change to the commission. Upon receipt of the new license certificate or upon its effective date, whichever is later, the broker shall remove from public view any license certificate bearing the licensee's former name.

(~~6~~10) Signature required. No license shall be valid unless the license certificate is signed by the licensee.

(~~7~~11) Effective dates. A request for licensure or for license changes shall become effective when the properly completed application, attachments and any required fee are received at and approved by the commission. An application that is incomplete or lacking proper fees shall be returned to the applicant and no license shall be issued until a completed application and proper fees are received at and actually approved by the commission.

(~~8~~12) Fees nonrefundable. No licensee shall be entitled to a refund of any fee after the license or license change has become effective.

SECTION 5. That Section 54-2019, Idaho Code, be, and the same is hereby amended to read as follows:

54-2019. DENIAL OF LICENSE APPLICATIONS. (1) The commission may deny any license application, including an application for license renewal, upon the commission's determination of any of the following:

(a) The applicant does not possess all of the qualifications required for the license sought;

(b) The applicant employed fraud, deception, misrepresentation, misstatement or omission or any unlawful means in applying for a

license or taking the exam;

(c) Within the five-year period immediately preceding the application, the applicant committed any act for which a real estate license in Idaho may be revoked or suspended;

(d) Payment of any licensing fee by check that is returned by the banking institution due to insufficient funds, unless the reason for not paying on the check is the fault of the banking institution; or

(e) There exist any other specific facts about the applicant that cause the commission to reasonably conclude that granting the applicant's request for Idaho licensure is not in the best interests of the citizens of the state of Idaho.

(2) Where any of the facts referenced above warranting denial of the application are not discovered or determined by the commission until after the license has been issued, such facts may be grounds for the inactivation, expiration, termination, suspension or revocation of the license.

SECTION 6. That Section 54-2023, Idaho Code, be, and the same is hereby amended to read as follows:

54-2023. CONTINUING EDUCATION REQUIREMENTS. Each licensee ~~seeking renewal of~~ applying to renew an Idaho real estate license on active status, and each Idaho licensee ~~seeking~~ applying to change from inactive to active license status, shall successfully complete a commission core course, plus the required number of classroom hours of commission-approved or certified continuing education coursework as provided in this section.~~,-plus-one-(1)-commission-approved-core-course.-Failure-to meet-the-continuing-education-requirements-as-set-forth-in-this--section constitutes-an-incomplete-application-for-a-renewal-of-an-active-license or-for-a-change-in-license-status-from-inactive-to-active,-and,-as-such, constitutes-grounds-for-denial-of-the-application.~~

(1) Required number of classroom hours. The required number of classroom hours is as follows:

(a) Renewing license on active status. A licensee renewing on active status effective prior to July 1, 2003, must successfully complete ~~at least~~ a commission core course, plus eight (8) classroom hours of continuing education, ~~plus-one-(1)-commission-approved-core course,~~ on or before the current license expiration date. A licensee renewing on active status effective on or after July 1, 2003, must successfully complete ~~at least~~ a commission core course, plus sixteen (16) classroom hours of continuing education, ~~plus--one--(1) commission-approved--core--course,~~ on or before the current license expiration date.

(b) Change from inactive to active. A licensee changing from inactive to active license status must meet the continuing education requirements for an active license for the current licensing period. If the inactive licensee renewed his license on or after July 1, 2003, he shall complete a commission core course, plus sixteen (16) classroom hours of continuing education, ~~plus--one--(1)--commission-approved-core-course,~~ before he can change to active license status. If the inactive licensee is within a license renewal period that began prior to July 1, 2003, he shall complete a commission core course. plus eight (8) classroom hours of continuing education, ~~plus one--(1)--commission-approved--core--course,~~ before he can change to

active license status. If the inactive licensee is within his initial licensing period, no continuing education is required to change to active license status.

(2) No duplicate credit. No licensee may obtain continuing education credit for completing:

(a) Any core course curriculum for which he has previously received continuing education credit; or

(b) Any course curriculum for which he has received continuing education credit in the same license period.

(3) Excess credits. The classroom hours shall apply to the license period in which such course is completed; hours completed in excess of those required for the license period shall not accumulate or be credited for the purposes of subsequent license renewal periods.

(4) Commission-ordered education. No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action.

(5) Obtaining continuing education classroom hours. In order to obtain continuing education classroom hours, a licensee ~~may~~ must:

(a) Successfully complete a commission-approved continuing education course;

(b) Successfully complete a commission-approved continuing education challenge exam;

(c) Attend an entire regularly-scheduled meeting of the commission. The licensee shall provide at least seven (7) days' advance notice to the education section of the commission of his intent to attend the meeting. Failure to provide advance notice shall result in no continuing education hours being credited. A maximum of three (3) hours for this activity shall be credited for any one (1) meeting in any one (1) license period;

(d) Successfully complete a commission-approved broker prelicense course, or a commission-approved continuing education challenge exam, in advanced real estate study. Continuing education credit may be obtained for retaking the same broker prelicense course or challenge exam only if completed after five (5) years of completing the previous course or challenge exam; or

(e) Provide to the commission a transcript or course completion certificate of successful completion of any of the following courses~~, in accordance with all of the continuing education requirements of this section,~~ without commission preapproval of the curriculum, instructors or providers:

(i) Professional designation c~~C~~ourses. Any course developed by national professional organizations that are required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice; ~~and~~

(ii) Courses accredited by another profession or jurisdiction. Any c~~C~~ourses approved by and offered in satisfaction of another professional or occupational licensing authority's education requirements, if the course is within the approved topic areas established by the commission; or

(iii) Courses offered by an accredited college or university. Any course offered in satisfaction of a degree requirement by an accredited college or university if the course is within the approved topic areas established by the commission.

(f) If a certified course instructor, teach a live course for which continuing education credit may be obtained. Credits shall be granted for the number of classroom hours taught.

(6) Licensee duty to keep satisfactory proof. The licensee shall keep satisfactory proof of having completed the continuing education requirement and shall submit such proof at the request of the commission as provided in section 54-2018, Idaho Code.

(7) Provisional license -- Extension of time. A three-month extension of time for completing the education requirements may be obtained by submitting with the renewal application, or application to activate, satisfactory evidence showing that the applicant was unable to comply with such education requirements. Such evidence ~~may~~ shall be:

(a) Bona fide hardship preventing completion of the reinstatement requirements of an inactive license;

(b) Health reasons preventing attendance or completion;

(c) Active duty in the military service with assignment to a permanent duty station outside of the state during the last twelve (12) months of a license period; or

(d) Other compelling cause beyond the control of the applicant while engaged in the real estate business.

If such an extension is granted, the licensee shall receive a provisional license for a period of time not to exceed three (3) months. No further extension of time may be granted. A license issued or renewed after an extension of time has been granted shall retain the original license expiration date. Failure to satisfy the continuing education requirement within the time granted shall result in the automatic inactivation of the license.

SECTION 7. That Section 54-2025, Idaho Code, be, and the same is hereby amended to read as follows:

54-2025. CERTIFICATION REQUIREMENTS. (1) Certification required. Except as otherwise provided in section 54-2023(5)(e), Idaho Code, c~~C~~ertification must be obtained by all course providers, ~~course~~ instructors teaching any course other than a continuing education elective course, and for all course content in order for the course to be credited toward prelicense or continuing education requirements in Idaho under this chapter.

(2) Courses, instructors and providers monitored. The commission or its representative may monitor any course for the purpose of course, instructor or provider certification.

(3) If the commission at any time determines that an instructor, course or provider is not meeting the requirements for continued commission approval or certification, written notification detailing the deficiencies requiring correction shall be made immediately to the appropriate person. The commission shall take no action to withdraw the certification for thirty (30) days from the date of the written notice. At the expiration of this period, if the deficiencies have not been corrected to the commission's satisfaction, the commission may take action to withdraw certification. Withdrawal of certification shall be governed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and the rules of the commission.

SECTION 8. That Section 54-2027, Idaho Code, be, and the same is hereby amended to read as follows:

54-2027. DUTIES AND REQUIREMENTS OF ALL CERTIFIED COURSE PROVIDERS. Failure of a certified course provider to comply with the following duties and requirements shall be grounds for the commission to withdraw or cancel the provider's certification for cause.

(1) Discrimination prohibited. Each certified course provider shall at all times be in compliance with state and federal laws, rules and regulations regarding all aspects of equal opportunity and protection of civil rights. No course provider shall engage in discriminatory practices, nor allow their course instructor, or method of delivery to violate laws prohibiting discrimination. Each course provider will fully comply with any requirements of the Americans with disabilities act regarding access to and delivery of its courses, including the provision of accessible facilities and reasonable accommodations for students.

(2) Open access to course offerings. Registration and attendance at all certified courses offered for prelicense or continuing education credit shall be open to all persons meeting normal course prerequisites;~~.--A~~ provided however, a certified course provider located in or affiliated with a licensed real estate brokerage company or professional association may ~~not~~ refuse ~~reasonable~~ access to any licensee or unlicensed person based on that licensee's or unlicensed person's affiliation with another organization or brokerage company, or the licensee's or unlicensed person's membership status in any professional organization unless such course provider has received financial support from the commission for its particular course offering. ~~However,~~ Nothing in this section shall restrict a course ~~provider is not prohibited~~ from charging a separate and reasonable course fee to nonaffiliated or nonmember licensees or unlicensed persons.

(3) Disclosure of fees. All fees charged to a student by a course provider shall be specified separately in writing. If additional fees are charged for supplies, materials or books required for ~~course--work~~ coursework, such fees shall be itemized by the provider and, upon payment of such fees, the supplies, materials or books shall become the property of the student. All fees and the manner in which they are to be paid shall be stated in a student contract, in a form approved by the commission. The student contract shall expressly include the provider's policy regarding the return of fees in the instance where the student is dismissed or voluntarily withdraws from the course.

(4) Facilities and supportive personnel. The provider shall provide the facilities and all supportive qualified personnel or approved proctors necessary to adequately implement its real estate program.

(5) Student records and other requirements. Each Idaho certified course provider shall comply with the following requirements:

(a) Records. Maintain for each individual student a complete, accurate and detailed record which shall include the total number of hours of instruction undertaken and satisfactorily or unsatisfactorily completed in the area of study;

(b) Course completion lists. Within five (5) working days after conclusion of each course of instruction, the provider shall submit to the council or commission an alphabetical list which shall include the names, addresses and social security numbers of the students completing the course of instruction, the name of the course,

the name of the instructor, the number of hours included in the course, the date of the course and the location. The list shall be certified by the instructor from whom the students received instruction and an authorized representative of the provider;

(c) Grades. The provider will provide written notification to students who successfully or unsuccessfully complete a course within thirty (30) days of the course completion date;

(d) Evaluations. ~~Each~~ Upon the conclusion of each course, the provider shall ~~submit acceptable~~ collect written evaluations from students ~~evaluations for each~~ the course and instructor, ~~which must be on commission approved forms. The use of~~ using an evaluation form approved by the commission, ~~evaluation form is recommended;~~ provided:

(i) For each prelicense course, the provider shall promptly submit the collected student written evaluations to the commission; and

(ii) For each continuing education course, the provider shall keep such evaluations for a period of one (1) year from the course completion date. Upon written request from the commission, the provider shall submit a written summary of the student evaluations for the course and instructor using a form approved by the commission.

(e) Course schedules. Each provider shall submit schedules of courses and instructors as requested by the commission and submit changes promptly as they occur. Whenever there is a change in a course including, but not limited to, a change in curriculum, course length or instructor, the provider shall promptly notify the commission in writing of the change.

(6) Instructor certification not required for continuing education elective courses. A certified provider may offer a continuing education elective course without obtaining approval or certification for the course instructor; provided however, the provider shall maintain resumes or other biographical information that documents the qualifications of the instructor to teach the continuing education elective course.

(7) Posting and recording fees. The commission may require that course providers pay to the commission a nonrefundable posting and recording fee to defray normal expenses incurred in maintaining the certificate program. The fee amount shall be established by the commission by motion.

(~~7~~8) Advertising restrictions:

(a) Providers may advertise that they are currently certified by the commission, if current certification has been approved, but no such advertising may state or imply that the provider is an agency of the commission or the council;

(b) No course provider shall provide any information to the public or to prospective students which is misleading in nature. Information is misleading when, taken as a whole, there is distinct probability that it will deceive the persons whom it is intended to influence.

(~~8~~9) Changes in certification. Certification shall be granted to the particular provider for the specific ownership, provider location, and named individual in charge as designated in the application for certification. Any changes in ownership, provider location, or provider name, or named individual in charge must be submitted for approval to

the commission, at least one (1) month in advance of the effective date of the proposed changes.

SECTION 9. That Section 54-2032, Idaho Code, be, and the same is hereby amended to read as follows:

54-2032. CERTIFICATION OF INSTRUCTORS. All individuals wishing to teach real estate courses for credit toward prelicense or the commission continuing education core course requirements in Idaho must first be approved or certified by the commission for each course the individual wishes to teach.

SECTION 10. That Section 54-2033, Idaho Code, be, and the same is hereby amended to read as follows:

54-2033. INSTRUCTOR QUALIFICATIONS. (1) Qualified instructors at degree-granting institutions. A qualified or full-time instructor or professor of an accredited college or university in any state or jurisdiction and who teaches real estate-related courses is deemed to be an approved instructor of such courses, in Idaho, for the purposes of this chapter.

(2) Other instructor applicants. All other individuals wishing to teach real estate courses for credit toward Idaho prelicense requirements, or the commission continuing education core course requirements must first meet the following additional qualifications and receive separate certification for each course to be taught:

(a) Unless this requirement is waived upon special review of the commission in the manner stated below, no individual instructor seeking certification may have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or jurisdiction. Further, the individual may not have been convicted, issued any fine, placed on probation, received a withheld judgment, or completed any sentence of confinement for or on account of any felony, or any misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing, in a court of proper jurisdiction. The failure of a certified instructor to maintain the qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the instructor's certificate as provided in section 54-2025(3), Idaho Code.

(b) Each applicant for certification shall also:

(i) Submit a properly completed application for instructor certification in the form and manner required by the commission, with all proper fees;

(ii) File a properly executed "irrevocable consent to service of process" in the manner and form prescribed by the commission and according to section 54-2012(1)(j), Idaho Code;

(iii) Qualify as at least one (1) of the following:

1. An attorney at law actively licensed in any state or jurisdiction with at least five (5) years of active practice in the areas of study proposed to be taught, and who has also successfully completed a commission-approved

instructor training course or procedure, including a student teaching period;

2. An individual currently approved or certified and in good standing as a real estate instructor for the same or similar course material in any other state or jurisdiction;

3. An individual who is appointed to teach a nationally recognized real estate course which is generally accepted in other states or jurisdictions; or

4. An individual with at least five (5) years active real estate-related experience who has also successfully completed a commission-approved instructor training procedure, including a student teaching period.

SECTION 11. That Section 54-2036, Idaho Code, be, and the same is hereby amended to read as follows:

54-2036. CERTIFICATION OF COURSES AND COURSE CONTENT. Every real estate course offered for prelicense or continuing education credit for an Idaho real estate license shall first be certified and accredited by the Idaho real estate commission.

(1) An application for course certification must be submitted in the form and manner required by the commission, with proper fees, at least two (2) months prior to contemplated date of the first course offering.

(2) Minimum requirements for course certification:

(a) Each course must be certified individually, offered only through a provider certified or approved in Idaho, and taught by an instructor certified or approved in Idaho in accordance with this chapter.

(b) Each prelicense course must contain at least twenty (20) classroom hours, and each continuing education course must contain at least two (2) classroom hours.

(c) Exam time shall not be included as approved classroom hours of instruction.

(d) A classroom hour is defined as a period of at least fifty (50) minutes of actual instruction.

(e) Distance learning ~~and alternative course delivery~~ courses. The ~~length of~~ design and delivery of each distance learning course shall be certified by the national association of real estate license law officials or by another institution whose certification standards are deemed equivalent by the commission. The credit hours for a certified distance learning ~~or other alternative~~ course shall be based upon the same number of hours which would be ~~awarded in~~ credited for an equivalent ~~classroom~~ live course, and must include a commission-approved~~, proctored~~ final exam. ~~The commission may, by motion, adopt national standards and require national certification for the design and delivery of noncommission-produced distance learning courses.~~

(f) Each prelicense course must include a ~~proctored,~~ commission-approved final exam requiring a minimum passing score of seventy percent (70%).

(g) Continuing education course exam.

(i) A licensee may receive continuing education course credit without having to take or pass an exam if the licensee person-

ally attends the entire live presentation of an approved course.

(ii) The commission may substitute all or a portion of the continuing education coursework required when a licensee shows evidence of passing a commission-approved challenge exam.

(h) Exam retake policy. Each certified course provider may, at its option, allow students who fail the initial course exam one (1) opportunity to retake the approved course exam within the following time periods:

(i) Prelicense course exam retakes must occur within one (1) month of the original course exam;

(ii) Continuing education course challenge exam retakes must occur within that course's certification period;

(iii) If a student fails the retake exam for any prelicense or continuing education course, the student must repeat the entire course and pass the final exam to receive credit.

(i) Challenge exams. A student shall not earn credit for any prelicense course by challenging and passing the course exam without otherwise completing all course requirements.

(3) Approved topics. The commission shall establish specific, approved topics for course content for prelicense courses and continuing education courses as it deems appropriate to current real estate practices and laws.

SECTION 12. That Section 54-2041, Idaho Code, be, and the same is hereby amended to read as follows:

54-2041. TRUST ACCOUNTS AND ENTRUSTED PROPERTY. (1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker.

(2) Immediately upon receipt, the broker shall deposit entrusted moneys in a neutral, qualified trust fund account, ~~in Idaho,~~ and shall properly care for any entrusted property.

(3) Only moneys relating to a regulated real estate transaction may be deposited in the broker's real estate trust fund account. Entrusted moneys shall not be commingled with moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain the trust account or as otherwise allowed by subsection (7) of section 54-2042, Idaho Code.

(4) The real estate broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved.

SECTION 13. That Section 54-2042, Idaho Code, be, and the same is hereby amended to read as follows:

54-2042. CREATION OF NONINTEREST-BEARING TRUST ACCOUNTS -- REQUIREMENTS. A broker may establish one (1) or more real estate trust accounts but each account must meet all requirements of this chapter, including the following:

(1) Each trust account must be established at an approved depository~~, which must be located in the state of Idaho,~~ and must be noninterest-bearing, except as allowed in section 54-2043, Idaho Code, or as otherwise may be provided by law. Approved depositories are state

or federally chartered banks and trust companies, state or federally chartered savings and loan associations, properly licensed title insurance companies, ~~in--Idaho,~~ or an actively licensed attorney at law. ~~in Idaho.~~

(2) Each account must be identified by the term "real estate trust account," on checks, deposit slips, and with the depository.

(3) Each trust account must be established and maintained under the licensed business name of the broker, and shall be under the full control of the broker.

(4) Each broker trust account must have a separate and complete set of records, which must consist of a monthly accounting, deposits, charges, and withdrawals or checks, even if the moneys are on deposit with a title company, attorney or other approved depository. The broker is responsible for ensuring that these separate account records are provided by the depository.

(5) Funds deposited in a real estate trust account must be subject to withdrawal on demand at the order or direction of the broker at all times, even if deposited with a title company or other approved depository.

(6) A commission-approved form giving notice of opening a trust account and giving authorization for the commission to inspect the account must be completed for each trust account, signed by the broker and an officer of the bank or depository and returned to the commission.

(7) No deposits to the trust account shall be made of funds that belong to the broker or real estate firm, except that the broker may deposit broker or firm funds for the purpose of opening and maintaining the account and for the payment of anticipated bank service charges for the trust account. In no event shall the balance of broker or firm funds in the account exceed three hundred dollars ($300). Maintenance funds shall not be disbursed for any purpose other than to cover bank charges charged directly to the trust account by the bank.

(8) An entity not specified as an approved escrow depository in subsection (1) of this section, may be accepted and approved by the commission as an escrow depository upon disclosure of the following:

(a) The details of the entity's financial structure;

(b) The amount and terms of errors and omissions insurance and any bonding;

(c) A copy of the entity's last audit and financial statement;

(d) A copy of any license or certificate issued to the entity; and

(e) Any other information that may help the commission make its determination.

SECTION 14. That Section 54-2043, Idaho Code, be, and the same is hereby amended to read as follows:

54-2043. INTEREST-BEARING TRUST ACCOUNTS. The broker may deposit funds in a separate, interest-bearing trust account for a single transaction if directed in writing by both parties to the transaction, and only if the following additional requirements are met:

(1) The interest-bearing trust account must be established in accordance with all requirements in section 54-2042, Idaho Code. However, the interest-bearing trust account shall be created at an approved depository. ~~in Idaho.~~

(2) The deposit shall be made in the name of the broker, as

described above, and each such account shall contain only the funds relating to one (1) transaction.

(3) The interest-bearing trust account, when created for this purpose, must allow for withdrawal of the funds upon the broker's demand, unless all parties direct the broker in writing to do otherwise.

(4) There must be a written agreement signed by both the buyer and the seller stating who is to receive the interest accrued from the deposit. This agreement is to be retained by the responsible broker in the transaction file with a copy given to the buyer and the seller.

SECTION 15. That Section 54-2056, Idaho Code, be, and the same is hereby amended to read as follows:

54-2056. TERMINATING OR CHANGING LICENSED BUSINESS RELATIONSHIPS. (1) Termination of licensed association. A sales associate who terminates his licensed association with a broker shall provide the broker written notice of the termination ~~and~~ no later than three (3) business days after the effective date. A broker who terminates the licensed association of a sales associate shall provide the associate written notice of the termination ~~and~~ no later than three (3) business days after the effective date. A licensee's written notice to the commission does not relieve him of the duty to provide written notice to the other licensee that he is terminating the licensed association. Upon written notice of the termination of a sales associate's licensed business association with a broker, whether by the broker or by the sales associate, the broker shall remove from public view the former associate's license certificate.

(2) New association. The broker shall submit a written application, in the form and manner approved by the commission, for each sales associate licensing with the broker.

(3) Termination for cause. Any broker who terminates the association of a sales associate for the violation of any of the provisions of sections 54-2059 through 54-2065, Idaho Code, shall, ~~promptly~~ within ten (10) business days of the termination, notify the commission, in writing, of the termination and the facts giving rise to the termination.

(4) Closing a branch office. Immediately upon closing a branch office, the broker shall provide the commission written notice of the closure advising of the new status of all licensees licensed with the closed branch. The broker shall immediately remove from public view the branch office license certificate and the license certificates of all licensees licensed in the branch office.

(5) Property of the broker. Upon termination of the business relationship as a sales associate licensed under a broker, the sales associate shall immediately turn over to the broker all listing information and listing contracts, keys, purchase and sale agreements and similar contracts, buyer brokerage information and contracts, and other property belonging to the broker. A sales associate shall not engage in any practice or conduct, directly or indirectly, which encourages, entices or induces clients of the broker to terminate any legal business relationship with the broker unless he first obtains written permission of the broker.

(6) Location of trust accounts and file records. When an actively licensed broker changes to a license status other than that of a designated broker, that individual must notify the commission in writing of

the location of all trust accounts and transaction file records which the broker was responsible for during the term of licensure as a designated broker. These records shall be available to the commission for three (3) years following the year in which each transaction was closed.

(7) Terminating relationships between a broker and a sole proprietorship owned by a person other than the broker. When a broker for a sole proprietorship, owned by a person other than the broker, terminates an association with the owner, all records and trust account funds shall become the property of, and be maintained and disbursed by, the terminating broker in accordance with this chapter and applicable rules promulgated thereunder. The terminating broker shall deliver, upon request made in writing by the clients and the new broker of that sole proprietorship, such records and trust account funds pertaining to that client, to the new broker who shall thereafter have the responsibility for preservation and disbursement, in accordance with this chapter and applicable rules promulgated thereunder.

SECTION 16. That Section 54-2062, Idaho Code, be, and the same is hereby amended to read as follows:

54-2062. ADDITIONAL GROUNDS FOR DISCIPLINARY ACTION -- OTHER ADMINISTRATIVE ACTIONS -- LICENSEE TO REPORT TO COMMISSION. (1) The commission may also take any disciplinary action, including, but not limited to, suspension or revocation of a license where the licensee:

(a) Has an order or determination of debarment, suspension, or any limitation on participation in government loan programs issued against the licensee for misconduct; or

(b) Has a real estate or other professional license~~, issued by another jurisdiction,~~ suspended or revoked for a disciplinary violation involving fraud, misrepresentation, or dishonest or dishonorable dealings. A certified copy of the order of the administrative agency in the other jurisdiction shall be prima facie evidence of the suspension or revocation.

(2) A licensee against whom a final administrative action has been taken, as described in subsection (1) of this section, shall, within twenty (20) days of such action, forward to the commission a copy of the legal document evidencing the same.

Approved March 23, 2005.

CHAPTER 108
(S.B. No. 1030)

AN ACT

RELATING TO THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; AMENDING SECTION 41-4303, IDAHO CODE, TO REVISE APPLICATION OF THE CHAPTER AND TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTION 41-4309, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO ASSESSMENTS BY THE BOARD OF DIRECTORS AND TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 41-4303, Idaho Code, be, and the same is hereby amended to read as follows:

41-4303. APPLICATION OF ~~ACT~~ CHAPTER. (1) This ~~act~~ chapter shall apply to direct life insurance policies, contractual obligations of managed care plans to members of such plans only, disability insurance policies, annuity contracts, and contracts supplemental to life and disability insurance policies, annuity contracts, and contracts supplemental to life and disability insurance policies and annuity contracts issued by persons licensed to transact insurance in this state at any time. Covered policies shall include annuities owned by a trust for a money purchase pension plan, profit sharing plan, 401(k) thrift plan or any other defined contribution plan, and annuities owned by a custodian of an individual retirement account.

(2) This ~~act~~ chapter shall not apply to:

(a) That portion or part of a variable life insurance or variable annuity contract not guaranteed by an insurer;

(b) That portion or part of any policy or contract under which the risk is borne by the policyholder;

(c) Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(d) Any such policy or contract issued by a reciprocal insurer, mutual benefit association, fraternal benefit society, hospital and medical service corporation, limited managed care plan, or self-funded health care plan; ~~or~~

(e) Any unallocated annuity contract, including an annuity owned by a defined benefit pension plan or trust;

(f) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or exchanges in value:

(i) Averaged over the period of four (4) years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for that same four (4) year period or for such lesser period if the policy or contract was issued less than four (4) years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and

(ii) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available.

(iii) For purposes of this section, "Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto; or

(g) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policyowner, including without limitation:

(i) Claims based on marketing materials;
(ii) Claims based on side letters, riders or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;
(iii) Misrepresentations of or regarding policy benefits;
(iv) Extra-contractual claims; or
(v) A claim for penalties or consequential or incidental damages.

SECTION 2. That Section 41-4309, Idaho Code, be, and the same is hereby amended to read as follows:

41-4309. ASSESSMENTS. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at eight percent (8%) per annum on and after the due date.

(2) There shall be ~~three~~ two (~~3~~2) classes of assessments, as follows:

(a) Class A assessments shall be ~~made~~ authorized and called for the purpose of meeting administrative costs and other general expenses. ~~and--examinations-conducted-under-the-authority-of-subsection-(5)-of section-41-4312-and-of-section-41-4315,-Idaho-Code~~ Class A assessments may be authorized and called whether or not they are related to a particular impaired or insolvent insurer.

(b) ~~Class B assessments shall be made~~ authorized and called to the extent necessary to carry out the powers and duties of the association under section 41-4308, Idaho Code, with regard to an impaired or insolvent ~~domestic~~ insurer.

~~(c)--Class--C--assessments--shall-be-made-to-the-extent-necessary-to carry-out-the-powers-and-duties-of--the--association--under--section 41-4308,--Idaho--Code,--with-regard-to-an-insolvent-foreign-or-alien insurer.~~

(3) (a) The amount of any class A assessment shall be determined by the board and may be ~~made~~ authorized and called on a non pro rata basis. Such assessment ~~shall~~ may be credited against future ~~insolvency~~ class B assessments. The amount of any class B ~~or C~~ assessment shall be allocated for assessment purposes among the accounts ~~in-the proportion-that-the-premiums-received-by-the-impaired--or--insolvent insurer--on-the-policies-covered-by-each-account-for-the-last-calendar-year-preceding-the-assessment-in-which-the-impaired-or-insolvent insurer-received-premiums-bears-to-the--premiums--received--by--such insurer--for--such-calendar-year-on-all-covered-policies~~ pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(b) Class ~~C~~ B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessments bears to such premiums received on business in this state for the calendar

year preceding the assessment by all assessed member insurers.

(c) ~~Class B assessments for each account shall be made separately for each state in which the impaired or insolvent domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired or insolvent insurer on policies covered by such account for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums bears to such premiums received in all such states for such calendar year by the impaired or insolvent insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessment bears to such premiums received on business in each state for the calendar year preceding assessment by all assessed member insurers.~~

~~(d)~~ Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this ~~act~~ chapter. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(~~e~~d) Notwithstanding any other provision of this section, a managed care organization shall not be subject to a class B ~~or class C~~ assessment for any domestic, foreign or alien insurer that is declared insolvent by any court prior to July 1, 2000.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(5) The total of all class B assessments ~~upon~~ authorized by the association with respect to a member insurer for each account shall not in ~~any~~ one (1) calendar year exceed two percent (2%) of such insurer's premiums received in this state during the calendar year preceding the assessment on the policies covered by the account. If the maximum assessment, together with the other assets of the association in ~~either~~ an account, does not provide in any one year in ~~either~~ an account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this ~~act~~ chapter.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained

in any account to provide funds for the continuing expenses of the association and for future losses. ~~if refunds are impractical.~~

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this ~~act~~ chapter, to consider the amount reasonably necessary to meet its assessment obligations under this ~~act~~ chapter.

(8) The association shall issue to each insurer paying an assessment under this ~~act~~ chapter, other than a class A assessment, a certificate of contribution, in a form prescribed by the director, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the director may approve.

Approved March 23, 2005.

CHAPTER 109
(S.B. No. 1038)

AN ACT

RELATING TO CRIME VICTIM COMPENSATION BENEFITS; AMENDING SECTION 72-1019, IDAHO CODE, TO INCREASE BENEFIT AMOUNTS, TO PROVIDE FOR THE PAYMENT OF BENEFITS FOR CREMATION EXPENSES AND ACTUAL EXPENSES OF TRANSPORTATION OF THE VICTIM'S BODY, TO EXPAND THE ELIGIBILITY FOR BENEFITS PAID AS A RESULT OF CRIMINALLY INJURIOUS CONDUCT AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. That Section 72-1019, Idaho Code, be, and the same is hereby amended to read as follows:

72-1019. COMPENSATION BENEFITS. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct, subject to a maximum of one hundred seventy-five dollars ($175). Weekly compensation payments shall be made at the end of each two (2) week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for one (1) week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The commission may order payment of reasonable expenses actually incurred by the claimant for reasonable services by a physician or surgeon, reasonable hospital services and medicines, mental health coun-

seling and care, and such other treatment as may be approved by the commission for the injuries suffered due to criminally injurious conduct. Payment for the costs of forensic and medical examinations of alleged victims of sexual assault performed for the purposes of gathering evidence for possible prosecution, after collections from any third party who has liability, shall be made by the commission. The commission shall establish a procedure for summary processing of such claims.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive aggregate weekly benefits amounting to sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one hundred seventy-five dollars ($175) per week. Weekly compensation payments shall be made at the end of each two (2) week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the commission determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial or cremation expenses of the victim, ~~not--exceeding-two-thousand-five-hundred-dollars-($2,500)~~ together with actual expenses of transportation of the victim's body, shall be paid in an amount not exceeding five thousand dollars ($5,000) if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) (a) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act or acts of criminally injurious conduct involving the same offender and occurring within a six (6) month period, may not exceed twenty-five thousand dollars ($25,000) in the aggregate.

(b) The limitation of subsection (5)(a) of this section is subject to the further limitation that payments for mental health treatment received as a result of the victim's injury may not exceed two thousand five hundred dollars ($2,500) unless the industrial commission finds extenuating circumstances pursuant to regulation of the industrial commission.

(6) Compensation benefits are not payable for pain and suffering or property damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the commission be awarded weekly compensation benefits in an amount determined by the commission not to exceed one hundred fifty dollars ($150) per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at

the time of death, may, in the discretion of the commission, be awarded, in an aggregate amount payable to all dependents, a sum not to exceed one hundred fifty dollars ($150) per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed twenty thousand dollars ($20,000), and the limitations of subsection (6) of this section apply to compensation under this subsection (7).

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every two (2) weeks.

(9) (a) Subject to the limitations in subsections (9)(b) and (9)(c) of this section, the spouse, parent, grandparent, child, grandchild, brother~~,~~ or sister of a victim who is killed, ~~as a result of criminally injurious conduct~~ kidnapped, sexually assaulted or subjected to domestic violence ~~or child injury~~ is entitled to reimbursement for mental health treatment received as a result of ~~the victim's death~~ such criminally injurious conduct.

(b) ~~Subject to the limitations in subsection (9)(c) of this section, the spouse, parent, child, brother or sister of a victim who is sexually assaulted is entitled to reimbursement for mental health treatment received as a result of the crime.~~

~~(c)~~ Total payments made under subsections (9)(a) ~~and (9)(b)~~ of this section, may not exceed five hundred dollars ($500) for each person or one thousand five hundred dollars ($1,500) for a family.

(~~d~~c) With regard to claims filed pursuant to this section, in order for family members of victims of crime to be entitled to benefits, the victim of the crime must also have been awarded benefits for the crime itself.

(10) A claimant or a spouse, parent, child or sibling of a claimant or victim may be reimbursed for his or her expenses for necessary travel incurred in connection with obtaining benefits covered pursuant to this chapter and in accordance with rules of the commission.

Approved March 23, 2005.

CHAPTER 110
(S.B. No. 1039, As Amended)

AN ACT

RELATING TO CONDOMINIUMS; AMENDING SECTION 55-1512, IDAHO CODE, TO PROVIDE FOR SERVICE OF PROCESS UPON A MANAGEMENT BODY OF A CONDOMINIUM DEVELOPMENT THAT HAS BEEN INCORPORATED.

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

SECTION 1. That Section 55-1512, Idaho Code, be, and the same is hereby amended to read as follows:

55-1512. ACTIONS RELATING TO COMMON AREAS -- PERSONS DESIGNATED TO RECEIVE PROCESS -- NEW DESIGNATION FILED -- SERVICE ON AUDITOR -- COPY FROM AUDITOR TO MANAGEMENT BODY -- APPLICATION OF CORPORATE LAW. Except when a domestic corporation has been formed and designated in the declaration to serve as the management body to administer the project, at the time the declaration is recorded one (1) or more persons shall be designated to receive service of process in any action relating to the common areas and facilities. Such designation shall be filed with the county auditor in the county in which the project is located together with an acknowledgment in writing of acceptance of such designation by the person so designated. The person so designated shall be a resident of the state of Idaho, and service upon such person shall be the exclusive method of service in any action relating to the common areas and facilities. Upon termination of such person's capacity or authority to receive service, a new designation shall be made by the management body of the project, and such designation shall be filed with the county auditor in the county in which the project is located together with an acknowledgment in writing of acceptance of such designation by the person so designated. Upon failure to so designate a person to receive service of process and to file such designation and acceptance of such designation, service may be made upon the county auditor with like effect as though said service were made upon a person designated, and it shall be the duty of the county auditor to forward a copy of such summons served on him by registered mail to the management body of the project at the address or location last known, but no failure on the part of the county auditor to mail such copy of summons shall affect the validity of the service thereof. When a corporate organization is formed and designated as the management body, service of process on the corporation shall be as permitted by law, and the Idaho rules of civil procedure.

Approved March 23, 2005.

CHAPTER 111
(S.B. No. 1040)

AN ACT

RELATING TO THE RIGHTS OF A JUDGMENT CREDITOR AGAINST A MEMBER OF A LIMITED LIABILITY COMPANY; AMENDING SECTION 53-637, IDAHO CODE, TO PROVIDE THAT THE CHARGING ORDER IS THE EXCLUSIVE REMEDY BY WHICH A JUDGMENT CREDITOR OF THE MEMBER OR TRANSFEREE MAY SATISFY A JUDGMENT AGAINST THE MEMBER'S INTEREST IN A LIMITED LIABILITY COMPANY.

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

SECTION 1. That Section 53-637, Idaho Code, be, and the same is hereby amended to read as follows:

53-637. RIGHTS OF JUDGMENT CREDITOR. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's limited liability company interest with payment of the unsatisfied amount of judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the

member's limited liability company interest. The charging order is the exclusive remedy by which a judgment creditor of the member or transferee may satisfy a judgment against the member's interest in a limited liability company. The provisions of this chapter do not deprive any member of the benefit of any exemption laws applicable to his limited liability company interest.

Approved March 23, 2005.

CHAPTER 112
(S.B. No. 1052)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1603, IDAHO CODE, TO PROHIBIT THE RETRIEVAL OF WILDLIFE ON CERTAIN LANDS WITHOUT THE PERMISSION OF THE OWNER OR PERSON IN CHARGE OF THE PROPERTY.

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

SECTION 1. That Section 36-1603, Idaho Code, be, and the same is hereby amended to read as follows:

36-1603. TRESPASSING ON CULTIVATED LANDS OR IN VIOLATION OF WARNING SIGNS -- POSTING OF PUBLIC LANDS. (a) No person shall enter the real property of another and shoot any weapon or enter such property for the purposes of hunting, retrieving wildlife, fishing or trapping, without the permission of the owner or person in charge of the property, which property is either cultivated or posted with legible "No Trespassing" signs, is posted with a minimum of one hundred (100) square inches of fluorescent orange paint except that when metal fence posts are used, the entire post must be painted fluorescent orange, or other notices of like meaning, placed in a conspicuous manner on or near all boundaries at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this subsection if said signs, paint areas or notices are posted at such points of access. For the purposes of this section, "cultivated" shall mean soil that is being or has been prepared by loosening or breaking up for the raising of crops, or used for the raising of crops, or artificially irrigated pasturage. No person shall fail to depart immediately from the real property of another after being notified in writing or orally by the owner of the real property or the owner's authorized agent.

(b) No person shall post, sign, or indicate that any public lands within this state, not held under an exclusive control lease, are privately owned lands.

Approved March 23, 2005.

CHAPTER 113
(S.B. No. 1053)

AN ACT

RELATING TO GUARDIANSHIPS; AMENDING SECTION 15-5-207, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO A COURT APPOINTMENT OF AN ATTORNEY OR GUARDIAN AD LITEM TO REPRESENT A MINOR; AND AMENDING SECTION 15-5-213, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO DE FACTO CUSTODIANS.

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

SECTION 1. That Section 15-5-207, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR -- PROCEDURE. Proceedings for the appointment of a guardian may be initiated by any relative of the minor, the minor if he is fourteen (14) years of age, a de facto custodian of the minor, or any person interested in the welfare of the minor.

(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 15-1-401 of this code to:

(1) The minor, if he is fourteen (14) or more years of age;

(2) The person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition;

(3) The de facto custodian of the minor, if any; and

(4) Any living parent of the minor.

(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204 of this part have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(d) ~~Upon the filing of a petition, t~~The court shall appoint an attorney to represent the minor~~, who shall have the powers and duties of a guardian ad litem~~ if the court determines that the minor possesses sufficient maturity to direct the attorney. If the court finds that the minor is not mature enough to direct an attorney, the court shall appoint a guardian ad litem for the minor. The court may decline to appoint an attorney or guardian ad litem if it finds in writing that such appointment is not necessary to serve the best interests of the minor or if the Idaho department of health and welfare has legal custody of the child.

(e) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

SECTION 2. That Section 15-5-213, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-213. DE FACTO CUSTODIAN. (1) "De facto custodian" means a person who has been the primary caregiver for, and primary financial supporter of, a child who, prior to the filing of a petition for guardianship, has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older.

(2) If a court determines by clear and convincing evidence that a person meets the definition of a de facto custodian, and that recognition of the de facto custodian is in the best interests of the child, the court shall give the person the same standing that is given to each parent ~~under this act~~ in proceedings for appointment of a guardian of a minor. In determining whether recognition of a de facto custodian is in the child's best interests, the court shall consider:

(a) Whether the child is currently residing with the person seeking recognition as a de facto custodian; and

(b) If the child is not currently residing with the person seeking de facto custodian status, the length of time since the person served as the child's primary caregiver and primary financial supporter.

Approved March 23, 2005.

CHAPTER 114
(S.B. No. 1054)

AN ACT

RELATING TO THE PEACE OFFICERS STANDARDS AND TRAINING FUND; AMENDING SECTION 19-4705, IDAHO CODE, TO REVISE THE DISTRIBUTION OF REMITTED FINES AND FORFEITURES; AMENDING SECTION 31-3201A, IDAHO CODE, TO REVISE THE DISTRIBUTION OF COURT FILING FEES; AND AMENDING SECTION 31-3201B, IDAHO CODE, TO INCREASE THE FEE CHARGED FOR THE PEACE OFFICERS STANDARDS AND TRAINING FUND AND TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 19-4705, Idaho Code, be, and the same is hereby amended to read as follows:

19-4705. PAYMENT OF FINES AND FORFEITURES -- SATISFACTION OF JUDGMENT -- DISPOSITION -- APPORTIONMENT. (a) All fines and forfeitures collected pursuant to the judgment of any court of the state shall be remitted to the court in which the judgment was rendered. The judgment shall then be satisfied by entry in the docket of the court. The clerk of the court shall daily remit all fines and forfeitures to the county auditor who shall at the end of each month apportion the proceeds according to the provisions of this act. Other existing laws regarding the disposition of fines and forfeitures are hereby repealed to the extent such laws are inconsistent with the provisions of this act except as provided in section 49-1013(3), Idaho Code.

(b) Fines and forfeitures remitted for violations of fish and game laws shall be apportioned two and one-half percent (2 1/2%) to the state

treasurer for deposit in the state general account, ten percent (10%) to the search and rescue account, twenty-two and one-half percent (22 1/2%) to the district court fund and sixty-five percent (65%) to the fish and game fund.

(c) Fines and forfeitures remitted for violations of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten percent (10%) to the state treasurer of which ~~ninety~~ eighty-six percent (90~~8~~6%) shall be deposited to the state general fund and ~~ten~~ fourteen percent (10~~4~~%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, forty-five percent (45%) to the state treasurer for deposit in the highway distribution account, twenty-two and one-half percent (22 1/2%) to the district court fund and twenty-two and one-half percent (22 1/2%) to the state treasurer for deposit in the public school income fund; provided, however, that fines and forfeitures remitted for violation of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, where an arrest is made or a citation is issued by a city law enforcement official, or by a law enforcement official of a governmental agency under contract to provide law enforcement services for a city, shall be apportioned ten percent (10%) to the state treasurer of which ~~ninety~~ eighty-six percent (90~~8~~6%) shall be deposited to the state general fund and ~~ten~~ fourteen percent (10~~4~~%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose officer made the arrest or issued the citation.

(d) Fines and forfeitures remitted for violation of any state law not involving fish and game laws, or motor vehicle laws, or state driving privilege laws, or state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten percent (10%) to the state treasurer of which ~~ninety~~ eighty-six percent (90~~8~~6%) shall be deposited to the state general fund and ~~ten~~ fourteen percent (10~~4~~%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred.

(e) Fines and forfeitures remitted for violation of county ordinances shall be apportioned ten percent (10%) to the state treasurer of which ~~ninety~~ eighty-six percent (90~~8~~6%) shall be deposited to the state general fund and ~~ten~~ fourteen percent (10~~4~~%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county whose ordinance was violated.

(f) Fines and forfeitures remitted for violation of city ordinances shall be apportioned ten percent (10%) to the state treasurer of which ~~ninety~~ eighty-six percent (90~~8~~6%) shall be deposited to the state general fund and ~~ten~~ fourteen percent (10~~4~~%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose ordinance was violated.

(g) Fines and forfeitures remitted for violations not specified in

this act shall be apportioned ten percent (10%) to the state treasurer of which ~~ninety~~ eighty-six percent (~~90~~86%) shall be deposited to the state general fund and ~~ten~~ fourteen percent (~~10~~4%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred except in cases where a duly designated officer of any city police department or city law enforcement official shall have made the arrest for any such violation, in which case ninety percent (90%) shall be apportioned to the city whose officer made the arrest.

(h) Fines and forfeitures remitted for violations involving registrations of motorcycles or motor-driven cycles used off highways, snowmobiles, or use of winter recreation parking areas shall be apportioned ten percent (10%) to the state treasurer of which ~~ninety~~ eighty-six percent (~~90~~86%) shall be deposited to the state general fund and ~~ten~~ fourteen percent (~~10~~4%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the general fund of the county or city whose law enforcement official issued the citation.

(i) Fines and forfeitures remitted for violations of overweight laws as provided in section 49-1013(3), Idaho Code, shall be deposited one hundred percent (100%) into the highway distribution account.

(j) As used in this section, the term "city law enforcement official" shall include an official of any governmental agency which is providing law enforcement services to a city in accordance with the terms of a contract or agreement, when such official makes the arrest or issues a citation within the geographical limits of the city and when the contract or agreement provides for payment to the city of fines and forfeitures resulting from such service.

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

31-3201A. COURT FEES. The clerk of the district court in addition to the fees and charges imposed by chapter 20, title 1, Idaho Code, and in addition to the fee levied by chapter 2, title 73, Idaho Code, shall charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law;

(a) A fee of $39.00 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 $17.00 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 $19.00 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 Juvenile Corrections Act;
(3) In cases brought under the Child Protective Act.

In all cases in which a filing fee of $39.00 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 pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. In all cases in which a filing fee of $19.00 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; $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 $10.00 of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. In all cases in which a filing fee of $17.00 is paid, $3.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; $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 $9.00 of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(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 pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. 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 pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(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 pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. 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 pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(d) A fee of $19.00 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 pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(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 pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(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 certifying the transcript on appeal, if such certificate is required. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(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 pursuant to subsections (a), (b), (c), (d) and (f) of this section shall be apportioned ~~ninety~~ eighty-six percent (~~90~~86%) to the state general fund and ~~ten~~ fourteen percent (~~10~~14%) to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, 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, 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(7), Idaho Code, relating to the evaluation and counseling or other treatment of such persons, 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 3. That Section 31-3201B, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201B. PEACE OFFICERS STANDARDS AND TRAINING -- FEE. The court shall charge a fee of ~~six~~ ten dollars ($6~~1~~0.00) for peace officers standards and training purposes to be paid by each person found guilty of any felony or misdemeanor, or found to have committed an infraction or any minor traffic, conservation or ordinance violation, except for cars unlawfully left or parked or when the court orders such fee waived because the person is indigent and unable to pay such fee; provided, however, that the judge or magistrate may in his discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. Such fees shall be in addition to all other fines and fees levied. Such fees shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees ~~into~~ to the state treasurer for deposit in the peace officers standards and training ~~account~~ fund.

Approved March 23, 2005.

CHAPTER 115
(S.B. No. 1055)

AN ACT

RELATING TO THE IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM; AMENDING SECTION 18-8324, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING THE CHAPTER HEADING FOR CHAPTER 52, TITLE 19, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTIONS 19-5201, 19-5202, 19-5203 AND 19-5204, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-3008, IDAHO CODE, TO REVISE TERMINOLOGY.

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

SECTION 1. That Section 18-8324, Idaho Code, be, and the same is hereby amended to read as follows:

18-8324. DISSEMINATION OF REGISTRY INFORMATION. (1) The department shall disseminate any registration information collected under this

chapter, including change of address notification, to criminal justice agencies through the ~~telecommunications~~ public safety and security information system established in section 19-5202, Idaho Code. Registry information provided under this section shall be used only for the administration of criminal justice or for the protection of the public as permitted by this chapter.

(2) The department shall provide quarterly to the superintendent of public instruction and to the director of the department of health and welfare a list of all sexual offenders required to register with the central registry together with the address, date of birth and crime of conviction for each offender listed. The superintendent may further distribute the list or portions thereof to school districts or to schools.

(3) The department shall release quarterly to the public a list of offenders thirty (30) days or more delinquent in maintaining registration or address verification. Offenders subject to being listed include those who have failed:

(a) To register with a sheriff after initial registration under section 18-8307, Idaho Code;

(b) To register annually as required in section 18-8307, Idaho Code; and

(c) To respond to an address verification notice as required in section 18-8308, Idaho Code.

(4) The department shall include a cautionary statement relating to completeness, accuracy and use of registry information when releasing information to the public or noncriminal justice agencies as well as a statement concerning the penalties provided in section 18-8326, Idaho Code, for misuse of registry information.

(5) Information released pursuant to this section may be used only for the protection of the public.

(6) Further dissemination of registry information by any person or entity shall include the cautionary statements required in subsection (4) of this section.

(7) Upon registration in a county of a person classified as a violent sexual predator presenting a high risk of reoffense by the Idaho sex offender classification board, or an equivalent classification in another state, the sheriff shall publish in a newspaper in general circulation within the county once a week for three (3) consecutive weeks, the name, address, photograph of said person and offense the offender has committed within thirty (30) days of registration. The sheriff shall charge a fee of fifty dollars ($50.00) in addition to any other fees authorized by this chapter to be paid by the sex offender to offset the cost of publication.

SECTION 2. That the Heading for Chapter 52, Title 19, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 52
~~LAW-ENFORCEMENT-COMMUNICATIONS~~
PUBLIC SAFETY AND SECURITY
INFORMATION SYSTEM

SECTION 3. That Section 19-5201, Idaho Code, be, and the same is hereby amended to read as follows:

19-5201. ~~CRIMINAL-JUSTICE-TELETYPEWRITER------COMMUNICATIONS~~ IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM -- INTENT AND PURPOSE. The maintenance of law and order is, and always has been, a primary function of government and is so recognized in both federal and state constitutions. The state has an unmistakable responsibility to give full support to all public agencies of the criminal justice system. This responsibility includes the provision of an efficient law enforcement ~~communications-network~~ information system available to all state and local agencies. It is the intent of the legislature that such a ~~network~~ system be established and maintained in a condition adequate to the needs of ~~the-criminal-justice-system-and-highway~~ public safety and security. It is the purpose of this ~~act~~ chapter to establish a ~~criminal-justice--teletypewriter--communications--network~~ public safety and security information system, known as "ILETS," for the state of Idaho.

SECTION 4. That Section 19-5202, Idaho Code, be, and the same is hereby amended to read as follows:

19-5202. ESTABLISHMENT OF ~~NETWORK----USE----RENTAL~~ INFORMATION SYSTEM -- USE -- ACCESS CHARGE -- INTERSTATE CONNECTION. (1) Establishment of network information system. The director of the Idaho state police shall establish a ~~teletypewriter-communications-network~~ public safety and security information system, known as "ILETS," which will interconnect the criminal justice agencies of this state and its political subdivisions and all agencies engaged in the promotion of highway safety into a unified ~~teletypewriter--communications~~ information system. The director is authorized to lease such transmitting and receiving facilities and equipment as may be necessary to establish and maintain such ~~teletypewriter-communications-network~~ a system.

(2) Use of network information system. The ~~teletypewriter--communications--network~~ public safety and security information system, known as "ILETS," shall be used exclusively for the law enforcement and criminal justice business of the state of Idaho and all the political subdivisions thereof, including all agencies engaged in the promotion of traffic safety.

(3) Judiciary and traffic safety. Nothing in this ~~act~~ chapter shall prohibit the use of or participation in the ~~teletypewriter-communications~~ information system herein provided by the judicial branch of the state government or by any other department, agency or branch of state or local government engaged in traffic safety.

(4) ~~Rental~~ Access. The ~~monthly-rental~~ quarterly access fee to be charged each department or agency participating in the ~~teletypewriter communications-network-on-a-terminal-or-unit--basis~~ information system shall be set by the ~~teletypewriter-communications~~ public safety and security information board, known as the "ILETS board," and in setting such ~~rental-charge~~ fee the board shall take into consideration the usage of said network system by each participant. ~~and-of-the-economic-position of-each-participant.~~ There is hereby created the ~~teletypewriter-communications-network~~ public safety and security information fund, to be known as the ILETS fund. All ~~rental-and-use~~ access fees collected under the provisions of this chapter shall be paid into the fund.

(5) Interstate connection. The ~~teletypewriter--communications--network~~ public safety and security information system provided for herein is hereby authorized to connect and participate with ~~teletypewriter-com-~~

~~munications-network~~ information systems of other states and provinces of Canada.

SECTION 5. That Section 19-5203, Idaho Code, be, and the same is hereby amended to read as follows:

19-5203. ~~TELETYPEWRITER--COMMUNICATIONS~~ PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM BOARD -- CREATION -- COMPOSITION -- TERMS -- RULES -- COMPENSATION OF MEMBERS. (1) There is hereby created within the Idaho state police a ~~teletypewriter-communications~~ public safety and security information system board, to be known as the ILETS board, which shall be composed of five (5) members appointed by the governor.

The members of the ~~teletypewriter-communications~~ information system board shall be composed of the following:

(a) Two (2) incumbent county sheriffs;

(b) Two (2) incumbent city chiefs of police;

(c) One (1) member of the Idaho state police.

(2) The term of office of the first board shall be staggered with the one (1) appointment expiring January 1, 1972; one (1) appointment expiring January 1, 1973; one (1) appointment expiring January 1, 1974; one (1) appointment expiring January 1, 1975; and one (1) appointment expiring January 1, 1976.

Thereafter, the term of office of each chief of police, sheriff and member of the Idaho state police shall be for a term of five (5) years.

The director of the Idaho state police shall be a permanent member of the board.

In the event any chief of police, sheriff or member of the Idaho state police ceases to be such chief of police, sheriff, or member of the Idaho state police his appointment to said board shall terminate and cease immediately and the governor shall appoint a qualified person in such category to fill the unexpired term of such member.

(3) The board shall, upon their appointment, adopt such rules, procedures and methods of operation as may be necessary to establish and put into use the most efficient and economical statewide ~~teletypewriter communications-network~~ public safety and security information system and shall publish and distribute said rules and procedures to each participating department, agency or office.

(4) The ~~teletypewriter--communications~~ public safety and security information system board shall have exclusive management control over the entire Idaho ~~law-enforcement-teletypewriter~~ public safety and security information system, ~~(ILETS)~~ which includes all hardware, software, electronic switches, peripheral gear, microwave links, and circuitry~~, and-terminal-devices~~ which make up the ~~network~~ system and any access thereto. The term ~~Idaho-law-enforcement-teletypewriter~~ public safety and security information system ~~(ILETS)~~ shall mean the ~~teletypewriter~~ information system established by the director of the Idaho state police pursuant to subsection (1) of section 19-5202, Idaho Code, and shall not apply to any type of voice-oriented transmission whether it be by mobile radio, microwave or telephone.

(5) Salaries and expenses. Members of said board shall be compensated as provided by section 59-509(b), Idaho Code, which expenses shall be paid from moneys appropriated for the funding of this ~~act~~ chapter.

The performance of duties under this ~~act~~ chapter by a member of the board shall be deemed to be in performance of his duties as an employee of his particular branch of government.

(6) Federal funding, gifts, donations. The director is authorized to apply for and accept federal funds granted by the congress of the United States, or by executive order, all of which must be deposited in the ~~teletypewriter-communication-network~~ ILETS fund, and which may be expended only after a legislative appropriation. The director may accept gifts and donations from individuals and private organizations or foundations for all or any of the purposes of chapter 52, title 19, Idaho Code.

SECTION 6. That Section 19-5204, Idaho Code, be, and the same is hereby amended to read as follows:

19-5204. EXECUTIVE OFFICER OF BOARD. The director of the Idaho state police shall be the executive officer of the ~~teletypewriter-communications--network~~ ILETS board and shall be responsible for the carrying out of the policies and rules of the board and with the management and expenditures of such funds as may be appropriated to implement this ~~act~~ chapter.

SECTION 7. That Section 67-3008, Idaho Code, be, and the same is hereby amended to read as follows:

67-3008. RELEASE OF CRIMINAL HISTORY RECORD INFORMATION. (1) All units of state, city and local governments, as well as any agency of the state created by the legislature which require by statute, rule, or local or county ordinance, fingerprinting of applicants or licensees, are authorized to submit fingerprints to the bureau for examination and further submission, if necessary, to the federal bureau of investigation. The bureau shall be the state's sole source of fingerprint submissions for criminal justice and applicant or licensing purposes to the federal bureau of investigation.

(2) The department shall provide copies of or communicate information from criminal history records to the following:

(a) Criminal justice agencies and the court;

(b) A person or public or private agency, upon written application on a form approved by the director and provided by the department, subject to the following restrictions:

(i) A request for criminal history records must be submitted in writing or as provided by rule. However, the department shall accept a request presented in person by the subject of the record; and

(ii) The request must identify a specific person by name and date of birth. Fingerprints of the person named may be required to establish positive identification; and

(iii) Responding to the request does not interfere with the secure and orderly conduct of the department and would not substantially prejudice or prevent the carrying out of the functions of the department; and

(iv) A record of an arrest that does not contain a disposition after twelve (12) months from the date of arrest may only be disseminated by the department to criminal justice agencies, to

the subject of the record, or to a person requesting the criminal history information with a signed release from the subject of the record; and

(v) Any release of criminal history data by the department shall prominently display the statement: "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF GUILT."

(3) Judicial review of the department's denial of a request for records shall be in accordance with the provisions of section 9-343, Idaho Code.

(4) A request for a criminal history record by a criminal justice agency or a court shall take precedence over all other requests. The department shall adopt rules to set forth the manner by which criminal justice agencies and courts without direct ~~terminal~~ access to the ~~law enforcement telecommunications network~~ public safety and security information system established by section 19-5202, Idaho Code, may request Idaho criminal history record information.

(5) Unless otherwise provided by law, access authorized under this section to criminal history records does not create a duty upon a person, employer, private agency, or public agency to examine the criminal history record of an applicant, employee or volunteer.

(6) A person or private agency, or public agency, other than the department, shall not disseminate criminal history record information obtained from the department to a person or agency that is not a criminal justice agency or a court without a signed release of the subject of record or unless otherwise provided by law.

(7) Direct ~~terminal~~ access to criminal history record information is regulated by chapter 52, title 19, Idaho Code, and the rules adopted pursuant to that chapter.

Approved March 23, 2005.

CHAPTER 116
(S.B. No. 1056)

AN ACT

RELATING TO THE IDAHO BEEF COUNCIL; AMENDING SECTION 25-2907, IDAHO CODE, TO INCREASE CERTAIN ASSESSMENTS UNDER TERMS SPECIFIED AND TO PROVIDE FOR REFUNDS UNDER TERMS SPECIFIED; AND DECLARING AN EMERGENCY.

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

SECTION 1. 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) In the event the federal beef promotion and research act is no longer in effect:

(a) The Idaho beef council shall have the authority to increase the assessment provided for in subsection (1) of this section to not more than one dollar ($1.00) per head.

(b) Any person may submit a written request for a refund of a collected assessment, or any portion thereof, to the council within thirty (30) calendar days after payment of the assessment. The council shall make the refund no later than sixty (60) calendar days after receipt of the refund request, provided the council has received the assessment from the state brand inspector.

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 23, 2005.

CHAPTER 117
(S.B. No. 1063, As Amended)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-227, IDAHO CODE, TO INCREASE THE PENALTY FOR OPERATING A VEHICLE WITHOUT THE OWNER'S CONSENT IN CERTAIN CIRCUMSTANCES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 49-227, Idaho Code, be, and the same is hereby amended to read as follows:

49-227. OPERATING VEHICLE WITHOUT OWNER'S CONSENT. Any person who shall operate a vehicle, not his own, without the consent of the owner, and with intent temporarily to deprive the owner of his possession of such vehicle, without intent to steal the vehicle, shall be guilty of a misdemeanor, unless the damages caused to the vehicle as a result of a violation of this section exceed one thousand dollars ($1,000) in value, or the value of property taken from the vehicle exceeds one thousand dollars ($1,000), or a combination of the damages caused to the vehicle and the value of property taken exceeds one thousand dollars ($1,000), in which case such person is guilty of a felony. The consent of the owner of a vehicle to its taking or operating shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or operating of the vehicle by the same or a differ-

ent person. Any person who assists in, or is a party or accessory to or an accomplice in any unauthorized taking or operation shall also be guilty of a misdemeanor, unless the damages caused to the vehicle as a result of a violation of this section exceed one thousand dollars ($1,000) in value, or the value of property taken from the vehicle exceeds one thousand dollars ($1,000), or a combination of the damages caused to the vehicle and the value of property taken exceeds one thousand dollars ($1,000), in which case such person is guilty of a felony. For the purpose of this section vehicle shall include, but is not limited to vehicles defined in section 49-123, Idaho Code, boats, airplanes, snowmobiles, three and four wheel all-terrain vehicles, hot air balloons, hang gliders, jet skis and motorcycles.

Approved March 23, 2005.

CHAPTER 118
(S.B. No. 1064)

AN ACT

RELATING TO MALICIOUS INJURY TO PROPERTY; AMENDING SECTION 18-7001, IDAHO CODE, TO PROVIDE FOR AN INCREASED PENALTY IN CERTAIN CIRCUMSTANCES.

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

SECTION 1. That Section 18-7001, Idaho Code, be, and the same is hereby amended to read as follows:

18-7001. MALICIOUS INJURY TO PROPERTY. (1) Except as otherwise provided in subsection (2) of this section, eEvery person who maliciously injures or destroys any real or personal property not his own, or any jointly owned property without permission of the joint owner, or any property belonging to the community of the person's marriage, in cases otherwise than such as are specified in this code, is guilty of a misdemeanor and shall be punishable by imprisonment in the county jail for up to one (1) year or a fine of not more than one thousand dollars ($1,000), or both.~~, unless the damages caused by a violation of this section exceed one thousand dollars ($1,000) in value, in which case such~~

(2) A person is guilty of a felony, and shall be punishable by imprisonment in the state prison for not less than one (1) year nor more than five (5) years, and may be fined not more than one thousand dollars ($1,000), or by both such fine and imprisonment, if:

(a) The damages caused by a violation of this section exceed one thousand dollars ($1,000) in value; or

(b) Any series of individual violations of this section are part of a common scheme or plan and are aggregated in one (1) count, and the damages from such violations when considered together exceed one thousand dollars ($1,000) in value.

Approved March 23, 2005.

CHAPTER 119
(S.B. No. 1067)

AN ACT
RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-1401, IDAHO CODE, TO REVISE THE PUNISHMENT FOR RECKLESS DRIVING AND INATTENTIVE DRIVING.

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

SECTION 1. That Section 49-1401, Idaho Code, be, and the same is hereby amended to read as follows:

49-1401. RECKLESS DRIVING. (1) Any person who drives or is in actual physical control of any vehicle upon a highway, or upon public or private property open to public use, carelessly and heedlessly or without due caution and circumspection, and at a speed or in a manner as to endanger or be likely to endanger any person or property, or who passes when there is a line in his lane indicating a sight distance restriction, shall be guilty of reckless driving and upon conviction shall be punished as provided in subsection (2) of this section.

(2) Every person ~~convicted of reckless driving under this section shall be punished by imprisonment in the county or municipal jail for a period of not less than five (5) days nor more than ninety (90) days, or by a fine of not less than twenty-five dollars ($25.00) nor~~ who pleads guilty to or is found guilty of reckless driving for the first time is guilty of a misdemeanor and may be sentenced to jail for not more than six (6) months or may be fined not more than ~~three~~ five hundred dollars ($~~3~~500), or may be punished by both fine and imprisonment. ~~On a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than fifty dollars ($50.00) nor~~ Every person who pleads guilty to or is found guilty of reckless driving, who has previously been found guilty of or has pled guilty to reckless driving, or any substantially conforming foreign criminal violation within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a misdemeanor and may be sentenced to jail for not more than one (1) year or may be fined not more than ~~three hundred~~ one thousand dollars ($~~3~~1,000), or may be punished by both fine and imprisonment. The department shall suspend the driver's license or privileges of any such person as provided in section 49-326, Idaho Code.

(3) Inattentive driving shall be considered a lesser offense than reckless driving and shall be applicable in those circumstances where the conduct of the operator has been inattentive, careless or imprudent, in light of the circumstances then existing, rather than heedless or wanton, or in those cases where the danger to persons or property by the motor vehicle operator's conduct is slight. Every person convicted of inattentive driving under this section shall be guilty of a misdemeanor and may be sentenced to jail for not more than ninety (90) days or may be fined not more than three hundred dollars ($300), or may be punished by both fine and imprisonment.

Approved March 23, 2005.

CHAPTER 120
(S.B. No. 1068, As Amended)

AN ACT

RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT; REPEALING CHAPTERS 43 AND 45, TITLE 39, IDAHO CODE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 45, TITLE 39, IDAHO CODE, TO SET FORTH PURPOSES, TO PROVIDE FOR CHAPTER APPLICATION, TO STATE WHO MAY CONSENT TO THEIR OWN CARE, TO STATE WHO MAY GIVE CONSENT TO CARE FOR OTHERS, TO PROVIDE FOR BLOOD TESTING, TO SET FORTH PROVISIONS APPLICABLE TO SUFFICIENCY OF CONSENT AND THE FORM OF CONSENT, TO SET FORTH RESPONSIBILITY FOR CONSENT AND DOCUMENTATION, TO PROVIDE A STATEMENT OF LEGISLATIVE POLICY, TO DEFINE TERMS, TO PROVIDE FOR A LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE, TO PROVIDE FOR REVOCATION, TO PROVIDE FOR EXECUTION, TO PROVIDE IMMUNITY AND TO SET FORTH GENERAL PROVISIONS; AMENDING SECTION 5-332, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-3910, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-3902, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1142, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-1015, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 66-405, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Chapters 43 and 45, Title 39, Idaho Code, be, and the same are 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 45, Title 39, Idaho Code, and to read as follows:

CHAPTER 45
THE MEDICAL CONSENT AND NATURAL DEATH ACT

39-4501. PURPOSES -- APPLICATION. (1) The primary purposes of this chapter are:

(a) To provide and codify Idaho law concerning consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures, and concerning what constitutes an informed consent for such care, treatment or procedures; and

(b) To provide certainty and clarity in the law of medical consent in the furtherance of high standards of health care and its ready availability in proper cases.

(2) Nothing in this chapter shall be deemed to amend or repeal the provisions of chapter 3, title 66, Idaho Code, as those provisions pertain to medical attendance upon or hospitalization of the mentally ill, nor the provisions of chapter 6, title 18, Idaho Code, pertaining to the provision of examinations, prescriptions, devices and informational materials regarding prevention of pregnancy or pertaining to therapeutic abortions and consent to the performance thereof.

(3) Nothing in this chapter shall be construed to permit or require the provision of health care for a patient in contravention of the patient's stated or implied objection thereto upon religious grounds nor shall anything in this chapter be construed to require the granting of permission for or on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in violation of the religious beliefs of the patient or the patient's parent or spouse.

39-4502. PERSONS WHO MAY CONSENT TO THEIR OWN CARE. Any person of ordinary intelligence and awareness sufficient for him or her generally to comprehend the need for, the nature of and the significant risks ordinarily inherent in, any contemplated hospital, medical, dental or surgical care, treatment or procedure is competent to consent thereto on his or her own behalf. Any physician, dentist, hospital or other duly authorized person may provide such health care and services in reliance upon such a consent if the consenting person appears to the physician or dentist securing the consent to possess such requisite intelligence and awareness at the time of giving the consent.

39-4503. PERSONS WHO MAY GIVE CONSENT TO CARE FOR OTHERS. (1) Consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures to any person who is not then capable of giving such consent as provided in this chapter or who is a minor or incompetent person, may be given or refused in the order of priority set forth hereafter unless the patient is a competent person who has refused to give such consent, and provided further that this subsection shall not be deemed to authorize any person to override the express refusal by a competent patient to give such consent himself:

(a) The legal guardian of such person;

(b) The person named in a "Living Will and Durable Power of Attorney for Health Care" pursuant to section 39-4510, Idaho Code, or a similar document authorized by this chapter;

(c) If married, the spouse of such person;

(d) A parent of such person;

(e) Any relative representing himself or herself to be an appropriate, responsible person to act under the circumstances;

(f) Any other competent individual representing himself or herself to be responsible for the health care of such person; or

(g) If the subject person presents a medical emergency or there is a substantial likelihood of his or her life or health being seriously endangered by withholding or delay in the rendering of such hospital, medical, dental or surgical care to such patient, the attending physician or dentist may, in his or her discretion, authorize and/or provide such care, treatment or procedure as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such physician or dentist, may proceed as if informed, valid consent therefor had been otherwise duly given.

(2) No person who, in good faith, gives consent or authorization for the provision of hospital, medical, dental or surgical care, treatment or procedures to another as provided by this chapter shall be subject to civil liability therefor.

(3) No physician, dentist, hospital or other duly authorized person who in good faith obtains consent from a person pursuant to either sec-

tion 39-4502 or 39-4503(1), Idaho Code, shall be subject to civil liability therefor.

39-4504. BLOOD TESTING. (1) A physician may consent to ordering tests of a patient's or a deceased person's blood or other body fluids for the presence of blood-transmitted or body fluid-transmitted viruses or diseases without the prior consent of the patient if:

(a) There has been or is likely to be a significant exposure to the patient's or a deceased person's blood or body fluids by a person providing emergency or medical services to such patient which may result in the transmittal of a virus or disease; and

(b) The patient is unconscious or incapable of giving informed consent and the physician is unable to obtain consent pursuant to section 39-4503, Idaho Code.

(2) The department of health and welfare shall promulgate rules identifying the blood-transmitted or body fluid-transmitted viruses or diseases for which blood tests or body fluid tests can be ordered under this section and defining the term "significant exposure" as provided in this section.

(3) Results of tests conducted under this section which confirm the presence of a blood-transmitted or body fluid-transmitted virus or disease shall be reported to the director of the department of health and welfare in the name of the patient or deceased person. The department records containing such test results shall be used only by public health officials who must conduct investigations. The exposed person shall only be informed of the results of the test and shall not be informed of the name of the patient or deceased person. Protocols shall be established by hospitals to maintain confidentiality while disseminating the necessary test result information to persons who may have a significant exposure to blood or other body fluids and to maintain records of such tests to preserve the confidentiality of the test results.

(4) Any person who willfully or maliciously discloses the results of a test conducted under this section, except pursuant to a written authorization by the person whose blood was tested or by such person's authorized representative, or as otherwise authorized by law, shall be guilty of a misdemeanor.

39-4505. SUFFICIENCY OF CONSENT. Consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures shall be valid in all respects if the person giving the consent is sufficiently aware of pertinent facts respecting the need for, the nature of, and the significant risks ordinarily attendant upon, such a patient receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the physician or dentist to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like physician or dentist of good standing practicing in the same community. As used in this section, the term "in the same community" refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

39-4506. FORM OF CONSENT. It is not essential to the validity of any consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures that the consent be in writing or any other form of expression; provided however, when the giving of such consent is recited or documented in writing and expressly authorizes the care, treatment or procedures to be furnished, and when such writing or form has been executed or initialed by a person competent to give such consent for himself or another, such written consent, in the absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid for the furnishing of such care, treatment or procedures, and the advice and disclosures of the attending physician or dentist, as well as the level of informed awareness of the giver of such consent, shall be presumed to be sufficient.

39-4507. RESPONSIBILITY FOR CONSENT AND DOCUMENTATION. Obtaining consent for health care is the duty of the attending physician or dentist or of another physician or dentist acting on his or her behalf or actually providing the contemplated care, treatment or procedure; provided however, a licensed hospital and any medical or dental office lay or professional employee, acting with the approval of such an attending or other physician or dentist, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the patient. In performing such a ministerial act, the hospital or medical or dental office lay or professional employee shall not be deemed to have engaged in the practice of medicine or dentistry.

39-4508. STATEMENT OF POLICY. For purposes of sections 39-4508 through 39-4514, Idaho Code:

(1) The legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn. The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits. The legislature further finds that patients are sometimes unable to express their desire to withhold or withdraw such artificial life prolongation procedures which provide nothing medically necessary or beneficial to the patient because of the patient's inability to communicate with the physician.

(2) In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of this state shall recognize the right of a competent person to have his wishes for medical treatment and for the withdrawal of artificial life-sustaining procedures carried out even though that person is no longer able to communicate with the physician.

(3) It is the intent of the legislature to establish an effective means for such communication. It is not the intent of the legislature that the procedures described in this chapter are the only effective means of such communication, and nothing in this chapter shall impair or supersede any legal right or legal responsibility which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. Any authentic expression of a person's wishes with respect to health care should be honored.

39-4509. DEFINITIONS. As used in sections 39-4508 through 39-4514, Idaho Code:

(1) "Artificial life-sustaining procedure" means any medical procedure or intervention that utilizes mechanical means to sustain or supplant a vital function which when applied to a qualified patient, would serve only to artificially prolong life. "Artificial life-sustaining procedure" does not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(2) "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, but does not include assisted feeding, such as spoon feeding or bottle feeding.

(3) "Attending physician" means the physician licensed by the state board of medicine who is selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

(4) "Competent person" means any emancipated minor or any person eighteen (18) or more years of age who is of sound mind.

(5) "Consent to care" includes refusal to consent to care and/or withdrawal of care.

39-4510. LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE. Any competent person may execute a document known as a "Living Will and Durable Power of Attorney for Health Care." Such document shall be in substantially the following form, or in another form that contains the elements set forth in this chapter. A "Living Will and Durable Power of Attorney for Health Care" executed prior to the effective date of this act, but which was in the "Living Will" and/or "Durable Power of Attorney for Health Care" form pursuant to prior Idaho law at the time of execution, or in another form that contained the elements set forth in this chapter at the time of execution, shall be deemed to be in compliance with this chapter. A "Living Will and Durable Power of Attorney for Health Care" or similar document(s) executed in another state which substantially complies with this chapter shall be deemed to be in compliance with this chapter. In this chapter, a "Living Will and Durable Power of Attorney for Health Care" may be referred to as a "directive." Any portions of the "Living Will and Durable Power of Attorney for Health Care" which are left blank by the person executing the document shall be deemed to be intentional and shall not invalidate the document.

LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Date of Directive:.....

Name of person executing Directive:.....
Address of person executing Directive:.....

A LIVING WILL
A Directive to Withhold or to Provide Treatment

1. Being of sound mind, I willfully and voluntarily make known my desire that my life shall not be prolonged artificially under the circumstances set forth below. This Directive shall only be effective if I am unable to communicate my instructions and:

a. I have an incurable injury, disease, illness or condition and two (2) medical doctors who have examined me have certified:

1. That such injury, disease, illness or condition is terminal; and

2. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and

3. That my death is imminent, whether or not artificial life-sustaining procedures are utilized; or

b. I have been diagnosed as being in a persistent vegetative state.

In such event, I direct that the following marked expression of my intent be followed, and that I receive any medical treatment or care that may be required to keep me free of pain or distress.

Check one box and initial the line after such box:

☐ ..... I direct that all medical treatment, care and procedures necessary to restore my health, sustain my life, and to abolish or alleviate pain or distress be provided to me. Nutrition and hydration, whether artificial or nonartificial, shall not be withheld or withdrawn from me if I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition.

OR

☐ ..... I direct that all medical treatment, care and procedures, including artificial life-sustaining procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or nonartificial shall not be withheld or withdrawn from me if, as a result, I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition, as follows: (If none of the following boxes are checked and initialed, then both nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.)

Check one box and initial the line after such box:

A. ☐ ..... Only hydration of any nature, whether artificial or nonartificial, shall be administered;

B. ☐ ..... Only nutrition, of any nature, whether artificial or nonartificial, shall be administered;

C. ☐ ..... Both nutrition and hydration, of any nature, whether artificial or nonartificial shall be administered.

OR

☐ ..... I direct that all medical treatment, care and procedures be withheld or withdrawn, including withdrawal of the administration of artificial nutrition and hydration.

2. This Directive shall be the final expression of my legal right to refuse or accept medical and surgical treatment, and I accept the consequences of such refusal or acceptance.

3. If I have been diagnosed as pregnant, this Directive shall have no force during the course of my pregnancy.

4. I understand the full importance of this Directive and am mentally competent to make this Directive. No participant in the making of this Directive or in its being carried into effect shall be held responsible in any way for complying with my directions.

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as your agent: (1) your treating health care provider; (2) a nonrelative employee of your treating health care provider; (3) an operator of a community care facility; or (4) a nonrelative employee of an operator of a community care facility. If the agent or an alternate agent designated in this Directive is my spouse, and our marriage is thereafter dissolved, such designation shall be thereupon revoked.

I do hereby designate and appoint the following individual as my attorney in fact (agent) to make health care decisions for me as authorized in this Directive. (Insert name, address and telephone number of one individual only as your agent to make health care decisions for you.)

Name of Health Care Agent:.....
Address of Health Care Agent:.....
Telephone Number of Health Care Agent:.....

For the purposes of this Directive, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of this Directive, I create a durable power of attorney for health care. This power of attorney shall not be affected by my subsequent incapacity. This power shall be effective only when I am unable to communicate rationally.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this Directive, including as set forth in paragraph 2 immediately above, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this Directive or otherwise made known to my agent including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services and procedures, including such desires set forth in a living will or similar document executed by me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services and procedures. You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this Directive, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.) In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated in a living will or similar document executed by me, if any. Additional statement of desires, special provisions, and limitations:.....
.....
(You may attach additional pages or documents if you need more space to complete your statement.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.

A. General Grant of Power and Authority. Subject to any limitations in this Directive, my agent has the power and authority to do all of the following: (1) Request, review and receive any information, verbal or written, regarding my physical or mental health including, but not limited to, medical and hospital records; (2) Execute on my behalf any releases or other documents that may be required in order to obtain this information; (3) Consent to the disclosure of this information; and (4) Consent to the donation of any of my organs for medical purposes. (If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc. or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identi-

fiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

6. SIGNING DOCUMENTS, WAIVERS AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this Directive to make, my agent has the power and authority to execute on my behalf all of the following: (a) Documents titled, or purporting to be, a "Refusal to Permit Treatment" and/or a "Leaving Hospital Against Medical Advice"; and (b) Any necessary waiver or release from liability required by a hospital or physician.

7. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1 above, in the event that agent is unable or ineligible to act as your agent. If an alternate agent you designate is your spouse, he or she becomes ineligible to act as your agent if your marriage is thereafter dissolved.) If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this Directive, such persons to serve in the order listed below:

A. First Alternate Agent:
Name.....
Address.....
Telephone Number.....

B. Second Alternate Agent:
Name.....
Address.....
Telephone Number.....

C. Third Alternate Agent:
Name.....
Address.....
Telephone Number.....

8. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL. (You must date and sign this Living Will and Durable Power of Attorney for Health Care.)

I sign my name to this Statutory Form Living Will and Durable Power of Attorney for Health Care on the date set forth at the beginning of this Form at ..... (City, State).....

.....
Signature

39-4511. REVOCATION. (1) A "Living Will and Durable Power of Attorney for Health Care" may be revoked at any time by the maker thereof, without regard to his mental state or competence, by any of the following methods:

(a) By being canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker thereof, or by some person in his presence and by his direction;

(b) By a written, signed revocation of the maker thereof expressing his intent to revoke; or

(c) By an oral expression by the maker thereof expressing his intent to revoke.

(2) There shall be no criminal or civil liability on the part of any person for the failure to act upon a revocation of a "Living Will and Durable Power of Attorney for Health Care" made pursuant to this section unless that person has actual knowledge of the revocation.

39-4512. EXECUTION OF LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE. A "Living Will and Durable Power of Attorney for Health Care" shall be effective from the date of execution unless otherwise revoked. Nothing in this chapter shall be construed to prevent a competent person from reexecuting a "Living Will and Durable Power of Attorney for Health Care" at any time.

39-4513. IMMUNITY. (1) No medical personnel or health care facility shall be civilly or criminally liable for acts or omissions carried out or performed pursuant to the directives in a facially valid living will or by the holder of a facially valid durable power of attorney or directive for health care if the medical personnel or health care facility acts in good faith.

(2) Any physician or other health care provider who for ethical or professional reasons is incapable or unwilling to conform to the desires of the patient as expressed by the procedures set forth in this chapter may withdraw without incurring any civil or criminal liability provided the physician or other health care provider makes a good faith effort to assist the patient in obtaining the services of another physician or other health care provider before withdrawal.

(3) No person who exercises the responsibilities of a durable power of attorney for health care in good faith shall be subject to civil or criminal liability as a result.

39-4514. GENERAL PROVISIONS. (1) This chapter shall have no effect or be in any manner construed to apply to persons not executing a "Living Will and Durable Power of Attorney for Health Care" pursuant to this chapter nor shall it in any manner affect the rights of any such persons or of others acting for or on behalf of such persons to give or refuse to give consent or withhold consent for any medical care, neither shall this chapter be construed to affect chapter 3, title 66, Idaho

Code, in any manner.

(2) The making of a "Living Will and Durable Power of Attorney for Health Care" pursuant to this chapter shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of artificial life-sustaining procedures from an insured patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health facility or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee plan, welfare benefit plan or nonprofit hospital service plan shall require any person to execute a "Living Will and Durable Power of Attorney for Health Care" as a condition for being insured for, or receiving, health care services.

SECTION 3. That Section 5-332, Idaho Code, be, and the same is hereby amended to read as follows:

5-332. CONSENT FOR EMERGENCY MEDICAL TREATMENT. The authorization or refusal of consent for emergency medical treatment under sections 5-330 or 5-331, Idaho Code, shall be governed by chapter ~~43~~5, title 39, Idaho Code.

SECTION 4. That Section 31-3910, Idaho Code, be, and the same is hereby amended to read as follows:

31-3910. CONSENT FOR EMERGENCY MEDICAL TREATMENT. The authorization or refusal of consent for emergency medical treatment under chapter 39, title 31, Idaho Code, shall be governed by chapter ~~43~~5, title 39, Idaho Code.

SECTION 5. That Section 39-3902, Idaho Code, be, and the same is hereby amended to read as follows:

39-3902. DEFINITIONS. For purposes of this chapter, the following words and terms have the meanings hereinafter stated:

(1) "Emergency medical treatment" means immediate medical intervention required, according to the prevailing medical standards of judgment and practice within the community, because of the medical condition of the person subject to this chapter.

(2) "Evaluation committee" means an interdisciplinary team consisting of at least four (4) individuals qualified by education and training to evaluate an individual as required by the provisions of this chapter, and an advocate designated by the person subject to this chapter. Each committee must include: two (2) social workers, at least one (1) of whom must be a master's level; a clinical psychologist or a psychiatrist; and a physician.

(3) "Informed assent" means a process by which a person subject to this chapter who lacks or is alleged to lack the capacity to consent to sterilization is given a fair opportunity to acknowledge the nature, risks and consequences of the procedures and, insofar as he or she is able to, indicates willingness and choice to undergo sterilization.

(4) "Interested person" means an interested, responsible adult

including, but not limited to, the legal guardian, spouse, parent, legal counsel, adult child, or next of kin of a person subject to this chapter, or if none of these are available, the department of health and welfare.

(5) "Medically necessary" means that, according to the prevailing medical standards of judgment and practice within the community, the procedure is reasonably calculated to prevent or treat conditions in the person subject to this chapter that endanger life, cause severe pain, or cause functionally significant deformity or malfunction, and for which there is not an equally effective alternative course of treatment available or suitable.

(6) "Person subject to this chapter" means all adults, except adults who may consent to their own treatment pursuant to chapter 435, title 39, Idaho Code. Adults who are alleged to lack this capacity are also persons subject to this chapter.

(7) "Physician" means a person duly licensed in the state of Idaho to practice medicine and surgery without restriction pursuant to laws of the state of Idaho.

(8) "Records" includes, but is not limited to, all court files of judicial proceedings brought under this chapter, written clinical information, observations and reports, or fiscal documents relating to a person subject to this chapter who has undergone or is about to undergo sterilization and which are related to the sterilization.

(9) "Sterilization" means any medical or surgical operation or procedure which can be expected to result in a patient's permanent inability to reproduce.

SECTION 6. That Section 54-1142, Idaho Code, be, and the same is hereby amended to read as follows:

54-1142. AUTHORITY IN ABSENCE OF PREARRANGED FUNERAL PLAN. (1) If the decedent has not made a prearranged funeral plan as set forth in section 54-1139, Idaho Code, the right to control the disposition of the remains of a deceased person vests in, and devolves upon the following in the order named:

(a) The person designated in a written document executed by the decedent and acknowledged in the same manner as required for instruments conveying real property, and subject to such limitations, restrictions, or directions, as may be set forth in such document;

(b) The person designated as agent under a durable power of attorney for health care executed by the decedent, unless such durable power of attorney for health care contains express and clear language denying such right;

(c) The person designated in a durable power of attorney executed by the decedent, if such power of attorney contains express and clear language granting such right to the agent named in such power of attorney;

(d) The competent surviving spouse of the decedent;

(e) A majority of the competent surviving adult children of the decedent, provided that less than one-half (1/2) of the competent surviving adult children shall be vested with the right to control the disposition of the remains of the decedent if they have used reasonable efforts to notify all other competent surviving adult children of their instructions to dispose of the decedent's remains

and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all competent surviving adult children;

(f) The competent surviving parents or parent of the decedent, provided that if one (1) of the competent surviving parents is absent, the remaining competent surviving parent shall be vested with the right to control the disposition of the remains of the decedent after reasonable efforts have been made and are unsuccessful in locating the absent competent surviving parent;

(g) The person appointed by a court of competent jurisdiction as the personal representative or administrator of the estate of the decedent;

(h) The person nominated as the personal representative of the estate of the decedent in the will of the decedent;

(i) The competent adult person or persons entitled to inherit from the decedent under the intestate succession laws of the state of Idaho, respectively in the next degrees of kinship, provided that if there is more than one (1) competent surviving adult person of the same degree of kinship, the majority of those persons, and provided further that less than the majority of competent surviving adult persons of the same degree of kinship shall be vested with the right to control the disposition of the remains of the decedent if those persons have used reasonable efforts to notify all other competent surviving adult persons of the same degree of kinship of their instructions to dispose of the decedent's remains and are not aware of any opposition to those instructions on the part of one-half (1/2) or more of all competent surviving adult persons of the same degree of kinship.

(2) If any person to whom the right of control has vested pursuant to the foregoing has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death, and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next qualifying person as listed above as if the charged person did not exist; provided however, that if the charges against such person are dropped, or if such person is acquitted of the charges, the right of control is returned to the person.

(3) For purposes of this section:

(a) "Adult" means an individual who is eighteen (18) years of age or older;

(b) "Child" means a natural or adopted child of the decedent;

(c) "Competent" means the individual has not been declared incompetent by a court of law, or who has been declared competent by a court of law after a prior declaration of incompetence;

(d) "Durable power of attorney" means a power of attorney described in section 15-5-501, Idaho Code, or any similar document properly executed under the laws of another jurisdiction; and

(e) "Durable power of attorney for health care" means the document described in ~~section 39-4505~~ chapter 45, title 39, Idaho Code, or any similar document properly executed under the laws of another jurisdiction;

(f) "Will" means any testamentary device which is valid under the Idaho probate code, including, but not limited to, sections 15-2-503, 15-2-504 and 15-2-506, Idaho Code, whether or not origi-

nally executed in, or under the laws of, the state of Idaho.

(4) (a) A cemetery authority or licensed funeral director or a licensed hospital or its authorized personnel may permit or assist in, and a physician may perform, an autopsy of any remains of a decedent in its custody:

(i) If the decedent, prior to his death, authorizes an autopsy in his will or in another written instrument, including, but not limited to, a durable power of attorney for health care; or

(ii) Upon the receipt of a written authorization signed by, telegrammed from, or received by facsimile transmission from, a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer; or

(iii) Upon the receipt of an oral authorization obtained by telephone, and recorded on tape or other recording device, from a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer.

(b) A cemetery authority or a licensed funeral director of a licensed hospital or its authorized personnel is not liable for permitting or assisting, and a physician is not liable for performing, an autopsy pursuant to the authorization provided in paragraph (a) of this subsection unless he has actual notice that such representation is untrue at the time the autopsy is performed. If such authorization is contained in a will, the autopsy may be performed regardless of the validity of the will in other respects and regardless of whether the will may not be offered for, or admitted to, probate until a later date.

(c) This subsection shall not authorize the obtaining of an oral authorization by telephone, recorded on tape or other recording device, for the autopsy of a deceased person if it is made known to the physician who is to perform the autopsy that the deceased person was, at the time of his death, a member of a religion or group which opposes autopsies.

SECTION 7. That Section 56-1015, Idaho Code, be, and the same is hereby amended to read as follows:

56-1015. FAILURE TO OBTAIN CONSENT. No person certified under sections 56-1011 through 56-1018B, Idaho Code, or physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital or health services to any individual regardless of age where that individual is unable to give this consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care, provided, however, that such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent. The provision or refusal of consent under sections 56-1011 through 56-1018B, Idaho Code, shall be governed by chapter 435, title 39, Idaho Code.

SECTION 8. That Section 66-405, Idaho Code, be, and the same is hereby amended to read as follows:

66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that the respondent is not developmentally disabled but appears in need of protective services, the court may cause the proceeding to be expanded or altered for consideration under the uniform probate code.

(2) If it is determined that the respondent is able to manage financial resources and meet essential requirements for physical health or safety, the court shall dismiss the petition.

(3) If it is determined that the respondent is developmentally disabled and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A person for whom a partial guardianship or partial conservatorship has been appointed under this chapter retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court.

(4) If it is determined that the respondent is developmentally disabled and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial guardian or partial conservator, the court may appoint a total guardian and/or total conservator.

(5) In the event that more than one (1) person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the department or any other organization or individual, public or private, that is or is likely to be providing services to the respondent.

(6) Subject to the limitations of the provisions of subsection (7) of this section, guardians or conservators may have any of the duties and powers as provided in sections 15-5-312(a)(1) through (4), 15-5-424 and 15-5-425, Idaho Code, and as specified in the order. Any order appointing a partial or total guardian or partial or total conservator under the provisions of this section must require a report to the court at least annually. In addition to such other requirements imposed by law or order, the report shall include:

(a) A description of the respondent's current mental, physical and social condition;

(b) The respondent's present address and living arrangement;

(c) A description of any significant changes in the capacity of the respondent to meet essential requirements for physical health or safety or to manage financial resources;

(d) A description of services being provided the respondent;

(e) A description of significant actions taken by the guardian or conservator during the reporting period;

(f) Any significant problems relating to the guardianship or conservatorship;

(g) A complete financial statement of the financial resources under the control or supervision of the guardian or conservator; and

(h) A description of the need for continued guardianship or conservatorship services.

(7) No guardian appointed under this chapter shall have the authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the person with a developmental disability. To withhold or attempt to withhold such treatment shall constitute neglect of the person and be cause for removal of the guardian. No physician or caregiver shall withhold or withdraw such treatment for a respondent whose condition is not terminal or whose death is not imminent. If the physician or caregiver cannot obtain valid consent for medically necessary treatment from the guardian, he shall provide the medically necessary treatment as authorized by section ~~39-4303(c)~~ 39-4503(1)(g), Idaho Code.

(8) A guardian appointed under this chapter may consent to withholding or withdrawal of artificial life-sustaining procedures, only if the respondent:

(a) Has an incurable injury, disease, illness or condition, certified by the respondent's attending physician and at least one (1) other physician to be terminal such that the application of artificial life-sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the respondent, and would only serve to prolong the moment of the respondent's death for a period of hours, days or weeks, and where both physicians certify that death is imminent, whether or not the life-sustaining procedures are used; or

(b) Has been diagnosed by the respondent's attending physician and at least one (1) other physician as being in a persistent vegetative state which is irreversible and from which the respondent will never regain consciousness.

(9) Any person, who has information that medically necessary treatment of a respondent has been withheld or withdrawn, may report such information to adult protective services or to the Idaho protection and advocacy system for people with developmental disabilities, who shall have the authority to investigate the report and in appropriate cases to seek a court order to ensure that medically necessary treatment is provided.

If adult protective services or the protection and advocacy system determines that withholding of medical treatment violates the provisions of this section, they may petition the court for an ex parte order to provide or continue the medical treatment in question. If the court finds, based on affidavits or other evidence, that there is probable cause to believe that the withholding of medical treatment in a particular case violates the provisions of this section, and that the life or health of the patient is endangered thereby, the court shall issue an ex parte order to continue or to provide the treatment until such time as the court can hear evidence from the parties involved. Petitions for court orders under this section shall be expedited by the courts and heard as soon as possible. No bond shall be required of a petitioner under this section.

(10) No partial or total guardian or partial or total conservator appointed under the provisions of this section may without specific

approval of the court in a proceeding separate from that in which such guardian or conservator was appointed:

(a) Consent to medical or surgical treatment the effect of which permanently prohibits the conception of children by the respondent unless the treatment or procedures are necessary to protect the physical health of the respondent and would be prescribed for a person who is not developmentally disabled;

(b) Consent to experimental surgery, procedures or medications; or

(c) Delegate the powers granted by the order.

Approved March 23, 2005.

CHAPTER 121
(S.B. No. 1069)

AN ACT

RELATING TO ESTATES; AMENDING SECTION 15-3-1205, IDAHO CODE, TO CLARIFY PROCEDURES APPLICABLE TO THE SUMMARY ADMINISTRATION OF ESTATES IN WHICH A SURVIVING SPOUSE IS THE SOLE BENEFICIARY.

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

SECTION 1. That Section 15-3-1205, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-1205. SUMMARY ADMINISTRATION OF ESTATES IN WHICH A SURVIVING SPOUSE IS THE SOLE BENEFICIARY. (a) Upon the testate or intestate death of a person leaving a surviving spouse as the sole devisee or beneficiary, the surviving spouse (or any person claiming title to any property through or under such surviving spouse) may file a verified petition setting out marriage and the death of a person leaving a surviving spouse as the sole devisee or heir. If the decedent died testate, the petition must be accompanied by the original of the last will and testament of the decedent. Notice of hearing shall be given pursuant to the provisions of section 15-1-401, Idaho Code.

(b) If it shall appear at such hearing that the decedent and the person claimed to be the surviving spouse were duly married and that the surviving spouse is the sole heir or devisee, a decree shall be made to that effect. This decree shall thereafter have the same effect as a formal decree approving or determining distribution. The petitioner, or the surviving spouse, or both, need not appear in person at such hearing, nor must an attorney for the petitioner spouse appear in person at such hearing. ~~Upon--proper-motion-made-by-the-petitioner,-t~~The petitioner or the attorney for the petitioner, or both, may either:

(1) Upon proper motion made by the petitioner, appear telephonically;; or ~~alternatively may~~

(2) Ssubmit one (1) or more affidavits in advance of the hearing certifying that notice of hearing was given as required by law and that no objection to the entering of the decree has been received by the petitioner or the attorney for the petitioner.

(c) In the event that the surviving spouse (or person claiming through or under the surviving spouse) shall elect to proceed under this

section, the surviving spouse shall assume and be liable for any and all indebtedness that might be a claim against the estate of the decedent and there will be no administration of the estate of the decedent.

Approved March 23, 2005.

CHAPTER 122
(S.B. No. 1071, As Amended)

AN ACT

RELATING TO TRUSTS AND ESTATES; AMENDING TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 8, TITLE 15, IDAHO CODE, TO SET FORTH THE TRUST AND ESTATE DISPUTE RESOLUTION ACT, TO PROVIDE A SHORT TITLE, TO STATE THE PURPOSE OF THE ACT, TO PROVIDE FOR COURT POWERS, TO DEFINE TERMS, TO SET FORTH PERSONS ENTITLED TO CERTAIN JUDICIAL PROCEEDINGS, TO PROVIDE FOR JUDICIAL PROCEEDINGS, TO PROVIDE FOR APPLICATION OF THE IDAHO RULES OF CIVIL PROCEDURE, TO PROVIDE FOR NOTICE, TO PROVIDE FOR APPLICATION OF THE DOCTRINE OF VIRTUAL REPRESENTATION, TO PROVIDE FOR SPECIAL NOTICE, TO PROVIDE FOR WAIVER OF NOTICE, TO PROVIDE FOR COSTS AND ATTORNEY'S FEES, TO PROVIDE FOR THE APPOINTMENT OF A GUARDIAN AD LITEM, TO PROVIDE FOR TRIAL BY JURY, TO PROVIDE FOR THE EXECUTION ON JUDGMENTS, TO PROVIDE FOR APPELLATE REVIEW, TO SET FORTH THE PURPOSE OF NONJUDICIAL RESOLUTION, TO PROVIDE FOR BINDING AGREEMENTS, TO PROVIDE FOR THE ENTRY OF AN AGREEMENT WITH THE COURT AND THE EFFECT OF SUCH AGREEMENT, TO PROVIDE FOR JUDICIAL APPROVAL OF AN AGREEMENT, TO PROVIDE FOR SPECIAL REPRESENTATIVES AND TO SET FORTH THE FORM OF THE PETITION AND ORDER FOR THE APPOINTMENT OF A SPECIAL REPRESENTATIVE.

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

SECTION 1. That Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 8, Title 15, Idaho Code, and to read as follows:

CHAPTER 8
TRUST AND ESTATE DISPUTE RESOLUTION ACT

PART 1.
PURPOSE, POWERS OF COURTS AND DEFINITIONS

15-8-101. TITLE -- PURPOSE. (1) This chapter shall be known and may be cited as either the "Trust and Estate Dispute Resolution Act" or "TEDRA."

(2) The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under title 15, Idaho Code. The provisions of this chapter are intended to provide nonjudicial methods for the resolution of matters by agreement. This chapter also provides for judicial resolution of disputes if a nonjudicial resolution is not obtained that are alternatives to the other provisions for resolution of contested matters under other chapters of title 15,

Idaho Code. The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in title 15, Idaho Code, or other Idaho law.

15-8-102. GENERAL POWERS OF COURTS -- INTENT -- PLENARY POWER OF THE COURT. (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this chapter to administer and settle:

(a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this chapter; and

(b) All trusts and trust matters.

(2) If this title 15, Idaho Code, should in any case or under any circumstances be inapplicable, insufficient or doubtful with reference to the administration and settlement of matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.

15-8-103. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Matter" includes any issue, question or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to:

(i) The construction of wills, trusts, devolution agreements, and other writings;

(ii) A change of personal representative or trustee;

(iii) A change of the situs of a trust;

(iv) An accounting from a personal representative or trustee; or

(v) The determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to more efficiently allocate exemptions or to achieve qualification for deductions, elections, and other tax requirements including, but not limited to, the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a quali-

fied domestic trust under section 2056A of the Internal Revenue Code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and

(f) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including actual joint tenancy property, property subject to a devolution agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of section 15-6-107, Idaho Code;

(ii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iii) The determination of any question arising in the administration of a nonprobate asset under section 15-6-107, Idaho Code;

(iv) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under title 15, Idaho Code; and

(v) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by section 11-604A(6), Idaho Code;

(g) The resolution of any other matter that could affect the nonprobate asset.

(2) "Nonprobate assets" means assets that are covered by chapter 6, title 15, Idaho Code.

(3) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

(f) The surviving spouse of a decedent with respect to his or her interest in the decedent's property;

(g) A guardian ad litem;

(h) A creditor;

(i) Any other person who has an interest in the subject of the particular proceeding;

(j) The attorney general if required under section 67-1401 5., Idaho Code;

(k) Any duly appointed and acting legal representative of a party such as a guardian, conservator, special representative, or attorney in fact;

(l) Where applicable, the virtual representative of any person

described in this subsection (3), the giving of notice to whom would meet notice requirements as provided in section 15-8-204, Idaho Code; and

(m) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under section 15-6-107, Idaho Code.

(4) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(5) "Representative" and other similar terms refer to a person who virtually represents another person under section 15-8-205, Idaho Code.

(6) "Trustee" means any acting and qualified trustee of the trust.

PART 2.
JUDICIAL RESOLUTION

15-8-201. PERSONS ENTITLED TO JUDICIAL PROCEEDINGS FOR DECLARATION OF RIGHTS OR LEGAL RELATIONS. (1) Any party may have a judicial proceeding for the declaration of rights or legal relations with respect to:

(a) Any matter, as defined in section 15-8-103, Idaho Code;

(b) The resolution of any other case or controversy that arises under the Idaho Code and referenced judicial proceedings under this chapter; or

(c) The determination of the persons entitled to notice under section 15-8-204, Idaho Code.

(2) The provisions of this chapter apply to disputes arising in connection with estates of incapacitated persons unless otherwise covered by chapter 5, title 15, Idaho Code. The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in title 15, Idaho Code, or other Idaho law. The provisions of this chapter shall not apply to actions for wrongful death under any other chapter or title of Idaho Code.

15-8-202. JUDICIAL PROCEEDINGS. (1) The provisions of this chapter shall control over any inconsistent provision of the Idaho rules of civil procedure.

(2) A judicial proceeding under this chapter may be commenced as a new action or as an action incidental to an existing judicial proceeding relating to the same trust or estate or nonprobate asset.

(3) Once commenced, the action may be consolidated with an existing proceeding or converted to a separate action upon the motion of a party for good cause shown, or by the court on its own motion.

(4) The Idaho rules of civil procedure apply to judicial proceedings under this chapter only to the extent that they are consistent with this chapter, unless otherwise provided by Idaho Code, or ordered by the court under section 15-8-102, Idaho Code, or provided by other applicable Idaho rules of civil procedure.

15-8-203. PROCEDURAL RULES. The Idaho rules of civil procedure apply to all proceedings under part 2 of this chapter.

15-8-204. NOTICE IN JUDICIAL PROCEEDINGS UNDER THIS CHAPTER REQUIRING NOTICE. (1) Subject to section 15-8-207, Idaho Code, in all judicial proceedings under this chapter that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least fourteen (14) days before the hearing on the petition, unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the Idaho rules of civil procedure.

(2) Proof of the service or mailing required in this section must be made by affidavit or declaration filed at or before the hearing.

15-8-205. APPLICATION OF DOCTRINE OF VIRTUAL REPRESENTATION. (1) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and the provisions of section 15-1-403, Idaho Code, and shall not be construed as limiting the application of that common law doctrine or the provisions of section 15-1-403, Idaho Code.

(2) Any notice requirement in this chapter is satisfied if notice is given as follows:

(a) Where an interest in an estate, trust, or nonprobate asset, or an interest that may be affected by a power of attorney, has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceedings requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, trust, or nonprobate asset, or an interest that may be affected by a power of attorney, has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or to persons who are, or might be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse, distributees, heirs, issue, or other kindred of the person; and

(c) Except as otherwise provided in this subsection (2), where an interest in an estate, trust, or nonprobate asset, or an interest that may be affected by a power of attorney, has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living person or persons shall virtually represent the persons and classes of persons who might take upon the happening of the additional future event.

(3) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.

(4) An action taken by the court is conclusive and binding upon

each person receiving actual or constructive notice or who is otherwise virtually represented.

15-8-206. SPECIAL NOTICE. Nothing in this chapter eliminates the requirement to give notice to a person who has filed a demand for notice pursuant to section 15-3-204, Idaho Code.

15-8-207. WAIVER OF NOTICE. Notwithstanding any other provision of this chapter, notice of a hearing does not need to be given to a legally competent person who has waived in writing notice of the hearing in person or by attorney, or who has appeared at the hearing without objecting to the lack of proper notice or personal jurisdiction. The waiver of notice may apply either to a specific hearing or to any and all hearings and proceedings to be held, in which event the waiver of notice is of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy of the notice of revocation of the waiver to the other parties. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice of the hearing waive the notice or appear at the hearing without objecting to the lack of proper notice or personal jurisdiction, the court may hear the matter immediately. A guardian or conservator or a guardian ad litem may make the waivers on behalf of the incapacitated person, and a trustee may make the waivers on behalf of any competent or incapacitated beneficiary of the trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make the waiver of notice on behalf of the person.

15-8-208. COST -- ATTORNEY'S FEES. (1) Either the district court or the court on appeal may, in its discretion, order costs, including reasonable attorney's fees, to be awarded to any party:

(a) From any party to the proceedings;

(b) From the assets of the estate or trust involved in the proceedings; or

(c) From any nonprobate asset that is the subject of the proceedings. The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.

(2) This section applies to all proceedings governed by this chapter including, but not limited to, proceedings involving trusts, decedent's estates and properties, and guardianship matters. Except as provided in section 12-117, Idaho Code, this section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, unless such statute specifically provides otherwise.

15-8-209. APPOINTMENT OF A GUARDIAN AD LITEM. (1) The court, upon its own motion or upon request of one (1) or more of the parties, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, or incapacitated, or unborn, or unascertained person, or any person whose identity or address is unknown, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) The court appointed guardian ad litem supersedes the special representative if so provided in the court order.

(3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in section 15-8-201, Idaho Code, with notice as provided in this section and section 15-8-204, Idaho Code.

(4) The guardian ad litem is entitled to reasonable compensation for services. Such compensation is to be paid from the principal of the estate or trust whose beneficiaries are represented.

15-8-210. TRIAL BY JURY. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. Any jury for any proceeding under this part 2 shall consist of six (6) jurors. If a jury is not demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions.

15-8-211. EXECUTION ON JUDGMENTS. Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

15-8-212. APPELLATE REVIEW. An interested party may seek appellate review of a final order, judgment, or decree of the court respecting a judicial proceeding under this chapter. The review must be done in the manner and way provided by law for appeals in civil actions.

PART 3.
NONJUDICIAL RESOLUTION

15-8-301. PURPOSE. The purpose of this part 3 is to provide a binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law.

15-8-302. BINDING AGREEMENT. Sections 15-8-301 through 15-8-305, Idaho Code, shall be applicable to the resolution of any matter, as defined in section 15-8-103, Idaho Code, other than matters subject to chapter 5, title 15, Idaho Code, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that sections 15-8-301 through 15-8-305, Idaho Code, shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of section 15-8-304, Idaho Code, the written agreement shall be binding and conclusive on all persons interested in the estate or trust. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under section 15-8-303, Idaho Code, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing and the discharge of any special representative who has acted with respect to the agreement. If a party who virtually represents another person under sec-

tion 15-8-205, Idaho Code, signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement.

15-8-303. ENTRY OF AGREEMENT WITH COURT -- EFFECT. (1) Any party, or a party's legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. However, if a special representative is a party to the written agreement, the agreement or a memorandum of its terms may not be filed within thirty (30) days of the agreement's execution by all parties unless the written consent of the special representative is filed along with, or included within, the provision of such agreement or memorandum. The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under section 15-8-304, Idaho Code, only after the court has determined that the special representative has adequately represented and protected the parties represented. Failure to complete any action authorized or required under this subsection does not cause the written agreement to be ineffective and the agreement is nonetheless binding and conclusive on all persons interested in the estate or trust.

(2) On filing the agreement or memorandum, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate or trust.

15-8-304. JUDICIAL APPROVAL OF AGREEMENT. Within thirty (30) days of execution of the agreement by all parties, the special representative may notice a hearing for presentation of the written agreement to a court of competent jurisdiction. The special representative shall provide notice of the time and date of the hearing to each party to the agreement whose address is known, unless such notice has been waived. Proof of mailing or delivery of the notice must be filed with the court. At such hearing, the court shall review the agreement on behalf of the parties represented by the special representative. The court shall determine whether or not the interests of the represented parties have been adequately represented and protected, and an order declaring the court's determination shall be entered. If the court determines that such interests have not been adequately represented and protected, the agreement shall be declared of no effect.

15-8-305. SPECIAL REPRESENTATIVE.

(1) (a) The personal representative or trustee may petition the court having jurisdiction over the matter for the appointment of a special representative to represent a person who is interested in the estate or trust and:

(i) Who is a minor;

(ii) Who is incompetent or disabled;

(iii) Who is yet unborn or unascertained; or

(iv) Whose identity or address is unknown.

The petition may be heard by the court without notice.

(b) In appointing the special representative, the court shall give due consideration and deference to any nomination(s) made in the petition, the special skills required in the representation, and the need for a representative who will act independently and prudently.

The nomination of a person as special representative by the personal representative or trustee and the person's willingness to serve as special representative are not grounds by themselves for finding a lack of independence; provided however, the court may consider any interests that the nominating fiduciary may have in the estate or trust in making the determination.

(c) The special representative may enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one (1) person or class of persons if the interests of such persons or class are not in conflict. The petition shall be verified. The petition and order appointing the special representative may be in the following forms:

CAPTION OF CASE

PETITION FOR APPOINTMENT OF SPECIAL REPRESENTATIVE UNDER SECTION 15-8-305, IDAHO CODE

The undersigned petitioner petitions the court for the appointment of a special representative in accordance with section 15-8-305, Idaho Code, and represents to the court as follows:

1. Petitioner. Petitioner ..... is the qualified and presently acting (personal representative) (trustee) of the above (estate) (trust) having been named (personal representative) (trustee) under (describe will and reference probate order or describe trust instrument.)

2. Issue Concerning (Estate) (Trust) Administration. A question concerning administration of the (estate) (trust) has arisen as to (describe issue, for example, "Related to interpretation, construction, administration, distribution.") The issues are appropriate for determination under section 15-8-305, Idaho Code.

3. Beneficiaries. The beneficiaries of the (estate) (trust) include persons who are unborn, unknown, or unascertained persons, or who are under eighteen (18) years of age: (list, with status of each.)

4. Special Representative. The nominated special representative ..... is a lawyer licensed to practice before the courts of this state or an individual with special skills or training in the administration of estates or trusts. The nominated special representative does not have an interest in the affected estate or trust and is not related to any person interested in the estate or trust. The nominated special representative is willing to serve. The petitioner has no reason to believe that the nominated special representative will not act in an independent and prudent manner and in the best interests of the represented parties. (It is recommended that the petitioner also include information specifying the particular skills of the nominated special representative that relate to the matter in issue.)

5. Resolution. Petitioner desires to achieve a resolution of the questions that have arisen concerning the (estate) (trust). Petitioner believes that proceeding in accordance with the procedures permitted under sections 15-8-301 through 15-8-305, Idaho Code, would be in the best interests of the (estate) (trust) and the beneficiaries.

6. Request of Court. Petitioner requests that (..... , an attorney licensed to practice in the state of Idaho,) (OR) (..... , an individual with special skills or training in the administration of estates or trusts,) be appointed special representative for those beneficiaries who are not yet adults, as well as for the unborn, unknown, and/or unascertained beneficiaries, as provided under section 15-8-305, Idaho Code.

DATED this ..... date of ....., ...

.....
(Petitioner or Petitioner's Legal Representative)

VERIFICATION

I certify under penalty of perjury under the laws of the state of Idaho that the foregoing is true and correct.

DATED ....., ..., at ....., Idaho.

.....
(Petitioner or other person having knowledge)

CAPTION OF CASE

ORDER FOR APPOINTMENT OF
SPECIAL REPRESENTATIVE UNDER
SECTION 15-8-305, IDAHO CODE

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the (estate) (trust) described in the Petition to appoint a special representative to address the issues that have arisen concerning the (estate) (trust) and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that ..... is appointed under section 15-8-305, Idaho Code, as special representative for the (estate) (trust) beneficiaries who are not yet adult age, and for unborn, unknown, or unascertained beneficiaries to represent their respective interests in the (estate) (trust) as provided in section 15-8-305, Idaho Code. The special representative shall be discharged of responsibility with respect to the (estate) (trust) at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is not reached within six (6) months from entry of this Order, the special representative appointed under this Order shall be discharged of responsibility, subject to subsequent reappointment under section 15-8-305, Idaho Code.

DONE IN OPEN COURT this ..... day of ....., ...

.....
JUDGE

(2) Upon appointment by the court, the special representative shall file a sworn certificate made upon penalty of perjury that he or she:

(a) Is not interested in the estate or trust;

(b) Is not related to any person interested in the estate or trust;

(c) Is willing to serve; and

(d) Will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state, or an individual with special skills or training in the administration of estates or trusts. The special representative may not have an interest in the affected estate or trust, and may not be related to a person interested in the estate or trust. The special representative is entitled to reasonable compensation for services, which must be paid from the principal of the estate or trust whose beneficiaries are represented.

(4) The special representative shall be discharged from any responsibility and shall have no further duties with respect to the estate or trust or with respect to any person interested in the estate or trust, on the earlier of:

(a) The expiration of six (6) months from the date the special representative was appointed, unless the order appointing the special representative provides otherwise; or

(b) The execution of the written agreement by all parties or their virtual representatives.

(5) Any action against a special representative must be brought before the earlier of:

(a) One (1) year from the discharge of the special representative; or

(b) The entry of an order by a court of competent jurisdiction under section 15-8-304, Idaho Code, approving the written agreement executed by all interested parties in accordance with the provisions of section 15-8-302, Idaho Code.

Approved March 23, 2005.

CHAPTER 123
(S.B. No. 1072)

AN ACT

RELATING TO HEIRS; AMENDING SECTION 15-2-108, IDAHO CODE, TO PROVIDE FOR INHERITANCE BY RELATIVES CONCEIVED BY NATURAL OR ARTIFICIAL MEANS WHO ARE BORN WITHIN TEN MONTHS AFTER THE DECEDENT'S DEATH.

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

SECTION 1. That Section 15-2-108, Idaho Code, be, and the same is hereby amended to read as follows:

15-2-108. AFTERBORN HEIRS. Relatives of the decedent conceived by natural or artificial means before his death but born ~~thereafter~~ within ten (10) months after the decedent's date of death, shall inherit as if they had been born in the lifetime of the decedent.

Approved March 23, 2005.

CHAPTER 124
(S.B. No. 1073)

AN ACT

RELATING TO MARRIAGE SETTLEMENTS; AMENDING SECTION 32-918, IDAHO CODE, TO PROVIDE FOR THE RECORDING OF SUMMARIES OF CONTRACTS AND TO PROVIDE FOR THE EFFECT OF SUCH RECORDING.

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

SECTION 1. That Section 32-918, Idaho Code, be, and the same is hereby amended to read as follows:

32-918. MARRIAGE SETTLEMENTS -- RECORD. (1) When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

(2) (a) A summary of the contract may be recorded in lieu of the contract, under this chapter or the laws of this state, if the requirements of this section are substantially met.

(b) A summary of the contract shall be signed and acknowledged by all parties to the original contract. The summary of the contract shall clearly state:

(i) The names of the parties to the original contract;

(ii) The complete mailing address of all parties;

(iii) The title and date of the contract;

(iv) A description of the interest or interests in real property created by the contract; and

(v) The legal description of the property.

(c) Other elements of the contract may be stated in the summary.

(3) If the requirements of this section are met, the summary of the contract may be recorded under the provisions of this chapter and, as to the contents of the summary only, it shall have the same force and effect as if the original contract had been recorded, and constructive notice shall be deemed to be given concerning the contents of the summary and the existence of the contract to any subsequent purchasers, mortgagees, or other persons or entities that acquire an interest in the real property.

Approved March 23, 2005.

CHAPTER 125
(S.B. No. 1081)

AN ACT

RELATING TO HIGHWAY CONTRACTS AND BIDS; AMENDING SECTION 40-902, IDAHO CODE, TO PROVIDE THAT WHEN A CONTRACTING AGENCY ALLOWS BID DOCUMENTS TO BE SUBMITTED ELECTRONICALLY, ELECTRONIC BID BOND WITH VALID ELECTRONIC SIGNATURES SHALL ACCOMPANY THE ELECTRONIC BID DOCUMENTS.

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

SECTION 1. That Section 40-902, Idaho Code, be, and the same is hereby amended to read as follows:

40-902. BIDS -- STATE HIGHWAY SYSTEM. (1) Whenever work on the state highway system is let by contract, sealed bids must be called for by public advertisement in at least two (2) consecutive weekly issues in a weekly newspaper or five (5) issues in a daily newspaper, having a general circulation in the county or one (1) of the counties, where the work is to be done.

(2) Each bid must be accompanied by a cashier's check or a certified check in favor of the department on some bank in the state of Idaho, or by a bidder's bond, for the sum of five percent (5%) of the amount of the bid, to be forfeited if the bidder, upon acceptance of his bid, fails or refuses to enter into a contract within fifteen (15) days after the presentation of the contract by the department to him for execution and to furnish the required bond. Checks and bonds of unsuccessful bidders shall be returned immediately after the contract is awarded. If the contracting agency allows electronically submitted bid documents, then a bid bond in electronic form with valid electronic signatures shall accompany the submittal of the electronic bid documents.

(3) Bids shall be opened publicly at the time and place specified in the advertisement and the contract let to the lowest responsible bidder, but the department has the right to reject any and all bids, or to let the contract for a part or all of the work.

(4) If no satisfactory bid is received, new bids may be called for, or the work may be performed by day labor, or as may be determined by the department.

(5) A bidder who did not submit the lowest responsible bid as determined by the department may within five (5) calendar days of bid opening file a written application to challenge the department's determination of the lowest responsible bidder and apply to the department's chief engineer for the appointment of a hearing officer to hold a contested case hearing. The application shall set forth in specific terms the reasons why the department's decision is thought to be erroneous. Upon receipt of an application, the chief engineer shall appoint a hearing officer with the authority to conduct a contested case hearing in accordance with the provisions of chapter 52, title 67, Idaho Code. Upon receipt from the hearing officer of findings of fact, conclusions of law and a recommended order, the chief engineer shall review the same and enter a final order sustaining or reversing the decision of the department on the selection of the lowest responsible bidder. Following entry of the final order, the chief engineer shall have the authority to award the contract to the bidder determined in the final order to be the lowest responsible bidder at a time and in a manner which shall be in the best interest of the state.

Approved March 23, 2005.

CHAPTER 126
(S.B. No. 1084)

AN ACT

RELATING TO VEHICLE LIGHTING EQUIPMENT; AMENDING SECTION 49-909, IDAHO CODE, TO REQUIRE REFLECTORS ON THE FRONT OF CERTAIN TRAILERS, SEMI-TRAILERS AND POLE TRAILERS.

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

SECTION 1. That Section 49-909, Idaho Code, be, and the same is hereby amended to read as follows:

49-909. ADDITIONAL EQUIPMENT REQUIRED ON CERTAIN VEHICLES. In addition to other equipment required in this chapter, the following vehicles shall be equipped as follows:

(1) On every bus or truck, whatever its size, there shall be:

(a) On each side, one (1) reflector, at or near the rear; and

(b) On the rear, two (2) reflectors, one (1) at each side, and one (1) stoplight.

(2) On every bus or truck eighty (80) inches or more in over-all width and less than thirty (30) feet in over-all length, in addition to the requirements in subsection (1):

(a) On the front, two (2) clearance lamps, one (1) at each side; and

(b) On the rear, two (2) clearance lamps, one (1) at each side.

(3) On every bus or truck thirty (30) feet or more in over-all length, regardless of its width, in addition to the requirements in subsection (1), clearance lamps required in subsection (2), plus:

(a) On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear; and

(b) On each side, one (1) reflector at or near the front.

(4) On every truck tractor, the cab of which is as wide as or wider than any vehicle being drawn:

(a) On the front, two (2) clearance lamps, one (1) at each side; and

(b) On each side, one (1) side marker lamp at or near the front.

(5) On every trailer or semitrailer having a gross weight in excess of three thousand (3,000) pounds, if wider than the truck or the cab of the truck tractor drawing it, the following:

(a) On the front, two (2) clearance lamps, one (1) at each side;

(b) On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear;

(c) On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear; and

(d) On the rear, two (2) clearance lamps, one (1) at each side, also two (2) reflectors, one (1) at each side, and one (1) stoplight.

(6) On every trailer or semitrailer having a gross weight in excess of three thousand (3,000) pounds if of the same width or less than the truck or the cab of the truck drawing it, the following:

(a) On each side, one (1) side marker lamp near the rear;

(b) On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear;

(c) On the rear, two (2) clearance lamps, one (1) at each side; and

(d) On the rear, two (2) reflectors, one (1) at each side and one (1) stoplight.

(7) On every pole trailer in excess of three thousand (3,000) pounds gross weight:

(a) On each side, one (1) side marker lamp and one (1) clearance lamp which may be in combination, to show the front, side and rear; and

(b) On the rear of the pole trailer or load, two (2) reflectors, one (1) at each side.

(8) On every trailer, semitrailer and pole trailer weighing three thousand (3,000) pounds gross or less:

(a) On the rear, two (2) reflectors, one (1) on each side; and

(b) On the front, two (2) reflectors, one (1) on each side.

(9) If any trailer or semitrailer is so loaded or is of dimensions which obscure the stoplight on the towing vehicle, then the drawn vehicle shall also be equipped with one (1) stoplight.

(10) Reflectors shall be mounted at a height no less than twenty-four (24) inches and not higher than sixty (60) inches above the ground on which the vehicle stands. If the highest part of the permanent structure of the vehicle is less than twenty-four (24) inches, the reflector at that point shall be mounted as high as that part of the permanent structure will permit. Rear reflectors on a pole trailer may be mounted on each side of the bolster or load. Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but the reflector shall meet all the other reflector requirements of this chapter.

(11) Clearance lamps shall be mounted on the permanent structure of the vehicle in a manner to indicate its extreme width and as near the top as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as prescribed for both.

(12) Lighting devices required shall be mounted, so far as practicable, in a manner to reduce the hazard of their being obscured by mud or dust thrown by the vehicle's wheels.

(13) On every trailer where the connecting tongue is fifteen (15) feet or more in length two (2) amber-colored reflectors shall be mounted on the connecting tongue, one (1) on each side near the center of the connecting tongue.

Approved March 23, 2005.

CHAPTER 127
(S.B. No. 1114)

AN ACT

RELATING TO REGISTRATION OF ELECTORS; AMENDING SECTION 34-408, IDAHO CODE, TO PROVIDE THAT A LEGIBLE, ACCURATE AND COMPLETE REGISTRATION CARD RECEIVED IN THE OFFICE OF THE COUNTY CLERK DURING THE TWENTY-FOUR DAY PERIOD PRECEDING AN ELECTION SHALL BE ACCEPTED AND HELD BY THE COUNTY CLERK UNTIL THE DAY FOLLOWING THE ELECTION WHEN REGISTRATION REOPENS, AT WHICH TIME THE REGISTRATION SHALL BECOME EFFECTIVE.

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

SECTION 1. That Section 34-408, Idaho Code, be, and the same is hereby amended to read as follows:

34-408. CLOSING OF REGISTER -- TIME LIMIT. (1) No elector may register in the office of the county clerk within twenty-four (24) days preceding any election held throughout the county in which he resides for the purpose of voting at such election; provided however, a legible, accurate and complete registration card received in the office of the county clerk during the twenty-four (24) day period preceding an election shall be accepted and held by the county clerk until the day following the election when registration reopens, at which time the registration shall become effective. This deadline shall also apply to any registrars the county clerk may have appointed.

(2) Any elector who will complete his residence requirement or attain the requisite voting age during the period when the register of electors is closed may register prior to the closing of the register.

(3) Notwithstanding subsection (1) of this section, an individual who is eligible to vote may also register, upon providing proof of residence, at the "absent electors' polling place" provided in section 34-1006, Idaho Code.

Approved March 23, 2005.

CHAPTER 128
(S.B. No. 1120)

AN ACT

RELATING TO CONCEALED FIREARMS; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3302H, IDAHO CODE, TO SET FORTH PROVISIONS FOR THE ISSUANCE OF A LICENSE TO CARRY CONCEALED FIREARMS TO QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS.

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

SECTION 1. That Chapter 33, 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 18-3302H, Idaho Code, and to read as follows:

18-3302H. CARRYING OF CONCEALED FIREARMS BY QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS. (1) A county sheriff shall issue a license to carry a concealed firearm to a qualified retired law enforcement officer provided that the provisions of this section are met.

(2) As used in this section:

(a) "Firearm" means a handgun and does not include:

(i) Any machine gun, as defined in 26 U.S.C. section 5845(b);

(ii) Any firearm silencer, as defined in 18 U.S.C. section 921; or

(iii) Any destructive device, as defined in 18 U.S.C. section 921.

(b) "Qualified retired law enforcement officer" means an individual who:

(i) Retired in good standing from service with a public agency as a law enforcement officer, provided that such retirement was for reasons other than mental instability;

(ii) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(iii) Before such retirement, was regularly employed as a law enforcement officer for an aggregate of fifteen (15) years or more, or retired from service with such agency after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(iv) Has a nonforfeitable right to benefits under the retirement plan of the agency;

(v) During the most recent twelve (12) month period has met, at his own expense, the standards for training and qualification of this state, as required at the discretion of the sheriff under paragraph (d) of this subsection or the agency from which he retired for active law enforcement officers, to carry a concealed firearm;

(vi) Is not chronically under the influence of alcohol, or under the influence of another intoxicating or hallucinatory drug or substance in violation of any provision of federal or state law;

(vii) Is not prohibited by federal law from receiving a firearm;

(viii) Has a current and valid photographic identification issued by the agency from which the individual retired from service as a law enforcement officer;

(ix) Provides by his affidavit, in triplicate, sworn and signed by him under penalty of perjury, that he meets all of the conditions set forth in this subsection (2);

(x) Pays the fees charged by the sheriff pursuant to this section; and

(xi) Completes the original application or renewal application as provided by this section.

(c) "Retired in good standing" means that at the time of his retirement, he was not under investigation, or subject to discipline, for any violation of this state's law enforcement code of conduct.

(d) "Standards for training and qualification in this state" means that when issuing a license pursuant to this section, the sheriff may require the applicant to demonstrate familiarity with a firearm by any of the following methods, provided the sheriff may require an applicant to complete more than one (1) firearms safety or training course:

(i) Completion of any hunter education or hunter safety course approved by the department of fish and game or a similar agency of another state;

(ii) Completion of any national rifle association firearms safety or training course, or any national rifle association hunter education course;

(iii) Completion of any firearms safety or training course or class available to the general public offered by a law enforce-

ment agency, community college, college, university, or private or public institution or organization or firearms training school, utilizing instructors certified by the national rifle association or the Idaho state police;

(iv) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement agency;

(v) Presentation of evidence of equivalent experience with a firearm through participation in organized shooting competitions or military service;

(vi) Completion of any firearms training or training or safety course or class conducted by a state certified or national rifle association certified firearms instructor; or

(vii) Any other firearms safety training that the sheriff may deem appropriate.

(3) The original and renewal license applications under this section shall be in triplicate, in a form to be prescribed by the director of the Idaho state police, and shall ask the name, address, description and signature of the licensee, date of birth, social security number, military status, identification of the law enforcement agency from which the applicant retired, and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. The application shall indicate that provision of the social security number is optional. In implementing the provisions of this section, the sheriff shall make applications readily available at the office of the sheriff or at other public offices in his jurisdiction.

(4) The fee for original issuance of a license under this section shall be twenty dollars ($20.00), paid to the sheriff. The sheriff may also collect any additional fees necessary to cover the cost of processing and the cost of materials for the license, which shall also be paid to the sheriff.

(5) An original or renewed license issued pursuant to this section shall be in a form substantially similar to that of the Idaho driver's license and shall be valid for a period of one (1) year. The license shall bear the signature, name, address, date of birth, picture of the licensee, expiration date, and the driver's license number or state identification card number of the licensee if used for identification in applying for the license, and shall state that the licensee is a qualified retired law enforcement officer. Upon issuing a license under the provisions of this section, the sheriff shall notify the Idaho state police on a form or in a manner prescribed by the director of the Idaho state police.

(6) A qualified retired law enforcement licensee under this section may renew his license if he applies for renewal at any time before or within ninety (90) days after the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete a renewal application pursuant to subsection (3) of this section and an affidavit pursuant to subsection (2) of this section. A renewed license shall take effect upon the expiration date of the prior license.

(7) The fee for renewal of the license, which must be paid on a yearly basis, shall be twelve dollars ($12.00), paid to the sheriff. The sheriff may also collect any additional fees necessary to cover the

processing costs and the cost of materials for the license, which shall also be paid to the sheriff. A licensee renewing after the expiration date of the license shall pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee. The renewal penalty fee, if any, shall be paid to the sheriff.

(8) A current and valid photographic identification issued by the agency from which the individual retired from service as a law enforcement officer, together with a license issued by the sheriff pursuant to this section, shall serve as a license to carry a firearm for a qualified retired law enforcement officer under 18 U.S.C. section 926C.

(9) The sheriff of the county where the license was issued or the sheriff of the county where the person resides shall have the power to revoke a license issued under this section pursuant to the provisions of section 18-3302(15), Idaho Code.

(10) A county sheriff, deputy sheriff, or county employee who issues a license to carry a concealed weapon pursuant to this section shall not incur any civil or criminal liability as the result of the performance of his duties under this section.

(11) A city, county or other political subdivision of this state shall not modify the requirements of this section, nor shall a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A civil action may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section. The civil action shall be brought in the county in which the application was made.

(13) In lieu of or in addition to qualification to carry a concealed firearm under this section, a retired law enforcement officer may apply for a license to carry concealed weapons under section 18-3302, Idaho Code.

Approved March 23, 2005.

CHAPTER 129
(S.B. No. 1125)

AN ACT

RELATING TO ADMINISTRATIVE RULES; AMENDING SECTION 67-5221, IDAHO CODE, TO REQUIRE THAT AN AGENCY INCLUDE IN A NOTICE OF PROPOSED RULEMAKING A CITATION TO THE SPECIFIC SECTION OF THE IDAHO CODE THAT HAS OCCASIONED THE RULEMAKING AND A SPECIFIC DESCRIPTION, IF APPLICABLE, OF ANY NEGATIVE FISCAL IMPACT ON THE STATE GENERAL FUND GREATER THAN TEN THOUSAND DOLLARS DURING THE FISCAL YEAR WHEN THE PENDING RULE WILL BECOME EFFECTIVE AND TO PROVIDE THAT THE ABSENCE OR ACCURACY OF A FISCAL IMPACT STATEMENT SHALL NOT AFFECT THE VALIDITY OR THE ENFORCEABILITY OF THE RULE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-5221, Idaho Code, be, and the same is hereby amended to read as follows:

67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:

(a) the specific statutory authority for the rulemaking including a citation to ~~a~~ the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking;

(b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;

(c) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year when the pending rule will become effective; provided, however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule;

(d) the text of the proposed rule prepared in legislative format;

(~~d~~e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;

(~~e~~f) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;

(~~f~~g) the manner in which persons may request an opportunity for an oral presentation as provided in section 67-5222, Idaho Code; and

(~~g~~h) the deadline for public comments on the proposed rule.

(2) (a) Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin. The form of the notice shall be substantially as follows: typefaces used shall measure greater than seven (7) points, and space width shall not be less than two (2) newspaper columns. The content of the notice shall be substantially as follows:

A prominent bold typeface heading designed to alert readers to the rules and information contained in the notice. The notice shall include the agency name and address, rule number, rule subject matter as provided in paragraph (1)(b) of this section, and the comment deadline. A brief statement in a prominent bold typeface that informs citizens where they can view the administrative bulletin in hard copy or electronic form shall be included.

(b) The coordinator shall cause the notice required in paragraph (a) of this subsection to be published in at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation published in Idaho and circulated in the county. The newspaper of largest circulation shall be established by the sworn statement of average annual paid weekday issue circulation that has been filed by a newspaper with the United States post office for the calendar year immediately preceding the calendar year during which the advertisement in this section is required to be published. The coordinator is authorized to negotiate a rate or rates with any or all newspapers publishing

these notices which will provide adequate exposure to the notices by the least expensive means. For the purposes of this section, the provisions of section 60-105, Idaho Code, shall not apply.

SECTION 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 23, 2005.

CHAPTER 130
(S.B. No. 1126)

AN ACT

RELATING TO HIGHWAY DISTRICT MEETINGS; REPEALING SECTIONS 40-1306A AND 40-1306B, IDAHO CODE, RELATING TO OPEN MEETINGS AND EXECUTIVE SESSIONS OF HIGHWAY DISTRICT BOARDS OF COMMISSIONERS.

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

SECTION 1. That Sections 40-1306A and 40-1306B, Idaho Code, be, and the same are hereby repealed.

Approved March 23, 2005.

CHAPTER 131
(S.B. No. 1137)

AN ACT

RELATING TO PEACE OFFICER STANDARDS AND TRAINING; AMENDING SECTION 19-510A, IDAHO CODE, TO CLARIFY THAT ONLY CERTIFIED PEACE OFFICERS HAVE THE AUTHORITY GIVEN BY STATUTE TO PEACE OFFICERS OF THE STATE OF IDAHO AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-5109, IDAHO CODE, TO AUTHORIZE THE PEACE OFFICER STANDARDS AND TRAINING COUNCIL TO ESTABLISH MINIMUM BASIC TRAINING AND CERTIFICATION STANDARDS FOR STATE CORRECTION OFFICERS AND FOR ADULT PROBATION AND PAROLE OFFICERS; AND AMENDING SECTION 20-209C, IDAHO CODE, TO CLARIFY THAT ONLY CERTIFIED PEACE OFFICERS HAVE THE AUTHORITY GIVEN BY STATUTE TO PEACE OFFICERS OF THE STATE OF IDAHO AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 19-510A, Idaho Code, be, and the same is hereby amended to read as follows:

19-510A. PEACE OFFICERS' POWERS TO EMPLOYEES OF THE STATE BOARD OF CORRECTION. All employees of the state board of correction who receive peace officer certification from the Idaho peace officers standards and training ~~advisory~~ council shall have all the authority given by statutes

to peace officers of the state of Idaho. All other classified employees designated by the board of correction pursuant to section 20-209C, Idaho Code, shall be empowered with the rights and duties of peace officers when engaged in transportation of prisoners or apprehension of prisoners or wards who have escaped, or apprehension and arrest of persons who are suspected of having violated the terms and conditions of their probation or parole.

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. One (1) component of minimum basic training shall be a course in the investigation of and collection of evidence in cases involving an allegation of sexual assault or battery.

(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 peace officer of a federally recognized Indian tribe within the boundaries of this state to attend the peace officer standards and training academy if said peace 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 peace 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 or deputy serving civil process, the deputy director 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 Idaho state police, 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 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.

(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.

(f) The council may, upon recommendation of the juvenile training council and pursuant to the requirements of this section, implement minimum basic training and certification standards for juvenile detention officers and for juvenile probation officers.

(g) The council may, upon recommendation of the correction standards and training counsel, and pursuant to the requirements of this section, establish minimum basic training and certification standards for state correction officers and for adult probation and parole officers.

SECTION 3. That Section 20-209C, Idaho Code, be, and the same is hereby amended to read as follows:

20-209C. AUTHORITY TO DESIGNATE EMPLOYEES AS PEACE OFFICERS. All employees of the state board of correction who receive peace officer certification from the Idaho peace officer~~s~~ standards and training ~~advisory~~ council shall have the authority given by statute to peace officers of the state of Idaho in accordance with the provisions of section 19-51~~0A~~9, Idaho Code. The state board of correction shall have the additional authority to designate other classified employees to act as peace officers when engaged in transportation of prisoners or apprehension of prisoners or wards who have escaped, or apprehension and arrest of persons who are suspected of having violated the terms and conditions of their probation or parole.

Approved March 23, 2005.

CHAPTER 132
(S.B. No. 1149)

AN ACT

RELATING TO THE IDAHO DIGITAL LEARNING ACADEMY; AMENDING SECTION 33-5502, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 33-5504, IDAHO CODE, TO PROVIDE THAT THE ACADEMY BOARD OF DIRECTORS SHALL EMPLOY A CURRICULUM AND INSTRUCTION COORDINATOR AND SHALL OBTAIN HOUSING FOR OPERATIONS OF THE ACADEMY; AMENDING SECTION 33-5505, IDAHO CODE, TO REVISE THE DEFINITIONS OF "HOST DISTRICT" AND "IDAHO DIGITAL LEARNING ACADEMY"; AND AMENDING SECTION 33-5507, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-5502, Idaho Code, be, and the same is hereby amended to read as follows:

33-5502. CREATION -- LEGISLATIVE FINDINGS -- GOAL. (1) There is hereby created within the state department of education the Idaho digital learning academy, a school-choice learning environment which joins the best technology with the best instructional practices.

(2) The legislature finds that it is in the best public interest to create the Idaho digital learning academy based on findings that indicate:

(a) Technology continues to impact all facets of life, including the education of students of school age and adult learners;

(b) Systems for delivery of education are as diverse as the learners;

(c) Public school systems are seeking high quality educational choices within the public system, and are aligning curriculum and assessment with state achievement standards; and

(d) The development of a comprehensive digital learning environment is cost prohibitive for individual school districts.

(3) The goal of the digital learning academy is to provide choice, accessibility, flexibility, quality and equity in curricular offerings for ~~high-school-aged~~ secondary students in this state.

SECTION 2. That Section 33-5504, Idaho Code, be, and the same is hereby amended to read as follows:

33-5504. DUTIES OF THE ACADEMY BOARD OF DIRECTORS. The board shall be responsible for ensuring that academy procedures and courses are in compliance with the rules of the state board of education and applicable statutes of the state of Idaho. In addition, the board shall:

(1) Recommend policies to be established by rule of the state board for effecting the purposes of this chapter.

(2) Employ staff as follows:

(a) A director who shall be responsible for staff development, staff evaluation, program development and oversight, and quality assurance;

(b) A ~~professional-development~~ curriculum and instruction coordinator who shall be responsible for training faculty in online course design, development and delivery, and shall assist the director in quality assurance;

(c) Clerical staff as necessary to manage student information, maintain student records, manage academy correspondence, and oversee basic financial accounting as directed;

(d) Appropriate technology staff who shall support faculty in understanding and applying the technical aspects of online course development and delivery;

(e) Faculty and teaching staff who are fully certificated Idaho teachers, to design and deliver planned curriculum content. Such staff shall be provided appropriate and sufficient training as necessary. The number of such staff shall largely be dictated by the number of courses under development, the number of courses offered, and the number of students participating in academy programs.

(3) Obtain housing ~~with-a-host-school-district~~ where actual operations of the academy are conducted by academy staff. ~~Housing--should--be minimal--and--reasonably-portable-so-that-it-can-be-transferred-from-one (1)-host-district-to-another-without-disruption-of-the-program.~~

(4) Contract with a service provider for delivery of academy courses online which shall be accessible twenty-four (24) hours a day, seven (7) days a week.

(5) Ensure that the academy is accredited by the state of Idaho and the northwest accreditation association.

(6) Develop policy for earning credit in courses based on mastery of the subject, demonstrated competency, and meeting the standards set for each course.

(7) Provide for articulating the content of certain high school courses with college and university courses in order to award both high school and undergraduate college credit.

(8) Develop policies and practices which provide strict application of time limits for completion of courses.

(9) Develop policies and practices on accountability, both by the student and the teacher, and in accordance with the provisions of section 33-5507, Idaho Code.

(10) Manage the moneys disbursed to the academy board from the superintendent.

(11) Set fees charged to school districts for student participation; fees charged for summer school; and fees charged to students and adults for professional development offerings.

SECTION 3. That Section 33-5505, Idaho Code, be, and the same is hereby amended to read as follows:

33-5505. DEFINITIONS. As used in this chapter:

(1) "Academy board," also referred to in this chapter as "the board" means the board of directors of the Idaho digital learning academy as such board is created in section 33-5503, Idaho Code.

(2) "Host district" means an Idaho school district where the fiscal operations of the Idaho digital learning academy are housed. ~~The host district shall also act as the fiscal agent for the academy.~~

(3) "Idaho digital learning academy" means an online educational program organized as a fully accredited ~~high~~ secondary school with statewide capabilities for delivering accredited courses to Idaho resident students in grades ~~nine~~ seven (~~9~~7) through twelve (12) at no cost to the student unless the student enrolls in additional courses beyond full-time enrollment. Participation in the academy by public school students shall be in compliance with academy and local school district policies. Adult learners and out-of-state students shall pay tuition commensurate with rates established by the state board with the advice of the superintendent, and such funds shall be included in the budget and audit of the academy's fiscal records.

(4) "State board" means the Idaho state board of education. The board is authorized and directed, with the advice and recommendation of the academy board of directors, to promulgate rules to implement the provisions of this chapter.

(5) "Superintendent" means the Idaho state superintendent of public instruction.

SECTION 4. That Section 33-5507, Idaho Code, be, and the same is hereby amended to read as follows:

33-5507. REGISTRATION -- ACCOUNTABILITY. (1) A student may register with the academy upon recommendation from a traditional school counselor or administrator, or may register directly with the academy if there is no current public school affiliation. However, in order for ~~course-work~~ coursework completed through the academy to be recorded on the student's transcript, the student shall indicate which ~~high~~ secondary school is to

receive and record credits earned.

(2) Students who register for courses shall provide the name of a responsible adult who shall be the contact person for the academy in situations which require consultation regarding the student's conduct and performance. A designated responsible adult for students with a school affiliation may be a teacher, a counselor or a distance learning coordinator. For home schooled students, a parent or guardian may be designated.

(3) Policies of accountability as established by rule of the state board shall address the special conditions which exist in an environment where there is reduced face-to-face contact between student and teacher; where students access courses at any time of day, from any location and at the student's own pace; where online etiquette and ethics should be clearly understood and required of all participants; and where all students' participation is monitored by online teachers and academy personnel.

(4) Policies shall be established by rule of the state board for student-related issues including taking exams, proctored or unproctored; ensuring that the work is being done by the student; and ensuring that ethical conduct and proper etiquette are always observed by all participants.

Approved March 23, 2005.

CHAPTER 133
(S.B. No. 1175)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 2006; 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 expense classes from the listed fund for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
State Regulatory Fund	$3,317,100	$745,600	$81,500	$4,144,200
Securities Investor Education and Training Fund	50,000			50,000
TOTAL	$3,367,100	$745,600	$81,500	$4,194,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Finance is authorized no more than fifty-one (51) full-time equivalent positions at any point during the period July 1, 2005,

through June 30, 2006, 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 23, 2005.

CHAPTER 134
(S.B. No. 1176)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 2006; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Fish and Game 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
Fish and Game Fund (Licenses)	$ 2,650,900	$ 911,000	$2,085,200	$314,500	$ 5,961,600
Fish and Game Fund (Other)		14,000			14,000
Fish and Game Set-aside Fund (Licenses)	200	35,700			35,900
Fish and Game Set-aside Fund (Other)		200			200
Fish and Game Primary Depredation Fund		1,400			1,400
Fish and Game Secondary Depredation Fund		1,400			1,400
Fish and Game Expendable Trust Fund		8,300			8,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Nonexpendable Trust Fund		3,400			3,400
Fish and Game Fund (Federal)	2,779,400	2,820,400	11,200		5,611,000
TOTAL	$ 5,430,500	$ 3,795,800	$2,096,400	$314,500	$11,637,200
II. ENFORCEMENT:					
FROM:					
Fish and Game Fund (Licenses)	$ 6,628,300	$ 2,010,900	$ 186,800		$ 8,826,000
Fish and Game Fund (Other)	87,800	18,600			106,400
Fish and Game Set-aside Fund (Other)		20,000			20,000
Fish and Game Expendable Trust Fund		20,800			20,800
TOTAL	$ 6,716,100	$ 2,070,300	$ 186,800		$ 8,973,200
III. FISHERIES:					
FROM:					
Fish and Game Fund (Licenses)	$ 3,033,800	$ 2,030,700	$ 432,800		$ 5,497,300
Fish and Game Fund (Other)	1,310,400	836,400	55,400		2,202,200
Fish and Game Set-aside Fund (Licenses)	171,500	251,700	223,000		646,200
Fish and Game Set-aside Fund (Other)	65,900	30,000			95,900
Fish and Game Expendable Trust Fund	83,500	50,400			133,900
Fish and Game Nonexpendable Trust Fund		32,700			32,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Fund (Federal)	10,671,900	5,048,000	1,473,700		17,193,600
TOTAL	$15,337,000	$ 8,279,900	$2,184,900		$25,801,800
IV. WILDLIFE:					
FROM:					
Fish and Game Fund (Licenses)	$ 3,259,400	$ 3,460,700	$ 160,600		$ 6,880,700
Fish and Game Fund (Other)	454,000	492,000			946,000
Fish and Game Set-aside Fund (Licenses)		7,200			7,200
Fish and Game Set-aside Fund (Other)	791,000	825,700	2,000		1,618,700
Fish and Game Expendable Trust Fund	358,400	276,700	9,300		644,400
Fish and Game Nonexpendable Trust Fund	10,000	2,300			12,300
Fish and Game Fund (Federal)	3,476,900	1,851,200	2,500		5,330,600
TOTAL	$ 8,349,700	$ 6,915,800	$ 174,400		$15,439,900
V. COMMUNICATIONS:					
FROM:					
Fish and Game Fund (Licenses)	$ 1,378,600	$ 459,200	$ 32,400		$ 1,870,200
Fish and Game Fund (Other)	84,800	34,900	61,500		181,200
Fish and Game Set-aside Fund (Other)	144,200	89,500			233,700
Fish and Game Expendable Trust Fund		20,000			20,000
Fish and Game Fund (Federal)	584,400	293,400	35,000		912,800
TOTAL	$ 2,192,000	$ 897,000	$ 128,900		$ 3,217,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
VI. ENGINEERING:					
FROM:					
Fish and Game Fund (Licenses)	$ 827,700	$ 77,000	$ 15,600		$ 920,300
VII. NATURAL RESOURCE POLICY:					
FROM:					
Fish and Game Fund (Licenses)	$ 601,500	$ 71,200	$ 36,500		$ 709,200
Fish and Game Fund (Other)	180,900	10,600			191,500
Fish and Game Set-aside Fund (Other)	130,900	15,300			146,200
Fish and Game Fund (Federal)	1,809,600	430,800			2,240,400
TOTAL	$ 2,722,900	$ 527,900	$ 36,500		$ 3,287,300
VIII. WINTER FEEDING AND HABITAT IMPROVEMENT:					
FROM:					
Fish and Game Fund (Licenses)	$ 440,800	$ 630,900	$ 2,700		$ 1,074,400
Fish and Game Set-aside Fund (Licenses)	53,300	1,401,500	1,800		1,456,600
Fish and Game Primary Depredation Fund				$200,000	200,000
Fish and Game Secondary Depredation Fund				200,000	200,000
TOTAL	$ 494,100	$ 2,032,400	$ 4,500	$400,000	$ 2,931,000
GRAND TOTAL	$42,070,000	$24,596,100	$4,828,000	$714,500	$72,208,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Fish and Game is authorized no more than five hundred twenty-five (525) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 23, 2005.

CHAPTER 135
(S.B. No. 1177)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 2006; 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 expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. INSURANCE REGULATION:					
FROM:					
Self-Governing Operating Fund	$3,382,500	$1,931,400	$210,300		$5,524,200
Miscellaneous Revenue Fund	77,500	8,000			85,500
Federal Grant Fund	116,600	97,900		$2,500	217,000
TOTAL	$3,576,600	$2,037,300	$210,300	$2,500	$5,826,700
II. STATE FIRE MARSHAL:					
FROM:					
Self-Governing State Fire Marshal Fund	$ 637,200	$ 294,500	$118,700		$1,050,400
GRAND TOTAL	$4,213,800	$2,331,800	$329,000	$2,500	$6,877,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Insurance is authorized no more than seventy-one and one-half (71.5) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 23, 2005.

CHAPTER 136
(S.B. No. 1178)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE OFFICE OF SPECIES CONSERVATION FOR FISCAL YEAR 2006; 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 Office of Species Conservation the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$444,300	$105,100			$ 549,400
Miscellaneous Revenue Fund	20,000	15,000			35,000
Federal Grant Fund	100,000	300,000	$7,500	$6,100,000	6,507,500
TOTAL	$564,300	$420,100	$7,500	$6,100,000	$7,091,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Office of Species Conservation is authorized no more than six (6) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 23, 2005.

CHAPTER 137
(S.B. No. 1181)

AN ACT

APPROPRIATING MONEYS FOR COMMUNITY COLLEGE SUPPORT FOR FISCAL YEAR 2006; AND EXPRESSING LEGISLATIVE INTENT IN REGARD TO ALLOCATION OF GENERAL FUNDS.

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 to be expended according to the designated expense class from the listed funds for the period July 1, 2005, through June 30, 2006:

FOR:	
Trustee and Benefit Payments	$20,823,900
FROM:	
General Fund	$20,523,900
Community College Fund	300,000
TOTAL	$20,823,900

SECTION 2. It is legislative intent that the State Board of Education develop an allocation formula which will be used to distribute the General Funds appropriated each year to North Idaho College and the College of Southern Idaho. Allocation factors may be based on each institution's enrollment growth, academic structure, personnel and infrastructure needs, or other factors the State Board of Education deems appropriate. The moneys appropriated in Section 1 of this act shall be allocated accordingly.

Approved March 23, 2005.

CHAPTER 138
(S.B. No. 1185)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE HUMAN RIGHTS COMMISSION FOR FISCAL YEAR 2006; 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 expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$510,900	$ 79,100	$590,000
Federal Grant Fund	112,800	99,800	212,600
Miscellaneous Revenue Fund		6,700	6,700
TOTAL	$623,700	$185,600	$809,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Human Rights Commission is authorized no more than eleven (11) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 23, 2005.

CHAPTER 139
(H.B. No. 33)

AN ACT
RELATING TO SMOKE MANAGEMENT AND CROP RESIDUE DISPOSAL; AMENDING SECTION 22-4802, IDAHO CODE, TO ADD A DEFINITION OF "ECONOMICALLY VIABLE ALTERNATIVE."

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

SECTION 1. That Section 22-4802, Idaho Code, be, and the same is hereby amended to read as follows:

22-4802. DEFINITIONS. In this chapter:

(1) "Adequate smoke dispersion" means that favorable meteorological and air quality conditions exist to allow crop residue burning to occur without endangering ambient air quality standards.

(2) "Cereal grain field" means a field of grass cultivated for edible seeds such as wheat, oats, barley, rye, rice, maize, grain, sorghum and proso millet.

(3) "Crop residue" means any vegetative material remaining in the field after harvest and shall not include weeds along ditch banks or waterways, orchard prunings, or forest slash piles.

(4) "Department" means the Idaho department of agriculture.

(5) "DEQ" means the Idaho department of environmental quality.

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

(7) "Economically viable alternative" means an alternative to thermal residue disposal that: (a) achieves agricultural objectives comparable to thermal disposal for the factors listed in section 22-4803(1)(a) through (c) and (2), Idaho Code; and (b) allows growers to experience a financial rate of return over the short- and long-term consistent with the rate of return that would occur if thermal residue disposal were utilized.

(8) "Field grass" or "forage grass field" means a field which has been planted with one (1) of the following varieties of grass for the purpose of producing seed: canary grass, bromegrass, oat grass, Timothy grass, wheat grass, or orchard grass.

(~~8~~9) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two (2) or more persons having a joint or common interest, or any unit or agency of local, state or federal government.

(~~9~~10) "Reasonable efforts" means, but is not limited to, the obtaining of any available information on local meteorological and air quality conditions and observing the smoke plume from small test fires or from other field burns.

(~~10~~11) "Turf grass field" means a field which has been planted with one (1) of the following varieties of grass for the purpose of producing seed: bluegrass, bent grass, fescues or perennial ryegrass.

Approved March 23, 2005.

CHAPTER 140
(H.B. No. 50, As Amended in the Senate)

AN ACT

RELATING TO COSMETICIANS; AMENDING SECTION 54-808, IDAHO CODE, TO INCREASE THE STUDENT TO INSTRUCTOR RATIO, TO CLARIFY THAT STUDENT INSTRUCTORS DO NOT COUNT AS STUDENTS FOR PURPOSES OF THE RATIO AND TO INCREASE THE AMOUNT OF THE REQUIRED BOND.

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

SECTION 1. That Section 54-808, Idaho Code, be, and the same is hereby amended to read as follows:

54-808. REGULATIONS FOR SCHOOLS. Every domestic school of cosmetology must be licensed under the provisions of this chapter and shall meet the following standards and provisions:

(1) Employ and maintain at least one (1) licensed instructor for every ~~fifteen~~ twenty (~~15~~20) students or fraction thereof with a student instructor not counting as a student for purposes of the student-instructor ratio;

(2) Possess sufficient apparatus and equipment for the proper and full teaching of all subjects of its curriculum;

(3) Keep a daily attendance record for each student;

(4) Maintain regular class and instruction hours, establish grades, and hold monthly examinations;

(5) Prescribe a school term for training in all phases of the practice of cosmetology;

(6) Provide applicable curriculums embracing subjects covering the scientific fundamentals for cosmetology, nail technology, esthetics, electrology and instructors as follows:

(a) The curriculum for cosmetology shall include hygiene, bacteriology, histology of the hair, skin, muscles, nails and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands and nails, massaging and manipulating the muscles of the body, permanent waving, haircutting and arranging, dressing, coloring, bleaching and tinting of the hair, a study of electricity as applied to cosmetology, and the Idaho laws and rules governing the practice of cosmetology;

(b) The curriculum for nail technology shall include hygiene, bacteriology, histology of the hands and feet, skin, muscles, nails and nerves, structure of the hands and feet, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, glands and nails, massaging and manipulating the muscles of the hands and feet, a study of electricity as applied to nail technology, and the Idaho laws and rules governing the practice of nail technology;

(c) The curriculum for esthetics shall include hygiene, bacteriology, histology of the skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, glands and nails, massaging and manipulating the muscles of the body, a study of electricity as applied to cosmetology, and the Idaho laws and rules governing the practice of esthetics;

(d) The curriculum for electrology shall include hygiene, bacteriology, histology of the hair, skin, muscles, nails and nerves, structure of the body, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands and nails, hypertrichosis, permanent removal of unwanted hair, a study of electricity as applied to electrology including the use and study of galvanic current, and the use and study of both automatic and manual high frequency current, and the Idaho laws and rules governing the practice of electrology;

(e) The curriculum for instructors shall include fundamentals of adult education, communication, preparation of lesson plans, practical and theoretical presentation and demonstration, use of teaching aids, measurement and evaluation, and the Idaho laws and rules governing cosmetology and electrology, in addition to teaching the acts prescribed in section 54-802, Idaho Code;

(7) Denote with clarity that the establishment is a school and that work is done by students. Such fact shall be made clear to the patron by signs conspicuously posted in the school and the adjoining shop, if any;

(8) All instructors must be licensed instructors in this state;

(9) Such school shall not permit any student or apprentice to receive instruction unless licensed under the provisions of this chapter;

(10) Every instructor shall devote his entire time during school or class hours to that of instructing the students and shall not apply his time to that of private or public practice;

(11) School hours for the purpose of instruction shall be offered on not less than a five (5) day week;

(12) Training received in an establishment not meeting the requirements for schools as herein set forth shall receive credit for said training as an apprentice rather than as a student, provided said training meets the requirements for apprentice training;

(13) All students, including those enrolled for instructor's training, shall be registered by the school with the board, listing the name, age, and qualifications of the student required for such training. Forms for such enrollment may be provided by the board and a register of such enrollments shall be maintained by the board. Hours of instruction shall be registered with the board as established by board rules, and a student may be permitted to transfer the credits earned at one (1) school to another school with permission of the board;

(14) Training received in electrology in a school shall not be recognized unless the school has been approved for such training by the board and the school meets and maintains the requirements to train electrologists as established by board rules;

(15) Training received in esthetics shall not be recognized unless the school has been approved for such training by the board, and the school meets and maintains the requirements to train estheticians as established by board rules;

(16) Training received in nail technology shall not be recognized unless the school has been approved for such training by the board, and the school meets and maintains the requirements to train nail technicians as established by board rules;

(17) Every school approved by the board shall deliver to the board, a bond to the state of Idaho in a form approved by the board, and renew the same annually, in the sum of twenty-five thousand dollars ($25,000)

executed by a corporate surety company duly authorized to do business in this state, conditioned that such school shall continue to give its courses of instruction, in accordance with the provisions of this chapter, until it has completed all such courses for which students have enrolled, and conditioned that such school shall fully comply with all promises or representations made to enrolled students as an inducement to such students to enroll. Any student so enrolled who may be damaged by reason of the failure of such school to comply with such conditions, shall have a right of action in his or her own name, on such bonds, for such damage.

Approved March 23, 2005.

CHAPTER 141
(H.B. No. 56)

AN ACT

RELATING TO SNOWMOBILE SEARCH AND RESCUE; AMENDING CHAPTER 29, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2913A, IDAHO CODE, TO CREATE A SNOWMOBILE SEARCH AND RESCUE FUND AND TO CREATE AN ADVISORY COMMITTEE; AMENDING SECTION 67-7103, IDAHO CODE, TO INCREASE THE SNOWMOBILE CERTIFICATES OF NUMBER FEE BY ONE DOLLAR; AMENDING SECTION 67-7104, IDAHO CODE, TO INCREASE THE NONRESIDENT SNOWMOBILE USER CERTIFICATE FEE BY ONE DOLLAR; AND AMENDING SECTION 67-7106, IDAHO CODE, TO PROVIDE FOR DEPOSIT OF THE INCREASE IN SNOWMOBILE CERTIFICATE FEES TO THE SNOWMOBILE SEARCH AND RESCUE FUND AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Chapter 29, 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 67-2913A, Idaho Code, and to read as follows:

67-2913A. SNOWMOBILE SEARCH AND RESCUE FUND -- ADVISORY COMMITTEE. (1) There is hereby created in the state treasury the snowmobile search and rescue fund. Moneys in the snowmobile search and rescue fund shall be perpetually appropriated to and shall be used by the director of the Idaho state police for the purpose of defraying costs of search and rescue operations which are conducted by a county sheriff's office to assist or recover individuals riding snowmobiles, and for no other purpose. One hundred percent (100%) of the moneys distributed to the fund pursuant to section 67-7106, Idaho Code, shall be deposited to the credit of the state snowmobile search and rescue fund. The fund shall be administered in the same manner as the state search and rescue fund created in section 67-2913, Idaho Code. The director of the Idaho state police is authorized to allocate up to ten percent (10%) of the moneys for reimbursement of administrative expenses.

(2) In the event the balance in the state snowmobile search and rescue fund exceeds thirty thousand dollars ($30,000) on July 1 of any year, moneys in excess of thirty thousand dollars ($30,000) shall be divided into two (2) equal parts and distributed to the:

(a) Training subaccount of the search and rescue fund created in section 67-2913, Idaho Code; and

(b) State snowmobile fund created in section 67-7106, Idaho Code, to be used exclusively by the director of the Idaho department of parks and recreation for snowmobile trail groomer replacement.

(3) The state treasurer shall invest all moneys in the state snowmobile search and rescue fund and the interest and proceeds earned on such investments shall be returned to the state snowmobile search and rescue fund.

(4) In the event that all moneys in the state snowmobile search and rescue fund are exhausted or no longer available, nothing in this chapter shall be construed to absolve any entity which would otherwise provide applicable services, from conducting search and rescue operations to assist or recover individuals riding snowmobiles. Nothing in this chapter shall be construed to limit recovery of moneys solely to the state snowmobile search and rescue fund for search and rescue operations assisting or recovering individuals riding snowmobiles.

(5) A three (3) member advisory committee shall review the operation and disbursement of moneys from the fund at the end of each fiscal year, and shall report to the fund administrator any proposed guidelines or policies deemed appropriate to improve operation of the fund. The committee shall be comprised of one (1) representative from the Idaho state snowmobile association, one (1) representative from the Idaho sheriffs' association, and one (1) representative appointed by the director of the Idaho department of parks and recreation. The respective organizations shall be responsible for reimbursing their member representative for any expenses incurred for service on the committee.

SECTION 2. That Section 67-7103, Idaho Code, be, and the same is hereby amended to read as follows:

67-7103. APPLICATION FOR NUMBER -- ATTACHMENT OF NUMBER -- CERTIFICATE -- APPLICATION FOR TRANSFER OF CERTIFICATE -- TRANSFER OF CERTIFICATE FEE -- TEMPORARY NUMBER -- FEES. (1) On or before November 1 of each year the owner of each snowmobile requiring numbering by the state of Idaho shall file an application for number with the department on forms approved by it. The application shall be signed by the owner and shall, except as provided in subsection (7) of this section, be accompanied by a fee of twenty-one dollars ($2~~0~~1.00). Upon receipt of the application the department shall issue to the applicant a certificate of number stating the number assigned to the snowmobile and the name and address of the owner. The owner shall attach to the snowmobile the identification number in a manner as may be prescribed by rules of the department. The number shall be located on the right and left side of the cowling of the snowmobile and shall be completely visible and shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the snowmobile for which issued, wherever the snowmobile is in operation.

(2) The department may issue any certificate of number directly or may authorize any persons to act as vendor for the issuance. In the event a person accepts the authorization, he may be assigned a block of numbers and certificates which upon issue, in conformity with this chapter and with any rules of the department, shall be valid as if issued directly by the department.

(3) All records of the department made or kept pursuant to this section shall be public records.

(4) Each snowmobile must be registered before it leaves the premises at the time of sale from any retail snowmobile dealer.

(5) The purchaser of a snowmobile shall, within fifteen (15) days immediately after acquisition, make application to the department for transfer to him of the certificate of number issued to the snowmobile, giving his name, address and the number of the snowmobile and shall at the same time pay to the department a fee of three dollars ($3.00). Upon receipt of the application and fee, the department shall transfer the certificate of number issued for the snowmobile to the new owner or owners. Unless the application is made and fee paid within fifteen (15) days, the snowmobile shall be considered to be without a certificate of number and it shall be unlawful for any person to operate that snowmobile until the certificate is issued.

(6) No number other than the number issued to a snowmobile pursuant to this chapter shall be painted, attached, or otherwise displayed on the snowmobile, except a temporary number may be attached to identify a snowmobile for the purpose of racing or other sporting events.

(7) Resident and nonresident owners of snowmobiles used for rental purposes shall purchase certificates of number for fifty-one dollars ($5~~0~~1.00) and the certificates of number shall be displayed on the machine at all times.

SECTION 3. That Section 67-7104, Idaho Code, be, and the same is hereby amended to read as follows:

67-7104. NONRESIDENT SNOWMOBILE USER CERTIFICATE REQUIRED. The owner of a nonresident, noncommercial snowmobile shall not be required to comply with the registration requirements of the state of Idaho, but shall be required to obtain a nonresident snowmobile user certificate. A fee of twenty-one dollars ($2~~0~~1.00) shall be imposed for the issuance of a nonresident snowmobile user certificate. The certificate of number shall be displayed in the same manner as provided in section 67-7103, Idaho Code. Such certificates shall be valid beginning November 1 through October 31 of the following year. Issuance and administration of nonresident snowmobile user certificates shall be conducted in the same manner as provided in section 67-7103, Idaho Code, for numbering of snowmobiles.

(1) For purposes of this section, "nonresident" shall be as defined in section 36-202, Idaho Code.

(2) In the absence of a bona fide program in the area or upon the request of the bona fide county snowmobile advisory committee of the nearest affected county in Idaho, the requirements for the nonresident certificate may be waived by the parks and recreation board on specific trails where the snowmobile trail grooming is solely supported by a state other than Idaho.

SECTION 4. That Section 67-7106, Idaho Code, be, and the same is hereby amended to read as follows:

67-7106. DISTRIBUTION OF MONEYS COLLECTED -- COUNTY SNOWMOBILE FUND -- STATE SNOWMOBILE ~~ACCOUNT~~ FUND -- STATE SNOWMOBILE SEARCH AND RESCUE FUND. (1) Each vendor shall not later than the fifteenth day of each

month remit all moneys collected under the provisions of sections 67-7103 and 67-7104, Idaho Code, to the state treasurer for credit to the state snowmobile ~~account~~ fund, established in the dedicated fund, to be administered by the director, except that one dollar ($1.00) from each snowmobile certificate of number fee, one dollar ($1.00) from each rental certificate of number fee, and one dollar ($1.00) from each non-resident snowmobile user certificate issued by the vendor shall be credited by the state treasurer to the state snowmobile search and rescue fund created in section 67-2913A, Idaho Code.

(2) Each county with a bona fide snowmobile program shall be entitled to receive from the department eighty-five percent (85%) of the moneys generated for that county during that registration period. Application for additional funds shall be made to the department by each county prior to the second Monday of August of each year. The moneys applied for shall be used solely for a bona fide snowmobile program. Counties with a bona fide snowmobile program~~,~~ may use up to fifteen percent (15%) of their county snowmobile moneys upon recommendation by their county snowmobile advisory committee for snowmobile law enforcement purposes.

(3) Up to fifteen percent (15%) of the statewide snowmobile ~~account~~ fund generated each year may be used by the department to defray administrative costs. Any moneys unused at the end of the fiscal year shall be returned to the state treasurer for deposit in the state snowmobile ~~account~~ fund.

(4) Vendors shall be entitled to charge an additional one dollar and fifty cents ($1.50) handling fee per registration for the distribution of certificates of number.

(5) Counties which have not established a bona fide snowmobile program shall remit the entire balance in the county snowmobile fund to the state treasurer for credit to the state snowmobile ~~account~~ fund, and shall be available to counties with a bona fide snowmobile program. Application for these moneys shall be made prior to the second Monday of August of that registration period.

Approved March 23, 2005.

CHAPTER 142
(H.B. No. 75)

AN ACT

RELATING TO THE IDAHO MONEY TRANSMITTERS ACT; AMENDING SECTION 26-2914, IDAHO CODE, TO REVISE THE DIRECTOR'S AUTHORITY TO CONDUCT EXAMINATIONS AND INVESTIGATIONS; AMENDING SECTION 26-2915, IDAHO CODE, TO REQUIRE THAT ADDITIONAL REPORTS BE MAINTAINED AND TO PROVIDE THAT RECORDS MUST BE MADE ACCESSIBLE TO THE DIRECTOR ON SEVEN DAYS' WRITTEN NOTICE IF THE RECORDS ARE MAINTAINED OUT OF STATE; AMENDING SECTION 26-2916, IDAHO CODE, TO REVISE CONDITIONS FOR THE RELEASE OF INFORMATION, TO DELETE LANGUAGE PROVIDING THAT THE DIRECTOR MAY RELEASE INFORMATION WITHOUT PRIOR NOTICE TO A LAW ENFORCEMENT AGENCY IN CONNECTION WITH A CRIMINAL REFERRAL AND TO MAKE A TECHNICAL CHANGE; AND AMENDING SECTION 26-2917, IDAHO CODE, TO PROVIDE FOR NOTICE AND OPPORTUNITY FOR HEARING FOR PURPOSES OF THE SUSPENSION OR REVOCATION OF LICENSES, TO REVISE THE GROUNDS UPON WHICH A LICENSE MAY BE SUSPENDED OR REVOKED AND TO MAKE A TECHNICAL CHANGE.

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

SECTION 1. That Section 26-2914, Idaho Code, be, and the same is hereby amended to read as follows:

26-2914. AUTHORITY TO CONDUCT EXAMINATIONS AND INVESTIGATIONS. (1) ~~The~~ For the purpose of discovering violations of this chapter or rules adopted under this chapter, discovering unsafe and unsound practices, or securing information lawfully required under this chapter, the director may ~~conduct examinations of a licensee~~ at any time, either personally or by designee, investigate or examine the business and wherever located, the books, accounts, records, papers, documents, files and other information used in the business of every applicant, licensee or its authorized representatives, and of every person who is engaged in the business of providing money transmission services, whether the person acts or claims to act under or without the authority of this chapter. For these purposes, the director or designated representative shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes and vaults of all such persons. The director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination or hearing and may require such person to produce books, accounts, papers, documents, records, files and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files and other information; may require that such original books, accounts, papers, documents, records, files and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files or other information. The director or designated person may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files or other information. Should the director conclude that an on-site examination of a licensee is necessary, the licensee, subject to the provisions of subsection (~~3~~2) of this section, shall pay all the actual costs of such examination. If the director determines, based on the licensee's financial statements and past history of operations in the state, that an on-site examination is unnecessary, the on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The director, in lieu of an on-site examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and reports so accepted are considered for all purposes as an official report of the director.

(2) ~~The director may request financial data from a licensee in addition to that required in section 26-2907, Idaho Code, or conduct an on-site examination of any authorized representative or location of a license within this state without prior notice to the authorized representative or licensee if the director has a reasonable basis to believe that the licensee or authorized representative is in violation of the provisions of this chapter.~~

~~(3)~~ In the case of refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director,

may issue to that person an order requiring him to appear before the director or his designee to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt of court. When the director examines a licensee or an authorized representative within this state, the licensee or authorized representative shall pay all the actual costs of such examination, up to a maximum of one thousand dollars ($1,000).

SECTION 2. That Section 26-2915, Idaho Code, be, and the same is hereby amended to read as follows:

26-2915. MAINTENANCE OF RECORDS. (1) Each licensee shall make, keep, and preserve the following books, accounts and other records for a period of three (3) years:

(a) A record or records of payment instruments sold;

(b) A general ledger containing all asset, liability, capital, income and expense accounts, which general ledger shall be posted at least monthly;

(c) Settlement sheets, if received from authorized representatives;

(d) Bank statements and bank reconciliation records;

(e) Records of outstanding payment instruments;

(f) Records of each payment instrument paid within the three (3) year period; ~~and~~

(g) A list of the names and addresses of all of the licensee's authorized representatives, as well as copies of each authorized representative's contract; and

(h) All reports required by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. sec. 5311, 31 CFR part 103 (2000), and other federal and state laws pertaining to money laundering.

(2) Maintenance of such documents as are required in this section in a photographic or other similar form shall constitute compliance with the provisions of this section.

(3) Records may be maintained at a location other than at a location within this state so long as they are made accessible to the director on ~~fifteen~~ seven (~~15~~7) days' written notice.

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(4)(a)~~ chapter 3, title 9, Idaho Code, by the director or any offi-

cer 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 or if:

~~(a)--The licensee provides consent prior to the release;-or~~

~~(b)--T~~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 provisions 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.~~

SECTION 4. That Section 26-2917, Idaho Code, be, and the same is hereby amended to read as follows:

26-2917. SUSPENSION OR REVOCATION OF LICENSES. After notice and opportunity for hearing, the director may suspend or revoke a licensee's license if the director finds that:

(1) Any fact or condition exists that, if it had existed at the time when the licensee applied for a license, would have been grounds for denying such application;

(2) The licensee's net worth becomes inadequate and the licensee, after ten (10) days' written notice from the director, fails to take such steps as the director deems necessary to remedy such deficiency;

(3) The licensee violates any provisions of this chapter or any rule or order of the director under the provisions of this chapter or is convicted of a violation of a state or federal money laundering or terrorism law;

(4) The licensee is conducting its business in an unsafe or unsound manner;

(5) The licensee is insolvent;

(6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(7) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy;

(8) The licensee refuses to permit the director to make any examination authorized in this chapter; ~~or~~

(9) The licensee ~~wilfully~~ willfully fails to make any report required in this chapter; or

(10) The licensee, any person who exercises any managerial authority over the licensee's activities, or any of its executive officers or other persons in control of the licensee are listed or become listed on the "specially designated nationals and blocked persons" list prepared by the United States department of the treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

Approved March 23, 2005.

CHAPTER 143
(H.B. No. 122, As Amended in the Senate)

AN ACT

RELATING TO REGULATION OF LIQUEFIED PETROLEUM GAS; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 51, TITLE 54, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A DECLARATION OF POLICY, TO PROVIDE DEFINITIONS, TO PROVIDE FOR A LICENSE REQUIREMENT, TO PROVIDE EXEMPTIONS, TO PROVIDE FOR THE LICENSING OF APPLICANTS AND ENDORSEMENT, TO PROVIDE QUALIFICATIONS FOR DEALER LICENSE, TO PROVIDE FOR ISSUING A FACILITY LICENSE AND TO PROVIDE FOR EQUIPMENT SAFETY AND FACILITY INSPECTIONS, TO CREATE THE IDAHO LIQUEFIED PETROLEUM GAS SAFETY BOARD, TO PROVIDE POWERS AND DUTIES OF THE BOARD, TO PROVIDE FOR THE DENIAL AND ISSUANCE OF LICENSES, TO PROVIDE FOR THE CLASSIFICATION OF LICENSES, TO PROVIDE FOR THE FORM OF A LICENSE, RECORDS, FEES AND PAYMENT OF COSTS AND EXPENSES, TO PROVIDE FOR NONTRANSFERAL OF LICENSES, TO PROVIDE FOR REVOCATION OR SUSPENSION OF A LICENSE AND PROCEDURES FOR DISCIPLINARY PROCEEDINGS, TO PROVIDE FOR VIOLATIONS AND PENALTIES, TO SPECIFY THE DUTY OF PROSECUTING ATTORNEYS AND THE ATTORNEY GENERAL OF THE STATE OF IDAHO; AMENDING SECTION 67-2601, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF SELF-GOVERNING AGENCIES SHALL INCLUDE THE LIQUEFIED PETROLEUM SAFETY BOARD; AND AMENDING SECTION 67-2602, IDAHO CODE, TO PROVIDE THAT THE BUREAU OF OCCUPATIONAL LICENSES IS EMPOWERED TO PROVIDE SERVICES FOR THE LIQUEFIED PETROLEUM SAFETY BOARD AND TO PROVIDE PROPER TERMINOLOGY.

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

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 51, Title 54, Idaho Code, and to read as follows:

CHAPTER 51
IDAHO LIQUEFIED PETROLEUM GAS PUBLIC SAFETY ACT

54-5101. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Liquefied Petroleum Gas Public Safety Act."

54-5102. DECLARATION OF POLICY. (1) In order to protect the public health, safety and welfare, every person practicing or offering to practice as a liquefied petroleum gas dealer as herein defined shall submit evidence of meeting such education, experience and examination qualifications as hereinafter provided and be licensed in accordance with the provisions of this chapter.

(2) In order to protect the public health, safety and welfare, it shall be unlawful to own or operate any facility engaged in liquefied petroleum gas facility operation unless such facility is licensed in accordance with the provisions of this chapter.

(3) Every person so licensed and every facility so licensed shall maintain prescribed standards of competence, conduct and operation, and shall annually renew said license in order to continue such practice or operation. This chapter shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.

54-5103. DEFINITIONS. (1) "Board" means the liquefied petroleum gas safety board.

(2) "Bureau" means the bureau of occupational licenses.

(3) "Department" means the department of self-governing agencies.

(4) "Good moral character" means the absence of any behavior that violates accepted standards of the community including, but not limited to:

(a) Conviction or plea of guilty to a felony or other crime involving moral turpitude;

(b) Habitual use of drugs or intoxicants to such a degree as to render a person unfit and unreliable to practice;

(c) Revocation or suspension or other restriction of any license or certificate in any state in the previous five (5) years; and

(d) Failure to pay final judgments in any state in the previous seven (7) years.

(5) "License" means a physical document issued by the bureau certifying that a person or facility has met the appropriate qualifications and has been granted the authority to practice or operate in Idaho under the provisions of this chapter.

(6) "Liquefied petroleum gas" or "LPG" or "LP-Gas" means any material that is composed predominantly of or by the mixture of any of the following hydrocarbons: propane, propylene, butanes, isobutanes and butylenes.

(7) "LPG facility" means any facility at a fixed location licensed pursuant to this chapter whose activities include selling, filling, refilling, or commercial handling or commercial storage of LPG.

(8) "LPG dealer" means any person licensed pursuant to this chapter who engages in LPG dealer practice.

(9) "LPG dealer practice" means a person engaging in the selling, filling, refilling, transporting, delivering, or commercial handling of LPG, or engaging in the installation or maintenance of systems, equipment, pipes or containers for the use or storage of LPG.

(10) "LPG code" means the liquefied petroleum gas code adopted by the national fire protection association, inc., commonly known as NFPA 58.

54-5104. LICENSE REQUIRED -- BUSINESS ENTITIES -- NAME AND ADDRESS CHANGE. (1) It shall be unlawful for any person to practice or to offer to engage in any practice governed by this chapter, or display a sign or in any other way advertise or represent oneself as a person who engages in such practices, unless duly licensed in accordance with this chapter. The license shall be posted in the person's established place of business or carried upon the person, and shall be presented upon demand as proof of licensing.

(2) A person, corporation, partnership, trust, association or other legal entity may maintain an established facility for engaging in an operation governed by this chapter, provided that such facility is properly licensed pursuant to this chapter. No person, corporation, partnership, trust, association or other legal entity may operate or conduct business under an assumed business name unless such operation or business is registered in accordance with the rules of the board.

(3) All holders of individual or facility licenses shall notify the board in writing of any change of address of office or established place of business within thirty (30) days of such change.

(4) All holders of individual or facility licenses shall report to the board and provide official documentation of any name change within thirty (30) days after the change becomes final.

54-5105. EXEMPTIONS. (1) The provisions of this chapter shall not apply to persons or entities engaging in the activities of selling, filling, refilling, transporting, delivering, or the commercial handling of natural gas or petroleum distillates, or persons engaging in the installation or maintenance of equipment used in the selling or handling or use of natural gas or petroleum distillates.

(2) The provisions of this chapter shall not apply to persons engaged in the dispensing of LPG into portable containers.

(3) The provisions of this chapter shall not apply to facilities engaged in the sale or exchange of portable containers possessing LPG.

54-5106. LICENSING OF APPLICANTS -- ENDORSEMENT. (1) The board shall issue a license to each applicant who submits the required information on an application form provided by the board together with the supporting documentation and the required fees, and who demonstrates to the satisfaction of the board that the applicant meets the education, experience, and examination requirements, or the facility requirements, of this chapter and the rules adopted thereto.

(2) Whenever the board determines that another state or country has licensing requirements substantially equivalent to or higher than those in effect pursuant to this chapter, the board may, upon receipt of the required application, supporting documentation, and required fee, issue licenses to applicants who hold current, unsuspended, unrevoked or otherwise nonsanctioned licenses in such other state or country. The board, in its discretion, may require by rule that applicants who received their professional education or experience outside of the United States provide additional information to the board concerning such professional education or experience. The board may also, in its discretion, require successful completion of additional course work or examination.

54-5107. QUALIFICATIONS FOR A DEALER'S LICENSE. Except as herein otherwise provided, the following shall be considered minimum requirements for a dealer's license. All applicants shall:

(1) Provide verification acceptable to the board of:

(a) Being at least eighteen (18) years of age; and

(b) Good moral character; and

(c) Never having had a license revoked or otherwise sanctioned as part of disciplinary action from this or any other state; and

(d) Never having been convicted, found guilty, or received a withheld judgment for any felony; and

(e) Never having been found by the board to have engaged in conduct prohibited by this chapter.

The board may take into consideration the rehabilitation of the applicant and other mitigating circumstances when considering applications for a license.

(2) Provide documentation satisfactory to the board that the applicant has successfully completed a certified educational training program approved by the board.

(3) Provide documentation satisfactory to the board that the applicant has successfully completed such experience as may be required by the board.

(4) Provide documentation that the applicant has successfully passed an examination approved by the board.

(5) Prior to July 1, 2006, the board may deem other education, experience, or examinations equivalent to the licensing requirements set forth in this chapter, provided that the board is satisfied, and the applicant provides documentation acceptable to the board that such applicant has:

(a) Documented experience in this state prior to July 1, 2005, in the LPG industry; and

(b) Practiced for not less than five (5) years in the field for which such applicant is applying for a license; and

(c) Applied for a license prior to July 1, 2006.

54-5108. FACILITY LICENSE -- EQUIPMENT -- INSPECTIONS. (1) The board shall issue a facility license to any person, corporation, partnership, trust, association or other legal entity to operate at specific locations only. No facility license shall be transferable, but an applicant may make application for more than one (1) facility license so long as all of the requirements are met for each license individually. Except as herein otherwise provided, the following shall be considered minimum requirements for a facility license:

(a) That the applicant is lawfully entitled to do business within the United States;

(b) That the applicant has not been refused a license for a facility, or its equivalent, or had a personal or facility license revoked in Idaho or in any other state;

(c) That the applicant has designated the name under which the facility will operate and has designated a specific location for which the facility license is to be issued;

(d) That the applicant has at least one (1) dealer licensed under this chapter who is a resident of the state of Idaho and who is, and will be, responsible for the operation of the facility;

(e) That the applicant has filed an application and paid the required filing fee;

(f) That the applicant's facility meets the requirements of the LPG code, except as designated by the board by rule;

(g) All applications for facility licenses are in writing and contain the name of the applicant, the address and location of the facility and a description of the type of structure and equipment to be used in the operation of the facility, and such further information as may be required by the board to ensure the safe operation of the facility, and its compliance with the requirements of this chapter;

(h) The person responsible for the operation of a facility maintains such records documenting the storage, transportation, dispensation and utilization of LPG as may be required by the laws of the state of Idaho and the rules adopted by the board; and

(i) In the event a licensed facility ceases to have a licensed dealer in its employ responsible for operation of the facility, all operation involving practices regulated under this chapter shall cease and written notification of such fact shall be submitted imme-

diately to the board. In the event a licensed facility fails to have a licensed dealer in its employ responsible for the facility within thirty (30) days of said notice, the facility license shall be summarily suspended until a licensed dealer is so employed.

(2) The board may adopt rules setting forth minimum general standards covering the design, construction, location, installation and operation of systems, equipment, pipes and containers for storing, handling, transporting by tank truck or tank trailer, and using liquefied petroleum gases and specifying the odorization of the gases and the degree thereof.

(3) The board shall adopt inspection rules regarding LPG facilities.

54-5109. IDAHO LIQUEFIED PETROLEUM GAS SAFETY BOARD. (1) There is hereby established in the department of self-governing agencies the Idaho liquefied petroleum gas safety board and the members thereof shall be appointed by the governor. In making appointments, the governor shall give consideration to recommendations submitted by the rocky mountain propane association and other such nominations as may be received. If recommendations are not made within sixty (60) days of notification and request, the governor may make appointments of any qualified individual.

(2) The board shall consist of five (5) members, two (2) of whom shall be licensed dealers pursuant to the provisions of this chapter; and one (1) of whom shall be a volunteer fireman in a rural area of the state; and one (1) of whom shall be a fireman employed by a city fire department in the state; and one (1) of whom shall be a representative of the general public not employed or otherwise connected with the practices or operations regulated pursuant to this chapter.

(3) The members of the first board shall serve for the following terms: one (1) dealer member shall serve for one (1) year; one (1) fireman member shall serve for two (2) years; one (1) dealer member shall serve for three (3) years; and one (1) fireman member and the public member shall each serve for four (4) years. Each member shall serve from the effective date of appointment or until a successor is duly appointed and qualified. Upon the expiration of the term of any member of the board, the governor shall appoint the subsequent member for a term of four (4) years. No member shall be appointed for more than two (2) successive terms.

(4) The governor may remove any member of the board for misconduct, incompetence, neglect of duty, or for any other cause.

(5) Three (3) members of the board shall constitute a quorum, and may exercise all the power and authority conferred on the board.

(6) Within thirty (30) days of the appointment of the first board and annually thereafter, the members shall meet and elect from among the members by majority vote of those present a chairman who shall serve for one (1) year.

(7) The board shall meet thereafter no less than annually at such times and at such places as may be specified by the chairman or by the written request of at least two (2) members.

(8) Each member of the board shall be compensated as provided in section 59-509(h), Idaho Code.

54-5110. POWERS AND DUTIES OF THE BOARD. The powers and duties of the board are as follows, to:

(1) Authorize all disbursements necessary to carry out the provisions of this chapter;

(2) Approve and administer qualifying examinations to test the knowledge and competence of applicants for a license;

(3) Supervise the approval and issuance of licenses as provided in this chapter, and to license persons who apply to the board and who are qualified pursuant to this chapter;

(4) Renew licenses to persons who apply to the board and who are qualified pursuant to this chapter;

(5) Accept complaints and conduct investigations concerning alleged violations of the provisions of this chapter;

(6) Require and conduct inspections of facilities licensed pursuant to this chapter;

(7) Conduct disciplinary proceedings and take such action as may be appropriate for any violation of this chapter;

(8) Authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest;

(9) Impose reasonable costs, investigative expenses and attorney's fees incurred in enforcing the provisions of this chapter upon a licensee found to have violated one (1) or more provisions of this chapter;

(10) Enforce all provisions of this chapter and board rules including, but not limited to, issuing subpoenas, and obtaining restraining orders and injunctions prohibiting conduct in violation of the provisions of this chapter; and

(11) Make and publish rules not inconsistent with the laws of this state which are necessary to carry out the provisions of this chapter. The rules relating to safety in the storage, distribution, dispensing, transporting and utilization of LPG in this state and in the manufacture, fabrication, assembly, sale, installation and use of LPG systems, piping, containers, apparatus or appliances shall be just and reasonable and shall conform, except as established by board rule, to the standards of the LPG code relating to the design, construction, installation and use of systems, piping, containers, apparatus, appliances and pertinent equipment for the storage, transportation, dispensation and utilization of LPG.

54-5111. DENIAL OR ISSUANCE OF LICENSES. (1) The board shall approve or disapprove all applications, and in the event an application is disapproved, the board shall promptly return to the applicant the license fee. Within fifteen (15) days after the denial of a license, the board shall notify the applicant of the denial and specify the reasons for the denial.

(2) If the applicant is qualified for licensing pursuant to the provisions of this chapter, the board shall approve the application and issue a license for the appropriate classification according to section 54-5112, Idaho Code.

(3) If the application for a facility license is complete and meets the provisions of this chapter, and the applicant attests that the equipment used at the facility complies with the minimum safety standards established by the board, the board shall approve the application and issue a license for the appropriate classification according to section 54-5112, Idaho Code.

54-5112. CLASSIFICATIONS OF LICENSES. For the purpose of administering the provisions of this chapter, the board may issue licenses in such types and classifications as may be necessary and as determined by board rule. Such license types may include, but not be limited to:

(1) An LPG dealer;

(2) An LPG facility;

(3) Any other licenses for persons, businesses or facilities engaged in activities regulated under this chapter that the board determines require a license and are not otherwise exempt under the provisions of this chapter.

54-5113. LICENSES -- RECORDS -- FEES -- PAYMENT OF COSTS AND EXPENSES. (1) The bureau of occupational licenses shall, upon the approval of the board and subject to the provisions of this chapter, register and issue licenses to persons who have been approved by the board in accordance with this chapter. The licenses shall bear on their face the seal of the state and the signature of the chief of the bureau of occupational licenses, and shall be effective until the next birthday of the person being licensed. Licenses so issued shall be renewed annually in accordance with section 67-2614, Idaho Code. The provisions of sections 67-2609 through 67-2614, Idaho Code, shall apply to licenses issued pursuant to this chapter.

(2) The board shall keep and the bureau shall maintain a record of board proceedings and a register of all applications that show:

(a) The name, age, social security number and residency of each applicant;

(b) The date of application;

(c) The place of business of such applicant;

(d) The educational and other qualifications of each applicant;

(e) Whether or not an examination was required;

(f) Whether the applicant was denied;

(g) Whether a license was issued;

(h) The dates of the action by the board;

(i) Compliance with continuing education requirements; and

(j) Such other information as may be deemed necessary by the board.

(3) The bureau of occupational licenses shall collect a fee not to exceed two hundred dollars ($200) for each application, each original license, and each annual renewal of any license issued pursuant to this chapter, and shall deposit all fees in the state treasury in accordance with section 67-2605, Idaho Code. The actual fees shall be set by board rule. The bureau shall also collect a fee equal to that charged by the examination provider when an examination is required as a condition of licensing. Fees paid under the provisions of this chapter shall not be refunded unless otherwise specified herein.

(4) All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred under the provisions of this chapter shall be charged against and paid from said fund.

54-5114. LICENSES NONTRANSFERABLE -- NOTICE OF CHANGE -- LICENSE FEES NOT REFUNDED. (1) Any license issued under the provisions of this chapter shall not be transferable to any other person, firm, association, partnership, corporation or legal entity, and shall be valid only

for the particular premises and particular persons described thereon.

(2) Whenever there is any transfer or change in the ownership of a facility, or whenever there is any change of name or address, such change shall be reported to the board within thirty (30) days together with such documentation as may be required.

54-5115. REVOCATION OR SUSPENSION OF LICENSE -- PROCEDURES FOR DISCIPLINARY PROCEEDINGS. (1) The board shall have the power to refuse to issue a license, or revoke, suspend, refuse to renew, or otherwise sanction any license issued pursuant to the provisions of this chapter for any of the following:

(a) Procuring a license or registration by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for a license or through any form of fraud or misrepresentation;

(b) Being convicted of a felony;

(c) Misrepresentation or fraudulent representation in the performance of any duty, conduct or activity regulated under this chapter;

(d) Violating the provisions of this chapter or any rules of the board or any code of conduct or ethical standards adopted by the board;

(e) Being incompetent;

(f) Failing to provide appropriate and personal supervision, if acting as the designated supervisor, to any person gaining experience under the provisions of this chapter.

(2) The board shall have the power to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire, relevant to any hearing before it of any matter which it has authority to investigate, and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of books, records or papers, directed to the sheriff of any county of the state of Idaho where such witness resides or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case.

(3) The procedures for disciplinary proceedings shall be in compliance with the Idaho administrative procedure act and the rules of the office of the attorney general and the bureau of occupational licenses.

54-5116. VIOLATIONS AND PENALTIES. Any person who shall practice or offer to practice as an LPG dealer or any person who shall operate or attempt to operate an LPG facility as defined in this chapter, without first having a valid and current and unsuspended license issued under the provisions of this chapter, shall be guilty of a misdemeanor and, for each violation, shall be subject to punishment by a fine of not more than one thousand dollars ($1,000) or by imprisonment for a period of not more than six (6) months, or both.

54-5117. DUTY OF PROSECUTING ATTORNEY -- DUTY OF ATTORNEY GENERAL. It shall be the duty of the prosecuting attorney or each county to prosecute all violations of this chapter constituting a violation of criminal law and it shall be the duty of the attorney general of the state of

Idaho to prosecute any administrative actions brought under the provisions of this chapter as requested by the board.

SECTION 2. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall consist of the following:

(a) Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; Idaho prune commission, as provided by chapter 30, title 22, Idaho Code; the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; and the Idaho aquaculture commission, as provided by chapter 44, title 22, Idaho Code.

(b) Professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of acupuncture, as provided by chapter 47, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of denturitry, as provided by chapter 33, title 54, Idaho Code; state board of engineering examiners, as provided by chapter 12, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; board of hearing aid dealers and fitters, as provided by chapter 29, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho Code; liquefied petroleum gas safety board, as provided by chapter 51, title 54, Idaho Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code, and its associated physical therapist advisory board, as provided by chapter 22, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho

outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; the board of examiners of residential care facility administrators, as provided by chapter 42, title 54, Idaho Code; and the board of drinking water and wastewater professionals, as provided by chapter 24, title 54, Idaho Code.

(c) The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) The division of building safety, to be headed by a division administrator and comprised of five (5) bureaus: plumbing, electrical, buildings, public works contractor licensing, and logging and industrial safety. The division administrator and bureau chiefs shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 40, title 39, Idaho Code, relating to manufactured homes and recreational vehicles; chapter 41, title 39, Idaho Code, relating to modular buildings; chapter 21, title 44, Idaho Code, relating to manufactured home dealer and installer licensing; chapter 10, title 54, Idaho Code, relating to electrical contractors and journeymen; chapter 19, title 54, Idaho Code, relating to licensing of public works contractors; chapter 26, title 54, Idaho Code, relating to plumbing and plumbers; and shall perform such additional duties as are imposed upon him by law. The division administrator shall cooperate with the industrial commission and aid and assist the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, and at the request of the commission shall make inspection of appliances, tools, equipment, machinery, practices or conditions, and make a written report to the commission. The administrator shall make recommendations to the commission to aid the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, provided however, that nothing herein shall be construed as transferring to the administrator any of the authority or powers now vested in the industrial commission.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

SECTION 3. That Section 67-2602, Idaho Code, be, and the same is hereby amended to read as follows:

67-2602. BUREAU OF OCCUPATIONAL LICENSES. (1) The bureau of occupational licenses created in the department of self-governing agencies by section 67-2601, Idaho Code, shall be empowered, by written agreement between the bureau and each agency for which it provides administrative or other services as provided by law, to provide such services for the board of acupuncture, board of architectural examiners, board of barber examiners, board of chiropractic physicians, board of cosmetology, counselor licensing board, state board of denturitry, board of hearing aid dealers and fitters, board of landscape architects, liquefied petroleum gas safety board, board of morticians, board of examiners of nursing home administrators, board of optometry, board of podiatrists, board of psychologist examiners, real estate appraiser board, board of examiners of residential care facility administrators, board of social work examiners, and such other professional and occupational licensing boards or commodity commissions as may request such services. The bureau may charge a reasonable fee for such services provided any agency not otherwise provided for by law and shall maintain proper accounting methods for all funds under its jurisdiction.

(2) Notwithstanding the statutes governing specific boards, for any board that contracts with the bureau of occupational licenses, each board member shall hold office until a successor has been duly appointed and qualified.

(3) The department of self-governing agencies, by and through the bureau of occupational licenses, shall be empowered to provide administrative or other services for the administration of chapter 48, title 54, Idaho Code, to issue, suspend, revoke or refuse to renew licenses and certificates, ~~of registration,~~ to issue subpoenas, to prescribe and impose fees and to assess administrative penalties pursuant to the provisions of chapter 48, title 54, Idaho Code.

Approved March 23, 2005.

CHAPTER 144
(H.B. No. 183)

AN ACT

RELATING TO LICENSING OF MOTOR VEHICLE DEALERS AND SALESMEN; AMENDING SECTION 49-1613, IDAHO CODE, TO PROVIDE THAT IT IS UNLAWFUL FOR A DEALER TO DISPLAY FOR SALE, EXCHANGE, OR SELL ANY VEHICLE UNLESS THE DEALER HAS DOCUMENTARY EVIDENCE OF HIS RIGHT OF POSSESSION OF EVERY VEHICLE IN HIS POSSESSION.

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

SECTION 1. That Section 49-1613, Idaho Code, be, and the same is hereby amended to read as follows:

49-1613. UNLAWFUL ACTS BY LICENSEE. (1) It shall be unlawful for the holder of any license issued under the provisions of this chapter to:

(a) Intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer;

(b) Violate any of the provisions of this chapter or any of the applicable rules;

(c) Knowingly purchase, sell or otherwise acquire or dispose of a stolen vehicle;

(d) Violate any law respecting commerce in vehicles or any lawful rule respecting commerce in vehicles promulgated by any licensing or regulating authority now existing or hereafter created by the laws of the state;

(e) Engage in the business for which the dealer is licensed without at all times maintaining a principal place of business;

(f) Engage in a type of business respecting the selling or exchanging of vehicles for which he is not licensed;

(g) Knowingly purchase a vehicle which has an altered or removed vehicle identification number plate or alter or remove a vehicle identification number plate;

(h) Violate any provision of this title or any rules promulgated;

(i) Violate any provision of the federal motor vehicle safety standards, federal odometer laws or regulations; or

(j) Display for sale, exchange, or sell any vehicle for which the vehicle dealer does not hold title or consignment agreement or other documentary evidence of his right to the possession of every vehicle in his possession.

(2) It shall be unlawful for any manufacturer licensed under this chapter to require, attempt to require, coerce, or attempt to coerce, any new vehicle dealer in this state to:

(a) Order or accept delivery of any new vehicle, part or accessory, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the new vehicle dealer. This paragraph is not intended to modify or supersede any terms or provisions of a franchise requiring dealers to market a representative line of vehicles which the manufacturer or distributor is publicly advertising.

(b) Order or accept delivery of any new vehicle with special features, accessories or equipment not included in the list price of such vehicles as publicly advertised by the manufacturer or distributor.

(c) Participate monetarily in an advertising campaign or contest, or to purchase any promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.

(d) Enter into any agreement with the manufacturer or to do any other act prejudicial to the dealer by threatening to terminate or cancel a franchise or any contractual agreement existing between the dealer and the manufacturer. This paragraph is not intended to preclude the manufacturer or distributor from insisting on compliance with reasonable terms or provisions of the franchise or other contractual agreement, and notice in good faith to any dealer of the dealer's violation of those terms or provisions shall not constitute a violation of the provisions of this chapter.

(e) Change the capital structure of the dealer or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria. No change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor. Consent shall not be unreasonably withheld.

(f) Refrain from participation in the management of, investment in, or the acquisition of any other line of new vehicle or related products. This paragraph does not apply unless the dealer maintains a reasonable line of credit for each make or line of new vehicle, and the dealer remains in compliance with any reasonable facilities requirements of the manufacturer, and no change is made in the principal management of the dealership.

(g) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this chapter or to require any controversy between a dealer and a manufacturer, distributor, or representatives, to be referred to any person other than the duly constituted courts of the state or the United States, or to the director, if that referral would be binding upon the dealer.

(h) Either establish or maintain exclusive facilities, personnel, or display space.

(i) Expand facilities without a written guarantee of a sufficient supply of new vehicles so as to justify an expansion, in light of the market and economic conditions.

(j) Make significant modifications to an existing dealership or to construct a new vehicle dealership facility without providing a written guarantee of a sufficient supply of new vehicles so as to justify modification or construction, in light of the market and economic conditions.

(3) It shall be unlawful for any manufacturer licensed under this chapter to:

(a) Delay, refuse, or fail to deliver new vehicles or new vehicle parts or accessories in a reasonable time, and in reasonable quantity relative to the dealer's facilities and sales potential in the dealer's relevant market area, after acceptance of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer, any new vehicle, parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. These provisions are not violated, however, if failure is caused by acts or causes beyond the control of the manufacturer.

(b) Refuse to disclose to any dealer handling the same line, the manner and mode of distribution of that line within the relevant market area.

(c) Obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to the dealer.

(d) Increase prices of new vehicles which the dealer had ordered

for consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a consumer shall constitute evidence of each such order, provided that the vehicle is in fact delivered to that customer. In the event of manufacturer price reductions or cash rebates paid to the dealer, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by the addition to a vehicle of required or optional equipment, or revaluation of the United States dollar, in the case of foreign-make vehicles or components, or an increase in transportation charges due to increased rates imposed by a carrier, shall not be subject to the provisions of this subsection.

(e) Release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or dealer, any business, financial, or personal information which may be provided from time to time by the dealer to the manufacturer without the express written consent of the dealer.

(f) Deny any dealer the right of free association with any other dealer for any lawful purpose.

(g) Unfairly compete with a dealer in the same line make, operating under an agreement or franchise from the aforementioned manufacturer, in the relevant market area. A manufacturer shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of that dealership on reasonable terms and conditions.

(h) Unfairly discriminate among its dealers with respect to warranty reimbursement.

(i) Unreasonably withhold consent to the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a dealer in this state.

(j) Fail to respond in writing to a request for consent as specified in subsection (i) of this section within sixty (60) days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for those purposes and containing the required information. Failure to respond shall be deemed to be consent to the request.

(k) Prevent or attempt to prevent, by contract or otherwise, any dealer from changing the executive management control of the dealership unless the manufacturer, having the burden of proof, can show that the change of executive management will result in executive management or control by a person or persons who are not of good moral character or who do not meet reasonable, preexisting and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards. Where the manufacturer rejects a proposed change in executive man-

agement control, the manufacturer shall give written notice of his reasons to the dealer within sixty (60) days of notice to the manufacturer by the dealer of the proposed change; otherwise, the change in the executive management of the dealership shall be presumptively considered approved.

(l) Terminate, cancel or fail to renew any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(m) Prevent or attempt to prevent the dealer, by written instrument or otherwise, from either receiving the fair market value of the dealership in a sale transaction, or from transferring the dealership to a spouse or legal heir, as specified in this chapter.

(n) Engage in any predatory practice or discrimination against any dealer.

(o) Resort to or to use any false or misleading advertisement in the conducting of his business as a manufacturer or distributor in this state.

(p) Make any false or misleading statement, either directly or through any agent or employee, in order to induce any dealer to enter into any agreement or franchise, or to take any action which is prejudicial to that dealer or his business.

(q) Require or coerce dealers to participate in local or national advertising campaigns or contests or to require or coerce dealers to purchase promotional or display materials.

(4) It is unlawful for any manufacturer or any officer, agent or representative to coerce, or attempt to coerce, any dealer in this state to sell, assign or transfer any retail installment sales contract, obtained by the dealer in connection with the sale by him in this state of new vehicles, manufactured or sold by the manufacturer, to a specified finance company or class of such companies, or to any other specified person, by any of the acts or means set forth, namely by:

(a) Any statement, suggestion, promise or threat that the manufacturer will, in any manner, benefit or injure the dealer, whether the statement, suggestion, threat or promise is express or implied or made directly or indirectly;

(b) Any act that will benefit or injure the dealer;

(c) Any contract, or any express or implied offer of contract, made directly or indirectly to a dealer for handling new vehicles, on the condition that the dealer sell, assign or transfer his retail installment sales contract in this state to a specified finance company or class of such companies, or to any other specified person; or

(d) Any express or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to sell, assign or transfer any of his retail sales contracts, in this state, on new vehicles manufactured or sold by that manufacturer to a finance company or class of companies, or other specified person, because of any relationship or affiliation between the manufacturer and a finance company or companies, or a specified person or persons.

Any statement, threats, promises, acts, contracts or offers of contracts, when the effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and

unfair methods of competition, against the policy of this state, and are unlawful.

(5) It is unlawful for any manufacturer or agent or employee of a manufacturer to use a written instrument, agreement, or waiver to attempt to nullify any of the provisions of this section, and such agreement, written instrument or waiver shall be null and void.

(6) It shall be unlawful, directly or indirectly, to impose unreasonable restrictions on the dealer relative to the sale, transfer, right to renew, termination discipline, noncompetition covenants, site control (whether by sublease, collateral pledge of lease, or otherwise), right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

(7) The provisions of this chapter shall apply to all written franchise agreements between a manufacturer and a dealer, including the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contract, advertising contract, construction or installation contract, servicing contracts and all other agreements where the manufacturer has any direct or indirect interest.

Approved March 23, 2005.

CHAPTER 145
(H.B. No. 184)

AN ACT

RELATING TO ODOMETERS; AMENDING SECTION 49-114, IDAHO CODE, TO DEFINE "MILEAGE"; AND AMENDING SECTION 49-1629, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE NOTICE REQUIREMENT WHEN AN ODOMETER READING IS ADJUSTED AND TO PROVIDE A CODE REFERENCE.

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

SECTION 1. 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 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) "Mileage" means actual distance that a vehicle has traveled.

(9) "Moped" means a limited-speed motor-driven cycle having both motorized and pedal propulsion that 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~~10) "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~~11) "Motor carrier" means an individual, partnership, corporation or other legal entity engaged in the transportation by motor vehicle of persons or property in the furtherance of a business or for hire.

(~~11~~12) "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) A119.7 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 potable water supply system, including a faucet and sink, separate 110-125 volt electrical power supply and/or LP-gas supply.

(~~12~~13) "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.

(~~13~~14) "Motor number." (See "Identifying number," section 49-110, Idaho Code)

(~~14~~15) "Motor vehicle." (See "Vehicle," section 49-123, Idaho Code)

(~~15~~16) "Motor vehicle liability policy" means an owner's or operator's policy of liability insurance, certified as provided in section 49-1210, Idaho Code, as proof of financial responsibility, and issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(~~16~~17) "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 2. That Section 49-1629, Idaho Code, be, and the same is hereby amended to read as follows:

49-1629. ODOMETERS. (1) Nothing in this chapter shall prevent the service, repair or replacement of an odometer, provided the mileage as defined in section 49-114, Idaho Code, indicated remains the same as before the service, repair or replacement. Where the odometer is incapable of registering the same mileage as before service, repair or replacement, the odometer shall be adjusted to read zero and a notice shall be attached permanently to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Provided however, the notice shall not be required if the odometer reading is converted from registering in kilometers to miles, and the mileage on the vehicle after the conversion of the odometer is equivalent to its mileage before the conversion. No person shall:

(a) Fail to adjust an odometer or affix a notice regarding adjustment, as required under this section.

(b) With intent to defraud, remove or alter any notice affixed to a vehicle pursuant to the provisions of this section.

(2) It shall be unlawful for any person to:

(a) Disconnect, turn back, or reset the odometer of any vehicle with the intent to reduce the number of miles indicated on the odometer gauge.

(b) Sell a vehicle in this state if that person has knowledge that the odometer on the vehicle has been turned back or replaced, and if the person fails to notify the buyer prior to the time of the sale, that the odometer has been turned back or replaced, or that he has reason to believe that the odometer has been turned back or replaced.

(c) Advertise for sale, to sell, to use, or to install on any part of a vehicle or on an odometer in a vehicle, any device which causes the odometer to register any mileage other than the true mileage driven.

Approved March 23, 2005.

CHAPTER 146
(H.B. No. 278)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF COMMERCE AND LABOR FOR FISCAL YEAR 2006; 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 and Labor the following amounts from the listed funds to be expended according to the designated expense classes for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. COMMERCE:					
FROM:					
General Fund	$2,197,000	$1,088,900	$5,000	$ 3,750,000	$ 7,040,900
Tourism and Promotion Fund	552,900	2,611,800	1,600	2,802,000	5,968,300
Federal Grant Fund	456,400	245,800	1,600	15,329,500	16,033,300
Miscellaneous Revenue Fund	119,600	105,400			225,000
Seminars and Publications Fund		371,100			371,100
TOTAL	$3,325,900	$4,423,000	$8,200	$21,881,500	$29,638,600
II. IDAHO RURAL PARTNERSHIP:					
FROM:					
Miscellaneous Revenue Fund		$ 124,300			$ 124,300
Federal Grant Fund	$ 108,200	50,800			159,000
TOTAL	$ 108,200	$ 175,100			$ 283,300
III. WAGE AND HOUR:					
FROM:					
General Fund	$ 411,200	$ 143,100			$ 554,300
Miscellaneous Revenue Fund		2,700			2,700
TOTAL	$ 411,200	$ 145,800			$ 557,000
GRAND TOTAL	$3,845,300	$4,743,900	$8,200	$21,881,500	$30,478,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Commerce and Labor is authorized no more than sixty-two and one-half (62.5) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 23, 2005.

CHAPTER 147
(H.B. No. 294)

AN ACT

APPROPRIATING MONEYS FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR FISCAL YEAR 2006; CLARIFYING THE APPROPRIATION FOR THE PORTFOLIO INVESTMENT PROGRAM; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED MONEYS; 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 expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. RETIREMENT ADMINISTRATION:				
FROM:				
PERSI Administrative Fund	$2,984,500	$2,508,100	$ 93,700	$5,586,300
II. PORTFOLIO INVESTMENT:				
FROM:				
PERSI Special Fund	$ 432,100	$ 199,500	$ 17,000	$ 648,600
GRAND TOTAL	$3,416,600	$2,707,600	$110,700	$6,234,900

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 Investment Program as provided in Section 59-1311(3), Idaho Code. Amounts necessary to pay all other investment expenses related to the Portfolio Investment 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. There is hereby reappropriated to the Public Employee Retirement System Board for the period July 1, 2005, through June 30, 2006, the unexpended and unencumbered cash balance not to exceed $2,200,000 of the appropriation made to the Public Employee Retirement System Board from the PERSI Administrative Fund for fiscal year 2005, to be used only for expenditures related to business process reengineering.

SECTION 4. In accordance with Section 67-3519, Idaho Code, the Public Employee Retirement System is authorized no more than sixty-three (63) full-time equivalent positions at any point during the period July

1, 2005, through June 30, 2006, 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 23, 2005.

CHAPTER 148
(H.B. No. 152)

AN ACT

RELATING TO THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004; TO DEFINE TERMS; TO PROVIDE FOR THE APPROVAL, RATIFICATION AND CONFIRMATION OF THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004; TO AUTHORIZE IMPLEMENTATION OF THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004; DECLARING AN EMERGENCY AND PROVIDING A CONTINGENCY ON EFFECTIVENESS.

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

SECTION 1. DEFINITIONS. For purposes of this act:

(1) "The Snake River Water Rights Agreement of 2004" means the document titled "Mediator's Term Sheet" dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document.

(2) "SRBA" means the Snake River Basin Adjudication litigation before the SRBA Court styled as In re Snake River Basin Adjudication, Case No. 39576.

(3) "SRBA Court" means the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls in re Snake River Basin Adjudication.

SECTION 2. RATIFICATION OF THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004. The Snake River Water Rights Agreement of 2004 as approved, ratified and confirmed by the 108th Congress of the United States in the "Snake River Water Rights Act of 2004," Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004), is hereby approved, ratified and confirmed.

SECTION 3. AUTHORIZATION FOR IMPLEMENTATION OF THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004. The Governor and the executive branch agencies with obligations under the agreement shall execute and perform all actions consistent with this act that are necessary to implement The Snake River Water Rights Agreement of 2004.

SECTION 4. DECLARING AN EMERGENCY -- CONTINGENCY ON EFFECTIVENESS. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect at such time that the Governor issues a proclamation certifying that all conditions for the effectiveness of The Snake River Water Rights Agreement of 2004 have been satisfied.

Approved March 24, 2005.

CHAPTER 149
(H.B. No. 153)

AN ACT

RELATING TO WATER; AMENDING SECTION 42-1763B, IDAHO CODE, TO PROVIDE INTERIM AUTHORITY FOR RENTAL OF WATER TO AUGMENT FLOWS FOR LISTED ANADROMOUS FISH, TO PROVIDE LEGISLATIVE FINDINGS AND INTENT, TO AUTHORIZE THE U.S. BUREAU OF RECLAMATION TO LEASE STORAGE AND NATURAL FLOW WATER RIGHTS THROUGH THE STATE WATER SUPPLY BANK AND LOCAL RENTAL POOLS UNDER SPECIFIED CONDITIONS, TO PROVIDE THAT CERTAIN RENTAL OF WATER FOR FLOW AUGMENTATION IS SUBJECT TO SPECIFIED LIMITATIONS AND CONDITIONS, TO PROVIDE CRITERIA RELATING TO STORAGE WATER RELEASED AND ANY NATURAL FLOW WATER RIGHTS LEASED OR ACQUIRED BY THE U.S. BUREAU OF RECLAMATION, TO SPECIFY CONDITIONS ON WATER RENTALS AND USE, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE THAT THE STATE SHALL PURSUE A SHAPING AGREEMENT FOR CERTAIN WATER RELEASED FROM LAKE CASCADE, TO PROVIDE THAT THE RENTAL OR USE OF CERTAIN WATER SHALL BE IN COMPLIANCE WITH SPECIFIED REQUIREMENTS, TO PROVIDE THAT THE STATE OF IDAHO SHALL NOT TAKE SPECIFIED ACTIONS TO REMEDY OR ADDRESS CERTAIN VIOLATIONS, TO REQUIRE THE U.S. BUREAU OF RECLAMATION TO SUBMIT DESIGNATED REPORTS TO THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES, TO PROVIDE REQUIREMENTS RELATING TO WATER RENTED OR USED FROM ABOVE HELLS CANYON DAM, TO PROVIDE THAT WATER RENTED OR USED SHALL BE SUBJECT TO SPECIFIED TERMS AND CONDITIONS, TO SPECIFY LIMITATIONS RELATING TO FLOW AUGMENTATION, TO CLARIFY LIMITATIONS RELATING TO SPECIFIED PROVISIONS, TO PROVIDE CONDITIONS ON EFFECTIVENESS, TO PROVIDE A CONDITIONAL SUNSET AND TO PROVIDE LEGISLATIVE INTENT RELATING TO CONSIDERATION OF REPEAL UNDER CERTAIN CONDITIONS; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 42-1763B, Idaho Code, be, and the same is hereby amended to read as follows:

42-1763B. INTERIM AUTHORITY FOR RENTAL OF ~~STORAGE~~ WATER TO AUGMENT FLOWS ~~DURING--THE-MIGRATION-OF-SNAKE-RIVER-SALMON~~ FOR LISTED ANADROMOUS FISH. (1) Legislative findings and intent regarding rental of ~~storage~~ water ~~from~~ by the U.S. bureau of reclamation ~~projects~~ in the Snake River basin within Idaho to augment lower Snake River flows ~~during-the-migration-of-Snake-River-salmon~~ for anadromous fish listed under the endangered species act.

~~(a)~~ The legislature finds that the U.S. bureau of reclamation ~~desires~~ proposes to release up to four hundred twenty-seven thousand (427,000) acre feet of leased or uncontracted water ~~to--augment salmon--flows~~ diverted from the Snake River basin to reservoir storage above Lewiston, and to lease or acquire up to sixty thousand (60,000) acre feet of consumptive natural flow water rights diverted and consumed below Milner dam and above Swan Falls dam from the mainstem of the Snake River to augment flows downstream of Hells Canyon dam during ~~2002,--2003--and~~ 20045 and through December 31, 2034. The state of Idaho is experiencing serious drought conditions

and it is therefore uncertain whether ~~four-hundred-twenty-seven thousand-(427,000)-acre-feet-of~~ this water will be available for rental for flow augmentation purposes in all years. ~~Nonetheless, t~~The legislature further finds that authorization of this legislation ~~will--facilitate-ongoing-negotiations-in-the-Snake-River-basin adjudication~~ is necessary for approval and implementation of the Snake River Water Rights Agreement of 2004 (Mediator's Term Sheet dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document), as approved, ratified, and confirmed by the 108th Congress of the United States in the "Snake River Water Rights Act of 2004," Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004). Therefore, the legislature authorizes the U.S. bureau of reclamation to ~~release~~ lease storage and natural flow water ~~from--its--projects~~ rights through the state water supply bank and local rental pools under the limited conditions of this section. ~~in-2002,-2003-and-2004.~~ Any rentals of water for flow augmentation under any other provision of law, including section 42-108A, Idaho Code, shall be subject to the limitations and conditions of this section and the Snake River Water Rights Agreement of 2004.

~~(b)--It-is-the-intent-of-the-legislature-to--promptly--consider--the repeal--of-this-section-in-the-event-that-the-provisions-of-the-supplemental-biological-opinion-issued-by-the-national-marine-fisheries service-on-January-24,-2002,-related-to-the-provision-of--flows--for salmon-from-the-Snake-River-basin-above-Brownlee-Reservoir-are-modified--or-declared-arbitrary,-capricious-or-otherwise-unlawful-or-set aside-by-any-federal-court.~~

(2) Rental of ~~storage~~ water ~~from~~ by the U.S. bureau of reclamation. ~~storage.~~

(a) Notwithstanding the legislative approval required in section 42-108, Idaho Code, any storage water released ~~from-U.S.-bureau-of reclamation-reservoirs~~ and any natural flow water rights leased or acquired by the bureau within the state of Idaho for ~~use-to-augment river-flows-during-the-migration-of-Snake-River-salmon~~ listed anadromous fish pursuant to this section must be rented through the water bank operated by the Idaho water resource board pursuant to sections 42-1761 through 42-1764, Idaho Code, or, in the case of storage water releases, through local ~~water~~ rental committees, created pursuant to section 42-1765, Idaho Code, under their respective water bank rules.

(b) For any rental of water pursuant to this section, the director shall not be required to determine under section 42-1763, Idaho Code, whether the water supply is sufficient for the purpose for which it is sought, whether the rental would cause the use of water to be enlarged beyond that authorized under the water right to be rented, whether such use is in the public interest, or whether such use is consistent with the factors enumerated under subsection (3) of section 42-401, Idaho Code.

(3) Conditions on ~~storage~~ water rentals.

(a) Any ~~storage~~ water made available under this section shall be obtained only from willing lessors. Any water rented under this section from ~~reservoirs~~ sources located within a basin having a local rental ~~pool~~ committee established pursuant to section 42-1765, Idaho

Code, or section 42-1765A, Idaho Code, shall be rented pursuant to this section only through the local rental ~~pool~~ committee.

(b) Storage water made available under this section shall be limited to four hundred twenty-seven thousand (427,000) acre feet annually, and natural consumptive flow water shall be limited to not more than the sixty thousand (60,000) acre feet annually that accrue to natural flow water rights acquired by the U.S. bureau of reclamation pursuant to the terms of the Snake River Water Rights Agreement of 2004. These ~~releases--from storage~~ amounts shall be reduced by other water the U.S. bureau of reclamation provides for flow augmentation ~~of salmon flows~~ for listed anadromous fish from the Snake River ~~and its tributaries~~ basin above Lewiston.

(c) In no event shall the release of water under this section cause the water surface of Lake Cascade ~~Reservoir~~ to be below the elevation required to maintain a storage volume of three hundred thousand (300,000) acre feet, fifty thousand (50,000) acre feet of which is dead space, which is currently estimated to be at an elevation of four thousand eight hundred nine and two-tenths (4,809.2) feet. In addition, the state of Idaho shall pursue a shaping agreement for any uncontracted water released from Lake Cascade under this section.

(d) The rental or use of water under this section shall be in compliance with any permit, applicable water quality rule and regulation or other requirements of the clean water act, shall not cause jeopardy to other species in the state of Idaho, and shall not result in significant adverse impacts to recreational uses of the waters of the Snake River basin in Idaho. The state of Idaho shall not require any restriction, modification, or condition on the diversion, storage, use, discharge of water, or land use to remedy or address violations of water quality standards or other clean water act requirements to the extent the rental or use of water by the U.S. bureau of reclamation under this section causes the violations. (e) The U.S. bureau of reclamation shall submit a report to the director by January 15 of each year describing the time, volume and purpose of ~~storage~~ water ~~released~~ provided for ~~salmon--purposes~~ listed anadromous fish from the Snake River basin above Lewiston during the past year and shall report on the plan for ~~releases--for~~ the spring and summer chinook by April 1 and on the plan for ~~releases for~~ the fall chinook by July 15 of each year.

(~~e~~f) All ~~storage~~ water rented ~~from~~ or used by the U.S. bureau of reclamation ~~reservoirs~~ under this section from above Hells Canyon dam must be used for power production purposes within the state of Idaho.

(g) All water rented or used by the U.S. bureau of reclamation under this section shall be subject to the terms and conditions contained in the Snake River Flow Component of the Snake River Water Rights Agreement of 2004.

(~~f~~h) Nothing herein shall entitle the U.S. bureau of reclamation to rent ~~storage~~ or use water for flow augmentation upon termination or expiration of the permission given in this section.

(4) Nothing in this section shall be construed to alter, or authorize the U.S. bureau of reclamation to modify in any way ~~the~~ its existing contractual obligations, ~~of the U.S. bureau of reclamation~~ or to constitute a finding by the legislature that the rental or use of storage

water or natural flow water rights for flow augmentation ~~of flows~~ for ~~salmon migration~~ listed anadromous fish or any other species is a beneficial use of water, that it is in the public interest, or whether such use injures existing water rights.

(5) This section shall not become effective until the director certifies to the governor that the U.S. bureau of reclamation's applications to transfer water right numbers 4616, 4617, 4618, 4623, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633 and 4636, and to amend water right permit numbers 25-07004 and 63-3618 will be withdrawn, or held in abeyance ~~until July 1, 2005~~ while this section is in effect, and the governor further issues a proclamation certifying that all conditions for the effectiveness of the Snake River Water Rights Agreement of 2004 have been satisfied.

(6) ~~On and after January 1, 2005, this act shall be null, void and of no force and effect.~~ This act shall be null, void and of no force and effect upon the expiration or termination of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004. In addition, it is the intent of the legislature to consider the repeal of this section in the event that any of the provisions of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004 are modified or declared arbitrary, capricious or otherwise unlawful or set aside by any federal court or there is a finding of jeopardy by any federal court in regard to any biological opinions for projects operated by the U.S. bureau of reclamation in the Snake River basin in Idaho.

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, 2005.

Approved March 24, 2005.

CHAPTER 150
(H.B. No. 154)

AN ACT

RELATING TO MINIMUM STREAM FLOW WATER RIGHTS; AMENDING CHAPTER 15, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1507, IDAHO CODE, TO PROVIDE FOR THE ESTABLISHMENT OF CERTAIN MINIMUM STREAM FLOW WATER RIGHTS, TO AUTHORIZE THE WATER RESOURCE BOARD TO HOLD THE MINIMUM STREAM FLOW WATER RIGHTS IN TRUST AND TO FILE CLAIMS FOR THE RIGHTS IN THE SNAKE RIVER BASIN ADJUDICATION, TO PROVIDE A PRIORITY DATE, TO PROVIDE FOR SUBORDINATION TO SPECIFIED USES, TO WAIVE CERTAIN FILING FEES, TO PROVIDE THAT CERTAIN MINIMUM STREAM FLOW WATER RIGHTS MAY BE SATISFIED AND MAINTAINED THROUGH DESIGNATED METHODS, TO PROVIDE FOR CERTAIN NOTICE AND CONSULTATION IN THE EVENT THE STATE DECIDES TO CHANGE ANY MINIMUM STREAM FLOW WATER RIGHT, TO CLARIFY THE AUTHORITY OF THE STATE IN RELATION TO THE MINIMUM STREAM FLOW WATER RIGHTS AND TO PROVIDE A CONTINGENCY ON EFFECTIVENESS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 15, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1507, Idaho Code, and to read as follows:

42-1507. SNAKE RIVER WATER RIGHTS AGREEMENT MINIMUM STREAM FLOW WATER RIGHTS ESTABLISHED. (1) The legislature hereby establishes minimum stream flow water rights for the stream reaches identified by resolution of the Idaho water resource board, adopted February 8, 2005. The elements of the minimum stream flow water rights established by this section are as defined by the board's resolution and the attachments thereto. The board shall hold the minimum stream flow water rights in trust for the people of the state of Idaho, and the board shall file claims for the rights in the Snake river basin adjudication. These minimum stream flow water rights shall have a priority date as of April 1, 2005, and shall be subordinated to future domestic, commercial, municipal, and industrial water uses and such other future uses as described in the December 17, 2004, resolution of the Idaho water resource board providing approval of the Snake River Water Rights Agreement of 2004 ("Mediator's Term Sheet" dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document), as approved, ratified, and confirmed by the 108th Congress of the United States in the "Snake River Water Rights Act of 2004," Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004).

(2) No fee shall be required in connection with the filing of claims in the Snake river basin adjudication for the minimum stream flow water rights established by this section.

(3) Any minimum stream flow water rights established by this section that are not capable of being maintained may be satisfied and maintained through operation of the water supply bank authorized by sections 42-1761 through 42-1765, Idaho Code, inclusive, and other available methods consistent with Idaho law.

(4) In the event the state decides to change any minimum stream flow water rights created by this section, it will provide notice of such change and consult with the Nez Perce tribe on a government-to-government basis as provided in the Snake River Water Rights Agreement of 2004. Provided however, nothing herein or in the Snake River Water Rights Agreement of 2004 shall be construed or interpreted to abridge, impair or limit the authority of the state of Idaho to create, modify or terminate any minimum stream flow water right established by this section.

(5) This section shall not become effective until the governor issues a proclamation certifying that all conditions for the effectiveness of the Snake River Water Rights Agreement of 2004 have been satisfied.

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 24, 2005.

CHAPTER 151
(S.B. No. 1065)

AN ACT

RELATING TO INJURY TO CHILDREN; AMENDING SECTION 18-1501, IDAHO CODE, TO DEFINE THE TERM "WILLFULLY" AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-1501, Idaho Code, be, and the same is hereby amended to read as follows:

18-1501. INJURY TO CHILDREN. (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(3) A person over the age of eighteen (18) years commits the crime of injury to a child if the person transports a minor in a motor vehicle or vessel as defined in section 67-7003, Idaho Code, while under the influence of alcohol, intoxicating liquor, a controlled substance, or any combination thereof, in violation of section 18-8004 or 67-7034, Idaho Code. Any person convicted of violating this subsection is guilty of a misdemeanor. If a child suffers bodily injury or death due to a violation of this subsection, the violation will constitute a felony punishable by imprisonment for not more than ten (10) years, unless a more severe penalty is otherwise prescribed by law.

(4) The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to have violated the duty of care to such child.

(5) As used in this section, "willfully" means acting or failing to act where a reasonable person would know the act or failure to act is likely to result in injury or harm or is likely to endanger the person, health, safety or well-being of the child.

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 25, 2005.

CHAPTER 152
(S.B. No. 1100)

AN ACT
RELATING TO SENTENCING IN CAPITAL CASES; AMENDING SECTION 19-2515, IDAHO CODE, TO REVISE LANGUAGE APPLICABLE TO STATUTORY AGGRAVATING CIRCUMSTANCES RELATED TO A DEFENDANT'S CONDUCT.

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

SECTION 1. That Section 19-2515, Idaho Code, be, and the same is hereby amended to read as follows:

19-2515. SENTENCE IN CAPITAL CASES -- SPECIAL SENTENCING PROCEEDING -- STATUTORY AGGRAVATING CIRCUMSTANCES -- SPECIAL VERDICT OR WRITTEN FINDINGS. (1) Except as provided in section 19-2515A, Idaho Code, a person convicted of murder in the first degree shall be liable for the imposition of the penalty of death if such person killed, intended a killing, or acted with reckless indifference to human life, irrespective of whether such person directly committed the acts that caused death.

(2) Where a person is sentenced to serve a term in the penitentiary, after conviction of a crime which falls within the provisions of section 20-223, Idaho Code, except in cases where the court retains jurisdiction, the comments and arguments of the counsel for the state and the defendant relative to the sentencing and the comments of the judge relative to the sentencing shall be recorded. If the comments are recorded electronically, they need not be transcribed. Otherwise, they shall be transcribed by the court reporter.

(3) Where a person is convicted of an offense which may be punishable by death, a sentence of death shall not be imposed unless:

(a) A notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code; and

(b) The jury, or the court if a jury is waived, finds beyond a reasonable doubt at least one (1) statutory aggravating circumstance. Where a statutory aggravating circumstance is found, the defendant shall be sentenced to death unless mitigating circumstances which may be presented are found to be sufficiently compelling that the death penalty would be unjust. The jury shall not direct imposition of a sentence of death unless it unanimously finds at least one (1) statutory aggravating circumstance and unanimously determines that the penalty of death should be imposed.

(4) Notwithstanding any court rule to the contrary, when a defendant is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, no presentence investigation shall be conducted; provided however, that if a special sentencing proceeding is not held or if a special sentencing proceeding is held but no statutory aggravating circumstance has been proven beyond a reasonable doubt, the court may order that a presentence investigation be conducted.

(5) (a) If a person is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, and

a notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code, a special sentencing proceeding shall be held promptly for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense. Information concerning the victim and the impact that the death of the victim has had on the victim's family is relevant and admissible. Such information shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community by the victim's death. Characterizations and opinions about the crime, the defendant and the appropriate sentence shall not be permitted as part of any victim impact information. The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

(b) If the defendant's guilt was determined by a jury verdict, the same jury shall hear the special sentencing proceeding; provided however, that if it is impracticable to reconvene the same jury to hear the special sentencing proceeding due to an insufficient number of jurors, the trial court may dismiss that jury and convene a new jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code.

(c) If the defendant's guilt was determined by a plea of guilty or by a decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including, but not limited to, a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code, unless such jury is waived.

(d) If a special sentencing proceeding is conducted before a newly impaneled jury pursuant to the provisions of subsection (5)(b) or (5)(c) of this section, the state and the defense may present evidence to inform the jury of the nature and circumstances of the murder for which the defendant was convicted. The newly impaneled jury shall be instructed that the defendant has previously been found guilty of first-degree murder and that the jury's purpose is limited to making findings relevant for sentencing.

(6) At the special sentencing proceeding, the state and the defendant shall be entitled to present all relevant evidence in aggravation and mitigation. Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing.

(7) The jury shall be informed as follows:

(a) If the jury finds that a statutory aggravating circumstance exists and no mitigating circumstances exist which would make the imposition of the death penalty unjust, the defendant will be sentenced to death by the court.

(b) If the jury finds the existence of a statutory aggravating circumstance but finds that the existence of mitigating circumstances makes the imposition of the death penalty unjust or the jury cannot unanimously agree on whether the existence of mitigating circumstances makes the imposition of the death penalty unjust, the defendant will be sentenced to a term of life imprisonment without

the possibility of parole; and

(c) If the jury does not find the existence of a statutory aggravating circumstance or if the jury cannot unanimously agree on the existence of a statutory aggravating circumstance, the defendant will be sentenced by the court to a term of life imprisonment with a fixed term of not less than ten (10) years.

(8) Upon the conclusion of the evidence and arguments in mitigation and aggravation:

(a) With regard to each statutory aggravating circumstance alleged by the state, the jury shall return a special verdict stating:

(i) Whether the statutory aggravating circumstance has been proven beyond a reasonable doubt; and

(ii) If the statutory aggravating circumstance has been proven beyond a reasonable doubt, whether all mitigating circumstances, when weighed against the aggravating circumstance, are sufficiently compelling that the death penalty would be unjust.

(b) If a jury has been waived, the court shall:

(i) Make written findings setting forth any statutory aggravating circumstance found beyond a reasonable doubt;

(ii) Set forth in writing any mitigating circumstances considered; and

(iii) Upon weighing all mitigating circumstances against each statutory aggravating circumstance separately, determine whether mitigating circumstances are found to be sufficiently compelling that the death penalty would be unjust and detail in writing its reasons for so finding.

(9) The following are statutory aggravating circumstances, at least one (1) of which must be found to exist beyond a reasonable doubt before a sentence of death can be imposed:

(a) The defendant was previously convicted of another murder.

(b) At the time the murder was committed the defendant also committed another murder.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The murder was committed for remuneration or the promise of remuneration or the defendant employed another to commit the murder for remuneration or the promise of remuneration.

(e) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(f) By the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life.

(g) The murder was committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, kidnapping or mayhem and the defendant killed, intended a killing, or acted with reckless indifference to human life.

(h) The defendant, by ~~prior~~ his conduct, ~~or~~ whether such conduct ~~in~~ was before, during or after the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society.

(i) The murder was committed against a former or present peace officer, executive officer, officer of the court, judicial officer or prosecuting attorney because of the exercise of official duty or because of the victim's former or present official status.

(j) The murder was committed against a witness or potential witness in a criminal or civil legal proceeding because of such proceeding.

Approved March 25, 2005.

CHAPTER 153
(H.B. No. 163)

AN ACT

RELATING TO CONTRACTOR REGISTRATION; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 52, TITLE 54, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DECLARE A POLICY, TO DEFINE TERMS, TO REQUIRE REGISTRATION, TO SET FORTH EXEMPTIONS, TO CREATE THE IDAHO CONTRACTORS BOARD, TO SET FORTH BOARD POWERS AND DUTIES, TO PROVIDE FOR THE DENIAL OF LIEN RIGHTS, TO PROVIDE THAT A CONTRACTOR'S REGISTRATION NUMBER SHALL BE REQUIRED ON BUILDING AND OTHER PERMITS, TO REQUIRE THE POSTING OF PERMITS, TO PROVIDE AN EXEMPTION, TO PROVIDE FOR APPLICATIONS FOR REGISTRATION, TO SET FORTH REGISTRATION PERIODS, TO PROVIDE FOR RENEWAL OF REGISTRATION, TO PROVIDE FOR THE DISPOSITION OF RECEIPTS, TO PROVIDE FOR THE PAYMENT OF EXPENSES, TO PROVIDE FOR RECIPROCAL REGISTRATION, TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF REGISTRATION AND CARDS, TO REQUIRE NOTIFICATION UPON ANY CHANGE OF OWNERSHIP, TO REQUIRE THE DISPLAY OF CONTRACTOR REGISTRATION NUMBERS, TO PROVIDE FOR BOARD AUTHORITY TO INVESTIGATE AND DISCIPLINE, TO PROVIDE FOR THE SUSPENSION OR REVOCATION OF REGISTRATION, TO PROVIDE FOR REINSTATEMENT, TO PROVIDE PENALTIES, TO SET FORTH POWERS AND DUTIES OF THE ATTORNEY GENERAL AND PROSECUTING ATTORNEYS AND TO PROVIDE FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 52, Title 54, Idaho Code, and to read as follows:

CHAPTER 52
IDAHO CONTRACTOR REGISTRATION ACT

54-5201. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Contractor Registration Act."

54-5202. DECLARATION OF POLICY. The legislature finds and declares that the practice of construction in the state of Idaho affects the public health, safety and welfare of its citizens. The legislature further finds that it is in the public interest to provide a mechanism to remove from practice incompetent, dishonest, or unprincipled practitioners of construction. To aid in fulfilling these purposes, this chapter provides for the registration of construction contractors within the state of Idaho.

54-5203. DEFINITIONS. As used in this chapter:

(1) "Board" means the Idaho contractors board as created in section 54-5206, Idaho Code.

(2) "Bureau chief" means the chief of the bureau of occupational licenses.

(3) "Construction" means the performance of building, altering, repairing, adding to, subtracting from, improving, reconstructing, moving, excavating, wrecking or demolishing any building, highway, road, bridge, or other structure, project, development or improvement to real property, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

(4) "Contractor" means:

(a) Any person who in any capacity undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to, or does himself or by or through others, perform construction; or

(b) A construction manager who performs construction management services.

(5) "Department" means the department of self-governing agencies of the state of Idaho.

(6) "Person" means any individual, firm, partnership, limited liability company, limited liability partnership, corporation, trust, association or other entity or organization capable of conducting business, or any combination thereof acting as a unit.

54-5204. REGISTRATION REQUIRED. (1) On and after January 1, 2006, it shall be unlawful for any person to engage in the business of, or hold himself out as, a contractor within this state without being registered as required in this chapter.

(2) It shall be unlawful for a contractor to engage any other contractor who is required by this chapter to be registered as a contractor unless such other contractor furnishes satisfactory proof to the contractor that he is duly registered under the provisions of this chapter.

(3) Any person who engages in the business or acts in the capacity of a contractor, whether or not duly registered, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho contractors board, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.

54-5205. EXEMPTIONS FROM REGISTRATION. (1) Nothing in this chapter shall be construed to restrict any person licensed, registered, or otherwise regulated by the state of Idaho from engaging in the profession or practice for which they are licensed, registered or otherwise regulated by the state of Idaho including, but not limited to, persons licensed pursuant to chapters 3, 10, 12, 19, 26, 45 and 50, title 54, Idaho Code, nor shall this chapter require such persons otherwise licensed, registered or regulated to obtain such registration as required by this chapter, so long as such person is not acting with the intent to evade this chapter. No such person exempt hereunder may hold himself out as a registered contractor.

(2) In addition to the exemption set forth in section (1) of this section, registration as provided for in this chapter shall not be required for the following, so long as such person is not acting with the intent to evade this chapter and so long as such person does not hold himself out as a registered contractor:

(a) A person who only performs labor or services for wages or a salary as an employee of a contractor, or as an employee of a person

otherwise exempt by the provisions set forth in this chapter, or strictly as a volunteer or as part of a bona fide educational curriculum or nonprofit charitable activity for which no wages or salary shall be paid; provided however, that such exemption shall not apply to any subcontractor or other independent contractor who is not otherwise exempt;

(b) An authorized representative of the United States government, the state of Idaho, or any incorporated municipality, county, alternative form of local government, highway district, reclamation district, or other municipal or political corporation or subdivision of this state;

(c) A public utility operating under the regulation of the Idaho public utility commission as set forth in title 61, Idaho Code, in the construction, maintenance, or development work incidental to its own business;

(d) A person who performs repair or operation incidental to the discovery or production of oil, gas or minerals or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit;

(e) A person who only furnishes materials, supplies or equipment without that person installing or fabricating them into or consuming them in the performance of the work of the construction contractor;

(f) A person performing work on one (1) undertaking or project considered casual, minor, or inconsequential, whether by one (1) or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than two thousand dollars ($2,000). The exemptions prescribed in this paragraph (f) shall not apply when the work or construction is part of a larger construction project, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than two thousand dollars ($2,000) for the purpose of evasion of this chapter or otherwise;

(g) A farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

(h) A person who engages in the construction of an agriculture building which is exempt from the Idaho building code act as set forth in section 39-4116, Idaho Code;

(i) An irrigation district, canal company, reservoir district, ground water district, water district, water measurement district, recharge district, flood control district, drainage district, or other water delivery or water management entity, or an operating agent of irrigation districts whose board consists of directors of its member districts;

(j) An operation related to clearing or other work upon land in rural districts for fire prevention purposes;

(k) An owner who contracts for work to be performed by a registered contractor on his own property, provided however, this exemption shall not apply to an owner who, with the intent to evade this chapter, constructs a building, residence or other improvement on the owner's property with the intention and for the purpose of selling the improved property at any time during the construction or within twelve (12) months of completion of such construction;

(l) An owner performing construction on the owner's personal residential real property, whether or not occupied by the owner, pro-

vided however, this exemption shall not apply to an owner who is otherwise regulated by this chapter who constructs a building, residence or other improvement on the owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for not less than twelve (12) months prior to the sale of such property;

(m) Owners of commercial properties, or lessees of commercial properties with the consent of the owner, who, whether themselves or with their own employees, perform maintenance, repair, alteration or construction work in or upon the properties;

(n) A real estate licensee acting within the scope of his license pursuant to chapter 20, title 54, Idaho Code, who, incident to a regulated real estate transaction, assists his clients in scheduling or performing nominal maintenance and repairs upon such properties being transferred; provided however, nothing in this section shall otherwise authorize a real estate licensee or a property manager to act in the capacity of a contractor unless registered with the board;

(o) A contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(p) A person working on the person's own residence, if the residence is owned by a person other than the resident;

(q) A person who engages in the construction of building to be used primarily for industrial chemical process purposes as set forth in section 39-4103, Idaho Code; or

(r) A person who engages in the construction of a modular building as defined in section 39-4105(12), Idaho Code, that is constructed in the state of Idaho for installation on a building site outside the state.

54-5206. IDAHO CONTRACTORS BOARD. (1) The Idaho contractors board is hereby created and made a part of the bureau of occupational licenses. It shall be the responsibility and duty of the bureau chief to administer this chapter, and the bureau chief shall exercise such powers and duties as are reasonably necessary to enforce the provisions of this chapter. The board may promulgate such rules as may be necessary to carry out the provisions of this chapter in order to effectuate the purposes herein and for the orderly and efficient administration thereof, except as may be limited or prohibited by law and the provisions of this chapter.

(2) The board shall consist of four (4) members who are contractors, and one (1) member of the public at large, all of whom shall be appointed by the governor as follows: one (1) contractor from the northern district consisting of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner counties; one (1) contractor from the southeastern district consisting of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou, Bear Lake, Franklin, Oneida, Power and Bannock counties; one (1) contractor from the southwestern district consisting of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley counties; one (1) contractor from the south central district consisting of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls

counties; and one (1) member of the public at large who resides in the state of Idaho and is a person of integrity and good reputation who has lived in this state for at least five (5) years immediately preceding appointment, who has never been registered as a contractor in this or another state, and who has never had a substantial personal, business, professional or pecuniary connection with a contractor except as a purchaser or owner of real property.

(3) Each member of the board who is a contractor shall serve a term of four (4) years and such terms shall be staggered. The initial board shall have one (1) member whose term expires July 1, 2007; one (1) member whose term expires July 1, 2008; one (1) member whose term expires July 1, 2009; and one (1) member whose term shall expire July 1, 2010. The member of the board who is a member of the public at large shall serve a four (4) year term, which initial term shall expire on July 1, 2008. No member of the board may be appointed to more than two (2) consecutive terms.

(4) The board shall meet within thirty (30) days after the appointment of all its members and thereafter at such other times as may be expedient and necessary for the proper performance of its duties, but not less than once during each calendar quarter. At the board's first meeting, the members shall elect one (1) of their number to be chairman. The chairman may serve in such capacity for a one (1) year term and may not serve in such capacity for more than two (2) consecutive terms. A majority of the board shall constitute a quorum for the transaction of business.

(5) The board may delegate to the bureau chief:

(a) The power to perform ministerial functions, investigate and discipline, hold hearings, appoint hearing officers, summon witnesses to appear, administer oaths and take affirmations of witnesses at any formal proceeding or before a duly appointed hearing officer;

(b) The power to appoint competent persons to issue subpoenas, administer oaths and take testimony; and

(c) The power to enforce orders of the board.

(6) Each member of the board shall be compensated as provided by section 59-509(b), Idaho Code.

(7) On and after January 1, 2006, each member of the board who is a contractor shall be registered in accordance with this chapter and shall be in good standing.

54-5207. GENERAL POWERS AND DUTIES OF THE BOARD. The board shall enforce the minimum standards and requirements therefor as provided by this chapter and by rule adopted by the board. The board may exercise such powers and duties as are reasonably necessary to carry out the provisions of this chapter and it may, among other things:

(1) Accept or reject applications for registration and establish the fees to be charged for application, registration and renewal, subject to the provisions of this chapter;

(2) Hold public meetings and attend or be represented at such meetings, within or without the state, prepare and publish rules pertaining to this chapter and such other information as may be necessary, and furnish copies thereof to those engaged in the business, trade, practice or work of contracting and to the public upon request;

(3) Furnish standards and procedures and prescribe reasonable rules

for applications, qualifications and registration of contractors, including proration of registration fees and staggering initial annual registration; and

(4) Under such rules as it may adopt, investigate, classify and determine the qualifications of applicants for registration pursuant to this chapter; and

(5) Contract with the bureau of occupational licenses to provide administrative services.

54-5208. DENIAL OF LIEN RIGHTS. A contractor who is not registered as set forth in this chapter, unless otherwise exempt, shall be denied and shall be deemed to have conclusively waived any right to place a lien upon real property as provided for in chapter 5, title 45, Idaho Code. This section shall not operate as a denial of lien rights for any subcontractor or independent contractor who is duly registered in accordance with this chapter and who is performing services at the direction of another contractor, nor shall it operate as a denial of lien rights for any employee of any contractor who is not duly registered, or for any supplier of materials to such unregistered contractor, so long as such subcontractor, independent contractor, employee or supplier did not have actual knowledge that such contractor was not duly registered, or who reasonably believed that such contractor was duly registered.

54-5209. BUILDING PERMITS AND CONTRACTOR REGISTRATION NUMBER -- POSTING AT SITE. (1) On and after January 1, 2006, no building inspector or such other authority of any county, municipality or district charged with the duty of issuing building permits or other permits for construction of any type shall issue any permit without first requesting presentment of an Idaho contractor's registration number. Such registration number presented shall be conspicuously entered on the face of a permit so issued; provided however, a permit may be issued to a person otherwise exempt from the provisions of this chapter provided such permit shall conspicuously contain the phrase "no contractor registration provided" on the face of such permit. No authority charged with the duty of issuing such permit shall be required to verify that the person applying for such permit is exempt as provided in this chapter.

(2) All building permits or other permits for construction of any type shall be posted at the construction site in such a manner that the conspicuous statements set forth in subsection (1) of this section are visible.

(3) No person engaged in construction activities who is otherwise exempt as set forth in section 54-5205, Idaho Code, shall be required to have a contractor registration number.

54-5210. APPLICATION FOR REGISTRATION. (1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the board and which shall include the following information pertaining to the applicant:

(a) Social security number for natural persons or employer tax identification number for other persons;

(b) The name and address under which the applicant conducts business;

(c) The name and address of each principal, member, partner, shareholder, or any other person claiming an ownership interest in the

business entity for which registration is being applied for;

(d) A certificate issued by an insurance company authorized to do business in the state of Idaho or other satisfactory proof that the applicant has procured and has in effect worker's compensation insurance or a statement by the contractor as to why such certificate or coverage is not required for the applicant;

(e) A certificate issued by an insurance company authorized to do business in the state of Idaho that the applicant has procured and has in effect a general liability policy, including products and continued operations insurance covering the applicant's construction operations in the sum of not less than three hundred thousand dollars ($300,000) single limit;

(f) A statement of the type of construction to be undertaken by the applicant, or such other information as may be required by the board pursuant to administrative rules adopted by the board; and

(g) A statement that the applicant and each principal, member, partner, shareholder, or any other person claiming an ownership interest in the business entity for which registration is being applied for herein has never been denied or had revoked a contractor's license or registration privilege in this or any other state or, if a license or registration privilege has been denied or revoked in this or any other state, an explanation of any such denial or revocation.

(2) Along with such application, the applicant shall submit a registration fee as may be set by the board to cover its administrative and enforcement costs, not to exceed one hundred fifty dollars ($150) per year.

(3) An application for registration that has been denied by the board shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and shall be subject to the provisions of that chapter as well as the administrative rules adopted by the board governing contested cases.

54-5211. REGISTRATION -- RENEWAL. A registration shall be issued for a period of not less than one (1) year nor more than five (5) years, as determined by the board. Each registration shall set forth its expiration date on the face of the certificate. No less than thirty (30) days prior to the expiration of such registration, the board shall notify a registered contractor that such registration is set to expire. Reinstatement of a lapsed registration shall require the payment of a renewal fee and reinstatement fee in accordance with the administrative rules adopted by the board. The failure of any registered contractor to renew his registration as required herein and by the administrative rules of the board shall not deprive such person of the right to renewal upon subsequent application for registration and payment of the required board fees.

54-5212. DISPOSITION OF RECEIPTS -- EXPENSES. All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund.

54-5213. RECIPROCAL REGISTRATION. (1) Nothing in this chapter shall be construed as preventing any incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this state from implementing its own regulation of construction contractors, provided that no such code, ordinance, rule or regulation enacted or adopted by such entity shall contain provisions less stringent than those requirements provided for by this chapter.

(2) A contractor may provide a verified copy of any current and unrestricted license, registration, or other type of certification granted to the contractor by any incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this state to the board, for review, along with a reciprocal registration fee not to exceed fifty dollars ($50.00), as determined by board rule, which is necessary for the administration and processing of such application. If the review indicates that the license, registration or certification was granted under provisions that were not less stringent than those provided by this chapter, the applicant shall be issued a registration based upon reciprocal registration.

54-5214. REGISTRATION CERTIFICATE -- DISPLAY. (1) Upon receipt of a duly completed application, together with the registration fee, and after such verification process as the board may from time to time deem appropriate by rule, a certificate of registration and a wallet-sized card showing the registrant's name and showing a registration number shall be issued, commencing on the date of issue and continuing in effect for a period of not less than one (1) year nor more than five (5) years, as determined by the board. Application for renewal of registration shall be filed on or before thirty (30) days prior to the expiration date. The board shall issue a certificate of registration to an applicant upon the applicant's compliance with the registration requirements of this chapter. Certificates shall not be assignable nor transferable. Upon any change of ownership or a change of address of a registered contractor entity, the board shall be notified by such entity within thirty (30) days. A certificate of registration, without the payment of a registration fee, shall be issued to any person who is granted a public works contractor license or a construction manager license, so long as those requirements for licensure in Idaho are met.

(2) A contractor registered pursuant to this chapter shall prominently display his contractor registration number for public view in his place of business, on advertising, contracts, permits, company or business letterheads, and purchase orders and subcontracts within sixty (60) days of issue of registration.

54-5215. AUTHORITY TO INVESTIGATE AND DISCIPLINE -- SUSPENSION OR REVOCATION OF REGISTRATION. (1) The board may investigate any person engaged in contracting within the state of Idaho, or any person believed to have acted as a contractor without being duly registered as required by this chapter. Upon receipt of a written complaint from a person who claims to have been injured or defrauded by such person, or upon information received by the board, the board shall perform an investigation of the facts alleged against such person. If the board investigation reveals that the facts alleged or received are sufficient to proceed with a formal action, the board may authorize the filing of an administrative complaint against such person and may seek injunctive relief

prohibiting such person from engaging in construction.

(2) The board shall have the authority to issue informal letters of reprimand, suspend or revoke a registration, impose a civil penalty in an amount not to exceed one thousand dollars ($1,000), recover the costs and fees incurred in an investigation and prosecution, or to issue a formal reprimand against any registered contractor if, after an opportunity for a hearing, the board determines that:

(a) A contractor has violated any of the provisions of this chapter including, but not limited to, failure to keep current or provide insurance coverage as required by this chapter;

(b) A contractor has violated any of the provisions of chapter 6, title 48, Idaho Code, relating to consumer protection including, but not limited to, making fraudulent misrepresentations to consumers;

(c) A contractor employed fraud or deception, made a misrepresentation or misstatement, or employed any unlawful means in applying for or securing registration as a contractor;

(d) A contractor employed fraud or deception, made a misrepresentation or misstatement, or employed any unlawful means in applying for or securing a building permit or other permits for construction of any type;

(e) A contractor failed to pay the required fee for registration as provided in this chapter;

(f) A contractor has been convicted of or has engaged in conduct constituting a violation of public laws, ordinances or rules of this state, or any subdivision thereof, relevant to contracting, reflecting on the registered contractor's ability or qualifications to continue contracting for other persons, and making the registered contractor a threat to the public safety, health or well-being;

(g) A contractor has engaged in any other conduct whether of the same or a different character than hereinabove specified which constitutes dishonest or dishonorable dealings;

(h) A contractor was grossly negligent or reckless in his conduct in the performance of construction. For purposes of this chapter, conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of construction in Idaho;

(i) A contractor had a license, registration or certification revoked, suspended or refused by this or another state, territory, incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this or another state, or omitted such information from any application to the board, or failed to divulge such information when requested by the board;

(j) A contractor has been adjudged mentally incompetent by a court of competent jurisdiction; or

(k) A contractor interfered with an investigation or disciplinary proceeding by a willful misrepresentation of facts or by the use of threats or harassment against any person to prevent such person from providing evidence in a disciplinary proceeding, investigation or other legal action instituted in accordance with this chapter.

(3) A contractor whose registration has been revoked or suspended shall be required to return his certificate of registration within the time determined by the board or, upon a failure to do so, shall be liable for civil penalties as set by the board but not to exceed fifty dol-

lars ($50.00) per day for each day the certificate is not returned after the expiration of the period allowed.

(4) The suspension or revocation of a registration shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and shall be subject to the provisions of that chapter as well as the administrative rules adopted by the board governing contested cases.

54-5216. REINSTATEMENT OF REGISTRATION AFTER DISCIPLINE. The board may reinstate a suspended or revoked registration upon a showing that:

(1) The grounds for such suspension or revocation have been eliminated;

(2) Such a violation is not likely to reoccur in the future; and

(3) The public interest is not jeopardized by reinstating the registration.

54-5217. PENALTIES. (1) Any person acting in the capacity of a contractor within the meaning of this chapter without a current registration as herein required shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(2) No person engaged in the business or acting in the capacity of a contractor, unless otherwise exempt, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which registration is required by this chapter without alleging and proving that he was a duly registered contractor, or that he was otherwise exempt as provided for in this chapter, at all times during the performance of such act or contract.

54-5218. ATTORNEY GENERAL -- PROSECUTING ATTORNEY. It shall be the right and duty of the attorney general or the prosecuting attorneys of the various counties to represent and appear for the people of the state of Idaho and the department in all actions and proceedings involving any question under this chapter or under any order or act of the board and to perform such other services as are required.

54-5219. 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 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 25, 2005.

CHAPTER 154
(H.B. No. 187)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CODE REFERENCE; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-416B, IDAHO CODE, TO ESTABLISH A BASQUE SPECIAL LICENSE PLATE PROGRAM; 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 shall be:

Vehicles one (1) and two (2) years old $48.00
Vehicles three (3) and four (4) years old $36.00
Vehicles five (5) and six (6) years old $36.00
Vehicles seven (7) and eight (8) years old $24.00
Vehicles over eight (8) years old $24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers 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 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 twenty-four dollars ($24.00).

(3) For all motorcycles and all-terrain vehicles operated upon the public highways the annual fee shall be nine dollars ($9.00). For operation of an all-terrain vehicle or motorcycle off the public highways, the fee specified in section 67-7122, Idaho Code, shall be paid. Registration exemptions provided in section 49-426(2) and (3), Idaho Code, apply to all-terrain vehicles and motorcycles used for the purposes

described in subsections (2) and (3) of section 49-426, Idaho Code.

(4) 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.

(5) Registration fees shall not be subject to refund.

(6) 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.

(7) 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 for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416, 49-418 and 49-418D, 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 49-416A, 49-416B, 49-417, 49-417A, 49-417B, 49-417C, 49-418A, 49-418B, 49-418C, 49-419, 49-419A, 49-419B, 49-419C, 49-419D, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, 49-420E and 49-420G, 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, unless otherwise specified by law.

SECTION 2. 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 49-416B, Idaho Code, and to read as follows:

49-416B. BASQUE PLATES. (1) On and after January 1, 2006, any person who is the owner of a vehicle registered under the provisions of section 49-402, Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and, upon department approval, receive special Basque license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Basque license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer for deposit to the Cenarrusa center for Basque studies at the Basque museum located in Boise, Idaho, and shall be used by the center to demonstrate commitment, through substantial educational and outreach programs, to the preservation of the Basque people, their culture, language and Basque contributions to Idaho and Idaho's history.

(3) 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. The owner may only display the plates on another vehicle upon receipt of the new registration from the department.

(4) The Basque license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. The design and any slogan on the plate shall be acceptable to the governing board of the Cenarrusa center for Basque studies and shall be approved by the Idaho transportation 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 Cenarrusa center for Basque studies.

(5) Sample Basque license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the Cenarrusa center for Basque studies at the Basque museum located in Boise, Idaho, and shall be used by the center to demonstrate commitment, through substantial educational and outreach programs, to the preservation of the Basque people, their culture, language and Basque contributions to Idaho and Idaho's history.

SECTION 3. This act shall be in full force and effect on and after January 1, 2006.

Approved March 25, 2005.

CHAPTER 155
(S.B. No. 1034)

AN ACT

RELATING TO THE COMPREHENSIVE STATE WATER PLAN; RATIFYING AND APPROVING THE AMENDED COMPREHENSIVE STATE WATER PLAN FOR THE PRIEST RIVER BASIN AS ADOPTED BY THE IDAHO WATER RESOURCE BOARD ON AUGUST 22, 2003; 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 amended Comprehensive State Water Plan for the Priest River basin, adopted by resolution of the Idaho Water Resource Board on August 22, 2003, be, and the same is hereby ratified and approved. The plan amendments allow modification of the fall operation schedule for the Priest Lake outlet structure to provide lake levels more favorable to Kokanee spawning.

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 28, 2005.

CHAPTER 156
(S.B. No. 1035)

AN ACT

RELATING TO THE COMPREHENSIVE STATE WATER PLAN; RATIFYING AND APPROVING THE COMPREHENSIVE STATE WATER PLAN FOR THE SOUTH FORK CLEARWATER RIVER BASIN AS ADOPTED BY THE IDAHO WATER RESOURCE BOARD ON JUNE 8, 2004, TO PROVIDE FOR DESIGNATION OF STATE NATURAL RIVERS, TO PROVIDE FOR DESIGNATION OF STATE RECREATIONAL RIVERS, AND TO PROVIDE FOR EXCEPTIONS TO APPLY TO THE DESIGNATED RECREATIONAL RIVERS; 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 Clearwater River Basin, adopted by resolution of the Idaho Water Resource Board on June 8, 2004, be, and the same is hereby ratified and approved. In accordance with section 42-1734A, Idaho Code, the basin plan includes the following protected river reach designations.

(1) The following waterways are protected as State Natural Rivers:

(a) Tenmile Creek - (10 miles): from headwaters to Wilderness boundary and the following tributary:

* Williams Creek - (5.2 miles): Headwaters to confluence with Tenmile Creek.

(b) Twentymile Creek - (3 miles): Headwaters to Wilderness boundary.

(c) Johns Creek - (8 miles): from headwaters to Wilderness boundary, and the following tributaries:

* Hagen Creek - (4.4 miles): Headwaters to confluence with Johns Creek.
* Square Mountain Creek - (5.0 miles): Headwaters to confluence with Moores Creek.
* Moores Creek - (6.4 miles): Headwaters to confluence with Square Mountain Creek.
* Gospel Creek - (6.6 miles): Headwaters to confluence with Johns Creek.
* West Fork Gospel Creek - (5.2 miles): Headwaters to confluence with Gospel Creek.

(d) The following activities are prohibited within these waterways:

* Construction or expansion of dams or impoundments;
* Construction of hydropower projects;
* Construction of water diversion works;
* Dredge or placer mining (including recreational dredge mining);
* Alteration of the stream bed; and
* Mineral or sand and gravel extraction within the stream bed.

(2) The following waterways are protected as state Recreational Rivers:

(a) Red River - (27.2 miles): Headwaters to confluence with American River, and the following tributaries:

* Otterson Creek - (3.5 miles): Headwaters to confluence with Red River.
* South Fork Red River - (11.7 miles): Headwaters to confluence with Red River.
* West Fork Red River - (4.3 miles): Headwaters to confluence with Middle South Fork Red River.
* Moose Butte Creek - (3.5 miles): Headwaters to confluence with Red River.
* Red Horse Creek - (8.2 miles): Headwaters to confluence with Red River.

(b) American River - (21.6 miles): Headwaters to confluence with South Fork Clearwater, and the following tributaries:

* Limber Luke Creek - (2.8 miles): Headwaters to confluence with American River.
* West Fork American River - (5.0 miles): Headwaters to confluence with American River.
* East Fork American River - (6.5 miles): Headwaters to confluence with American River.
* Kirks Fork - (6.8 miles): Headwaters to confluence with American River.

(c) Crooked River - (11.6 miles): Headwaters to confluence with South Fork Clearwater, and the following tributary:

* Relief Creek - (6.3 miles): Headwaters to confluence with Crooked River.
* East Fork Crooked River - (7.1 miles): Headwaters to confluence with Crooked River.
* West Fork Crooked River - (5.3 miles): Headwaters to confluence with Crooked River.

(d) Newsome Creek - (15.7 miles): Headwaters to confluence with South Fork Clearwater, and the following tributaries:

* Haysfork Creek - (5.0 miles): Headwaters to confluence with Newsome Creek.
* Baldy Creek - (6.1 miles): Headwaters to confluence with Newsome Creek.
* Pilot Creek - (6.0 miles): Headwaters to confluence with Newsome Creek.
* Sawmill Creek - (3.6 miles): Headwaters to confluence with Newsome Creek.
* Sing Lee Creek - (3.0 miles): Headwaters to confluence with Newsome Creek.
* West Fork Newsome Creek - (6.0 miles): Headwaters to confluence with Newsome Creek.

(e) Tenmile Creek - (7 miles): Wilderness boundary to confluence with South Fork Clearwater and the following tributary:

* Sixmile Creek - (4.7 miles): Headwaters to confluence with Tenmile Creek.

(f) Twentymile Creek - (8 miles): Wilderness boundary to confluence with South Fork Clearwater.

(g) Wing Creek - (5.1 miles): Headwaters to confluence with South Fork Clearwater.

(h) Silver Creek - (15.9 miles): Headwaters to confluence with South Fork Clearwater.
(i) Johns Creek - (12 miles): Wilderness boundary to confluence with South Fork Clearwater.
(j) Meadow Creek - (15.2 miles): Headwaters to confluence with South Fork Clearwater.
(k) Mill Creek - (15.9 miles): Headwaters to confluence with South Fork Clearwater.
(l) South Fork Clearwater - (63.8 miles): Headwaters to confluence with Middle Fork Clearwater - Recreational.
The following activities are prohibited within these waterways, except as allowed under subsection (3) of this section:

* Construction or expansion of dams or impoundments;
* Construction of hydropower projects;
* Construction of diversion works;
* Dredge or placer mining (including recreational dredging, except where allowed through application for permit, Form 3804-B);
* Mineral or sand and gravel extraction within the stream channel;
* Alterations of the stream channel.

(3) The following exceptions apply to recreational rivers listed in subsection (2) of this section:
(a) Alterations of the stream channel for construction and maintenance of roads, bridges, and trails; public recreation facilities; fish and wildlife enhancement structures; and channel reconstruction projects approved by the Board are allowed if they do not impede fish passage, spawning, rearing and boat passage.
(b) The following recreational river reaches are adjacent to privately owned land, which may require construction of diversion works for domestic, municipal or agricultural uses:

* South Fork Clearwater River, from the Nez Perce National Forest boundary to confluence with Middle Fork Clearwater:
* Red River and Moose Butte Creek
* American River, mainstem only
* Relief Creek
* Crooked River, mainstem only
* Newsome Creek mainstem and Pilot Creek
* Meadow Creek
* Mill Creek

Construction of water diversion works for domestic, municipal, and agricultural uses is allowed on the river reaches specified herein if these activities do not impede fish passage, spawning, rearing or boat passage.
(c) All activities allowed under this subsection must comply with all state stream channel alterations rules and standards. All works must be constructed or maintained to minimize erosion and sedimentation.

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 28, 2005.

CHAPTER 157
(S.B. No. 1036, As Amended)

AN ACT

RELATING TO THE STATE BOARD OF CORRECTION; AMENDING CHAPTER 2, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-237B, IDAHO CODE, TO SET FORTH PROVISIONS APPLICABLE TO THE MEDICAL COSTS OF STATE PRISONERS HOUSED IN CORRECTIONAL FACILITIES.

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

SECTION 1. 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 20-237B, Idaho Code, and to read as follows:

20-237B. MEDICAL COSTS OF STATE PRISONERS HOUSED IN CORRECTIONAL FACILITIES. (1) The state board of correction shall pay to a provider of a medical service for any and all prisoners confined in a correctional facility, as defined in section 18-101A(1), Idaho Code, an amount no greater than the reimbursement rate applicable based on the Idaho medicaid reimbursement rate. This limitation applies to all medical care services provided outside the facility, including hospitalizations, professional services, durable and nondurable goods, prescription drugs and medications provided to any and all prisoners confined in a correctional facility, as defined in section 18-101A(1), Idaho Code. For required services that are not included in the Idaho medicaid reimbursement schedule, the state board of correction shall pay the reasonable value of such service.

(2) For the purposes of subsection (1) of this section, the term "provider of a medical service" shall include only companies, professional associations and other health care service entities whose services are billed directly to the department of correction. The term "provider of a medical service" shall exclude:

(a) Privatized correctional medical providers under contract with the department of correction to provide health care to prison inmates;

(b) Private prison companies;

(c) Out-of-state correctional facilities contracting with the department of correction to house prisoners;

(d) County jails; and

(e) Companies, professional associations and other health care service entities whose services are provided within the terms of agreements with privatized correctional medical providers under contract with the department of correction, private prison companies and county jails.

Approved March 28, 2005.

CHAPTER 158
(S.B. No. 1061)

AN ACT

RELATING TO DOMESTIC VIOLENCE; AMENDING SECTION 18-918, IDAHO CODE, TO MAKE A GRAMMATICAL CHANGE, TO REVISE THE INTENT REQUIRED TO COMMIT A DOMESTIC BATTERY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 18-918, Idaho Code, be, and the same is hereby amended to read as follows:

18-918. DOMESTIC VIOLENCE. (1) For the purpose of this section:
(a) "Household member" means a person who is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or a person with whom a person is cohabiting, whether or not they have married or have held themselves out to be husband or wife.
(b) "Traumatic injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.
(2) (a) Any household member who ~~commits~~ in committing a battery, as defined in section 18-903, Idaho Code, ~~and willfully and unlawfully~~ inflicts a traumatic injury upon any other household member is guilty of a felony.
(b) A conviction of felony domestic battery is punishable by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000) or by both fine and imprisonment.
(3) (a) A household member who commits an assault, as defined in section 18-901, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic assault.
(b) A household member who commits a battery, as defined in section 18-903, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic battery.
(c) A first conviction under this subsection (3) is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in a county jail not to exceed six (6) months, or both. Any person who pleads guilty to or is found guilty of a violation of this subsection (3) who previously has pled guilty to or been found guilty of a violation of this subsection (3), or of any substantially conforming foreign criminal violation, notwithstanding the form of the judgment or withheld judgment, within ten (10) years of the first conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a term not to exceed one (1) year or by a fine not exceeding two thousand dollars ($2,000) or by both fine and imprisonment. Any person who pleads guilty to or is found guilty of a violation of this subsection (3) who previously has pled guilty to or been found guilty of two (2) violations of this subsection (3), or of any substantially conforming foreign

criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within fifteen (15) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars ($5,000) or by both fine and imprisonment.

(4) The maximum penalties provided in this section shall be doubled where the act of domestic assault or battery for which the person is convicted or pleads guilty took place in the presence of a child. For purposes of this section, "in the presence of a child" means in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic assault or battery. For purposes of this section, "child" means a person under sixteen (16) years of age.

(5) Notwithstanding any other provisions of this section, any person who previously has pled guilty to or been found guilty of a felony violation of the provisions of this section or of any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment or withheld judgment, and who within fifteen (15) years pleads guilty to or is found guilty of any further violation of this section, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000), or by both such fine and imprisonment.

(6) For the purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or 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 with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(7) (a) Any person who pleads guilty to or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, agency or organization approved by the court in accordance with ~~subsection~~ paragraph (c) of this subsection to determine whether the defendant should be required to obtain aggression counseling or other appropriate treatment. Such evaluation shall be completed prior to the sentencing date if the court's list of approved evaluators, in accordance with ~~subsection~~ paragraph (c) of this subsection, contains evaluators who are able to perform the evaluation prior to the sentencing dates. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling or treatment considered appropriate for the defendant, together with the estimated costs thereof, and shall recommend any other suitable alternative counseling or treatment programs, together with the estimated costs thereof. The defendant shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an 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 counseling is required unless the defendant makes a showing by a preponderance of evidence that counseling is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the

court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized for court-ordered counseling or treatment pursuant to this section for indigent defendants as provided by law. In the event that funding is provided for or on behalf of the defendant by a governmental entity, the defendant shall be ordered to make restitution to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code.

(b) If the evaluation recommends counseling or other treatment, the court shall order the person to complete the counseling or other treatment in addition to any other sentence which may be imposed. If the court determines that counseling or treatment would be inappropriate or undesirable, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such counseling or treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation or a comparable program. Nothing contained in this subsection shall be construed as requiring a court to order that counseling or treatment be provided at government expense unless otherwise required by law.

(c) Each judicial district shall by rule establish a uniform system for the qualification and approval of persons, agencies or organizations to perform the evaluations required in this subsection. Only qualified evaluators approved by the court shall be authorized to perform such evaluations. Funds to establish a system for approval of evaluators shall be derived from moneys designated therefor and deposited in the district court fund as provided in section 31-3201A(q), Idaho Code.

(d) Counseling or treatment ordered pursuant to this section shall be conducted according to standards established or approved by the Idaho council on domestic violence.

Approved March 28, 2005.

CHAPTER 159
(S.B. No. 1076, As Amended)

AN ACT

RELATING TO A CREDIT RATING ENHANCEMENT COMMITTEE; AMENDING CHAPTER 12, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1224, IDAHO CODE, TO CREATE THE IDAHO CREDIT RATING ENHANCEMENT COMMITTEE

IN THE OFFICE OF THE STATE TREASURER, TO PROVIDE MEMBERSHIP, COMPENSATION, A QUORUM, MEETINGS AND PERSONNEL; AND AMENDING CHAPTER 12, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1225, IDAHO CODE, TO PROVIDE THE FUNCTIONS AND DUTIES OF THE CREDIT RATING ENHANCEMENT COMMITTEE.

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

SECTION 1. That Chapter 12, 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 67-1224, Idaho Code, and to read as follows:

67-1224. IDAHO CREDIT RATING ENHANCEMENT COMMITTEE -- MEMBERSHIP -- COMPENSATION -- QUORUM -- MEETINGS -- PERSONNEL. (1) There is hereby established in the office of the state treasurer the Idaho credit rating enhancement committee. The committee shall consist of the following members: the state treasurer, the administrator of the division of financial management, one (1) senator appointed by the president pro tempore of the senate and one (1) member of the house of representatives appointed by the speaker of the house of representatives. Other members of the committee shall be appointed by the governor after considering recommendations of the state treasurer and shall consist of one (1) member from each of the following entities knowledgeable on matters of public finance, including the Idaho state municipal bond bank, Idaho housing and finance association, Idaho state building authority, the department of education as a representative of the school bond guarantee fund and one (1) member at large.

(2) The term of an appointed member is two (2) years, but an appointed member serves at the pleasure of the appointing authority. Before the expiration of the term of an appointed member, the appointing authority shall appoint a successor. If there is a vacancy for any reason in the office of an appointed member, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the committee shall be entitled to compensation and expenses as provided in section 59-509(b), Idaho Code, which shall be paid by the state treasurer.

(4) The state treasurer shall serve as chairperson of the committee, with such powers and duties necessary for the performance of that office as the committee determines appropriate.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) The committee shall meet at least once every six (6) months at a time and place determined by the committee. The committee also shall meet at other times and places specified by the call of the chairperson or by a majority of the members of the committee.

(7) The office of the state treasurer shall provide the committee with office space and clerical and other administrative support.

SECTION 2. That Chapter 12, 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 67-1225, Idaho Code, and to read as follows:

67-1225. POWERS AND DUTIES OF CREDIT RATING ENHANCEMENT COMMITTEE. The Idaho credit rating enhancement committee shall advise the governor and the legislature regarding policies and action that enhance and preserve the state's credit rating and maintain the future availability of low cost capital financing. In carrying out this function, the committee shall:

(1) Develop a six (6) year forecast of debt capacity targets by debt type and repayment sources based on the policies and actions established under this section;

(2) Convert debt capacity targets to net available capacity estimates by reflecting amounts of capacity currently issued, the planned issuance of prior authorized debt and estimates of debt repayment;

(3) Report findings, including net debt capacity, and recommendations to the governor and the legislature by August 1 of each year.

Approved March 28, 2005.

CHAPTER 160
(S.B. No. 1080)

AN ACT

RELATING TO THE PLATE MANUFACTURING ACCOUNT; AMENDING SECTION 49-450, IDAHO CODE, TO PROVIDE THAT THE ACTUAL COST OF PRODUCING AND DISTRIBUTING LICENSE PLATES SHALL BE PAID FROM THE PLATE MANUFACTURING ACCOUNT AND TO PROVIDE FOR DISTRIBUTIONS TO THE HIGHWAY DISTRIBUTIONS ACCOUNT; AMENDING SECTION 49-450A, IDAHO CODE, TO EXPAND THE PURPOSE OF THE PLATE MANUFACTURING ACCOUNT TO INCLUDE PAYING THE ACTUAL COST OF PRODUCING AND DISTRIBUTING LICENSE PLATES AND TO AUTHORIZE THE STATE CONTROLLER TO DISTRIBUTE ADDITIONAL FUNDS TO PAY PRODUCTION AND DISTRIBUTION COSTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 49-450, Idaho Code, be, and the same is hereby amended to read as follows:

49-450. ADDITIONAL FEE FOR EACH PLATE ISSUED. In addition to the vehicle registration fee provided by law, whenever any plate is issued for vehicle registration, there shall be charged a fee of three dollars ($3.00) per plate, which shall be deposited into the plate manufacturing account created in section 49-450A, Idaho Code. The actual cost of producing and ~~manufacturing~~ distributing license plates and the fifty cents ($.50) per plate fee designated to the Idaho heritage trust for the use of the copyrighted design provided for in section 49-443(1), Idaho Code, shall be paid from the plate manufacturing account. The ~~remainder of the plate fee shall be deposited in~~ difference between deposits into the account and disbursements out of the account not required for future obligations shall be transferred by the state controller from the plate manufacturing account to the highway distribution account as established in section 40-701, Idaho Code, for apportionment as designated in that section. Funds designated to the Idaho heritage trust shall be matched with equal funds from other sources for funding projects designed to preserve Idaho's historic resources.

SECTION 2. That Section 49-450A, Idaho Code, be, and the same is hereby amended to read as follows:

49-450A. PLATE MANUFACTURING ACCOUNT. There is hereby created in the state treasury an account to be known as the "plate manufacturing account" for the purpose of paying the actual cost to ~~manufacture~~ produce and distribute license plates and to pay costs related to use of the centennial design on the license plate. All moneys in this account are hereby continuously appropriated to the department. Any additional funds required to pay plate ~~manufacturing~~ production and distribution costs will be transferred by the state controller from the state highway account.

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 28, 2005.

CHAPTER 161
(S.B. No. 1092)

AN ACT

RELATING TO WORKER'S COMPENSATION PROCEDURES; AMENDING SECTION 72-432, IDAHO CODE, TO SPECIFY LIMITATIONS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 72-706, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO A CLAIMANT'S RIGHT TO MEDICAL BENEFITS.

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

SECTION 1. That Section 72-432, Idaho Code, be, and the same is hereby amended to read as follows:

72-432. MEDICAL SERVICES, APPLIANCES AND SUPPLIES -- REPORTS. (1) Subject to the provisions of section 72-706, Idaho Code, t~~T~~he employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital services, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer.

(2) The employer shall also furnish necessary replacements or repairs of appliances and prostheses, unless the need therefor is due to lack of proper care by the employee. If the appliance or prosthesis is damaged or destroyed in an industrial accident, the employer, for whom the employee was working at the time of accident, will be liable for replacement or repair, but not for any subsequent replacement or repair not directly resulting from the accident.

(3) In addition to the income benefits otherwise payable, the employee who is entitled to income benefits shall be paid an additional sum in an amount as may be determined by the commission as by it deemed

necessary, as a medical service, when the constant service of an attendant is necessary by reason of total blindness of the employee or the loss of both hands or both feet or the loss of use thereof, or by reason of being paralyzed and unable to walk, or by reason of other disability resulting from the injury or disease actually rendering him so helpless as to require constant attendance. The commission shall have authority to determine the necessity, character and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital or rehabilitation facility when in its judgment such change is desirable or necessary.

(4) (a) The employee upon reasonable grounds, may petition the commission for a change of physician to be provided by the employer; however, the employee must give written notice to the employer or surety of the employee's request for a change of physicians to afford the employer the opportunity to fulfill its obligations under this section. If proper notice is not given, the employer shall not be obligated to pay for the services obtained. Nothing in this section shall limit the attending physician from arranging for consultation, referral or specialized care without permission of the employer. Upon receiving such written notice, the employer shall render its written decision on the claimant's request within fourteen (14) days. If any dispute arises over the issue of a request for change of physician, the industrial commission shall conduct an expedited hearing to determine whether or not the request for change of physician should be granted, and shall render a decision within fourteen (14) days after the filing of the response by the employer.

(b) The industrial commission shall, no later than December 31, 1997, promulgate a rule for the expeditious handling of a petition for change of physician pursuant to this section. Nothing herein shall prevent the commission from making periodic amendments, as may become necessary, to any rule for a petition for change of physician.

(5) Any employee who seeks medical care in a manner not provided for in this section, or as ordered by the industrial commission pursuant to this section, shall not be entitled to reimbursement for costs of such care.

(6) An employee shall not be responsible for charges of physicians, hospitals or other providers of medical services to whom he has been referred for treatment of his injury or occupational disease by an employer designated physician or by the commission, except for charges for personal items or extended services which the employee has requested for his convenience and which are not required for treatment of his injury or occupational disease.

(7) The employer or surety shall not be subject to tort liability to any health care provider for complying with the provisions of this law.

(8) Nothing in this chapter shall be construed to require a workman who in good faith relies on Christian Science treatment by a duly accredited Christian Science practitioner to undergo any medical or surgical treatment, providing that neither he nor his dependents shall be entitled to income benefits of any kind beyond those reasonably expected to have been paid had he undergone medical or surgical treatment, and the employer or insurance carrier may pay for such spiritual treatment.

(9) The commission shall promulgate rules requiring physicians and

other practitioners providing treatment to make regular reports to the commission containing such information as may be required by the commission. The commission shall promulgate such rules with the counsel, advice, cooperation and expertise of representatives of industry, labor, sureties and the legal and medical professions as well as institutions, hospitals and clinics having physical rehabilitation facilities.

(10) All medical information relevant to or bearing upon a particular injury or occupational disease shall be provided to the employer, surety, manager of the industrial special indemnity fund, or their attorneys or authorized representatives, the claimant, the claimant's attorneys or authorized representatives, or the commission without liability on the part of the physician, hospital or other provider of medical services and information developed in connection with treatment or examination for an injury or disease for which compensation is sought shall not be privileged communication. When a physician or hospital willfully fails to make a report required under this section, after written notice by the commission that such report is due, the commission may order forfeiture of all or part of payments due for services rendered in connection with the particular case. An attorney representing the employer, surety, claimant or industrial special indemnity fund shall have the right to confer with any health care provider without the presence of the opposing attorney, representative or party, except for a health care provider who is retained only as an expert witness.

(11) Physicians or others providing services under this section shall assist in the rehabilitation program provided in section 72-501A, Idaho Code. They shall cooperate with specialists from the commission's rehabilitation staff and with employer rehabilitation personnel in furthering the physical or vocational rehabilitation of the employee. The extension of total temporary disability benefits during retraining as authorized by section 72-450, Idaho Code, shall be the responsibility of the commission, however, the physician shall inform the commission as soon as it is medically apparent that the employee may be unable to return to the job in which he sustained injury or occupational disease following treatment and maximum recovery.

(12) An injured employee shall be reimbursed for his expenses of necessary travel in obtaining medical care under this section. Reimbursement for transportation expenses, if the employee utilizes a private vehicle, shall be at the mileage rate allowed by the state board of examiners for state employees; provided however, that the employee shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel.

(13) An employee who leaves the locality where employed at the time of the industrial accident, or manifestation of an occupational disease, or the locality in which the employee is currently receiving medical treatment for the injury, shall give timely notice to the employer and surety of the employee's leaving the locality. The employer or surety may require the claimant to report to the treating physician for examination prior to leaving the locality, if practical. If an examination by the treating physician is not practical prior to leaving the locality, the employer or surety may assist in arranging an examination by an appropriate physician in the new locality. After receiving notice of relocation, the employer or surety shall have the same responsibility to furnish care as set forth in subsection (1) of this section.

SECTION 2. That Section 72-706, Idaho Code, be, and the same is hereby amended to read as follows:

72-706. LIMITATION ON TIME ON APPLICATION FOR HEARING. (1) When no compensation paid. When a claim for compensation has been made and no compensation has been paid thereon, the claimant, unless misled to his prejudice by the employer or surety, shall have one (1) year from the date of making claim within which to make and file with the commission an application requesting a hearing and an award under such claim.

(2) When compensation discontinued. When payments of compensation have been made and thereafter discontinued, the claimant shall have five (5) years from the date of the accident causing the injury or date of first manifestation of an occupational disease within which to make and file with the commission an application requesting a hearing for further compensation and award.

(3) When income benefits discontinued. If income benefits have been paid and discontinued more than four (4) years from the date of the accident causing the injury or the date of first manifestation of an occupational disease, the claimant shall have one (1) year from the date of the last payment of income benefits within which to make and file with the commission an application requesting a hearing for additional income benefits.

(4) Medical benefits. The payment of medical benefits beyond five (5) years from the date of the accident causing the injury or the date of first manifestation of an occupational disease shall not extend the time for filing a claim or an application requesting a hearing for additional income benefits as provided in this section.

(5) Right to medical benefits not affected. ~~The provisions of this section shall not affect a~~ Except under circumstances provided in subsection (1) of this section, the claimant's right to medical benefits under the provisions of section 72-432(1), Idaho Code, shall not be otherwise barred by this section.

(6) Relief barred. In the event an application is not made and filed as in this section provided, relief on any such claim shall be forever barred.

Approved March 28, 2005.

CHAPTER 162
(S.B. No. 1099)

AN ACT

RELATING TO THE SALE OF TIMBER ON STATE LANDS; AMENDING SECTION 58-406, IDAHO CODE, TO REVISE PROVISIONS RELATING TO VERY SMALL SALES OF TIMBER.

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

SECTION 1. That Section 58-406, Idaho Code, be, and the same is hereby amended to read as follows:

58-406. SALE OF PARCELS -- ADVERTISEMENT OF SALE. (1) Whenever the state board of land commissioners directs a sale of timber, it shall direct such sale in such parcels as it deems for the best interests of the state.

(2) All sales of timber on state lands, where sold separate from the lands, shall be advertised in one (1) or more newspapers, to be designated by the board, one (1) of which shall be in the county where such timber is located, if there be such paper, if not, then in some newspaper published in an adjoining county, and if such timber is located in more than one (1) county, then in some newspaper in each of the said counties, if there be such paper, if not, then in some newspaper published in an adjoining county, once a week for four (4) consecutive weeks, except that in cases of catastrophic damage caused by insect, weather, or fire, the state board of land commissioners may direct an advertisement of less than four (4) consecutive weeks.

(3) The advertisement shall set forth the time and place of the sale, a description of the land by legal subdivisions on which such timber is situated, the length of time allowed for harvesting the timber, and the minimum price below which no bid shall be accepted.

(4) Small sales of timber, not exceeding one million (1,000,000) board feet in volume, according to the cruiser's estimate, and not exceeding a maximum value established by the state board of land commissioners, may be made as provided herein, except that only one (1) publication of advertisement shall be necessary and the date of sale shall be set not less than four (4) days after date of publication.

(5) Very small sales of timber, not exceeding ~~one~~ two hundred thousand (~~1~~200,000) board feet and not exceeding a maximum value established by the state board of land commissioners, may be made without advertisement and upon approval of the director of the department of lands.

Approved March 28, 2005.

CHAPTER 163
(S.B. No. 1119)

AN ACT

RELATING TO THE IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS MEDAL OF HONOR; AMENDING THE HEADING FOR CHAPTER 88, TITLE 67, IDAHO CODE, TO PROVIDE THE IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS MEDAL OF HONOR; AMENDING SECTION 67-8801, IDAHO CODE, TO PROVIDE FOR ESTABLISHMENT OF THE IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS MEDAL OF HONOR; AMENDING SECTION 67-8802, IDAHO CODE, TO PROVIDE FOR THE IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS MEDAL OF HONOR COMMISSION CREATION AND TO PROVIDE MEMBERSHIP OF THE DEPARTMENT OF HEALTH AND WELFARE BUREAU OF EMERGENCY MEDICAL SERVICES ON THE COMMISSION; AMENDING SECTION 67-8803, IDAHO CODE, TO PROVIDE FOR THE AWARDING OF THE IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS MEDAL OF HONOR; AMENDING SECTION 67-8804, IDAHO CODE, TO PROVIDE FOR A POSTHUMOUS AWARD OF THE IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS MEDAL OF HONOR; AMENDING SECTION 67-8805, IDAHO CODE, TO PROVIDE FOR THE DESIGN AND COST OF THE IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS MEDAL OF HONOR; AND AMENDING CHAPTER 88, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-8806, IDAHO CODE, TO DEFINE TERMS.

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

SECTION 1. That the Heading for Chapter 88, Title 67, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 88
IDAHO LAW ENFORCEMENT, ~~AND~~ FIREFIGHTING
AND EMS MEDAL OF HONOR

SECTION 2. That Section 67-8801, Idaho Code, be, and the same is hereby amended to read as follows:

67-8801. IDAHO LAW ENFORCEMENT, ~~AND~~ FIREFIGHTING AND EMS MEDAL OF HONOR ESTABLISHED. There is hereby established a decoration of the Idaho law enforcement, ~~and~~ firefighting and EMS medal of honor with accompanying ribbons and appurtenances for award by the governor in the name of the state to any law enforcement officer, ~~or~~ firefighter or EMS provider who has been killed or seriously injured in the performance of duty, or who has been distinguished by exceptionally meritorious conduct, upon nomination of the Idaho law enforcement, ~~and~~ firefighting and EMS medal of honor commission.

SECTION 3. That Section 67-8802, Idaho Code, be, and the same is hereby amended to read as follows:

67-8802. IDAHO LAW ENFORCEMENT, ~~AND~~ FIREFIGHTING AND EMS MEDAL OF HONOR COMMISSION CREATED -- MEMBERSHIP -- ESTABLISHMENT OF QUALIFICATIONS FOR AWARD. (1) There is hereby created in the office of the governor the Idaho law enforcement, ~~and~~ firefighting and EMS medal of honor commission, hereafter referred to as the commission, which shall nominate candidates for the award of the Idaho law enforcement, ~~and~~ firefighting and EMS medal of honor. The commission shall consist of one (1) representative from each of the following: the office of the governor, the office of the attorney general, the Idaho prosecuting attorneys association, the Idaho chiefs of police association, the Idaho fire chiefs association, the Idaho sheriffs' association, the Idaho peace officers association, the Idaho department of health and welfare bureau of emergency medical services and the peace officers standards and training council. Members of the commission shall be appointed by the governor and shall each serve for a term of four (4) years.

(2) The attorney general or his designee shall serve as chair of the commission and shall designate a secretary for the commission.

(3) The commission shall meet annually, or at the call of the chair, to consider candidates for nomination. Commission meetings may be conducted via teleconference.

(4) The commission shall adopt rules establishing the qualifications for the Idaho law enforcement, ~~and~~ firefighting and EMS medal of honor and the protocol governing the decoration, and other rules necessary to carry out the purposes of this chapter.

SECTION 4. That Section 67-8803, Idaho Code, be, and the same is hereby amended to read as follows:

67-8803. WHEN AND BY WHOM AWARDED. The Idaho law enforcement, ~~and~~ firefighting and EMS medal of honor shall be awarded by the governor to the recipients during the national law enforcement recognition week. The governor may delegate the awarding of the medal to the lieutenant governor or the attorney general.

SECTION 5. That Section 67-8804, Idaho Code, be, and the same is hereby amended to read as follows:

67-8804. POSTHUMOUS AWARD. The Idaho law enforcement, ~~and~~ firefighting and EMS medal of honor may be awarded posthumously by presentation to a representative of the deceased as may be deemed appropriate by the governor or the designees specified in section 67-8803, Idaho Code.

SECTION 6. That Section 67-8805, Idaho Code, be, and the same is hereby amended to read as follows:

67-8805. DESIGN AND COST. The decoration of the Idaho law enforcement, ~~and~~ firefighting and EMS medal of honor shall be cast in bronze or other metal. The design of the medal shall incorporate the great seal of the state of Idaho with other insignia as deemed appropriate by the law enforcement, ~~and~~ firefighting and EMS medal of honor commission. The reverse of the decoration shall be inscribed with the words: "For exceptionally honorable and meritorious conduct in performing services as a law enforcement officer, ~~or~~ firefighter or EMS provider." The cost of the medal shall be paid by the agency whose officer, ~~or~~ firefighter or EMS provider receives the medal. The family of a recipient may request a second medal and may receive such medal upon payment to the commission of the cost of the medal.

SECTION 7. That Chapter 88, 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 67-8806, Idaho Code, and to read as follows:

67-8806. DEFINITIONS. As used in this chapter:

(1) "EMS" means emergency medical services; and

(2) "Emergency medical services provider" or "EMS provider" means an emergency medical services provider certified by the department of health and welfare pursuant to sections 56-1011 through 56-1018B, Idaho Code, and an ambulance-based clinician as defined in the rules governing emergency medical services as adopted by the department of health and welfare.

Approved March 28, 2005.

CHAPTER 164
(S.B. No. 1129)

AN ACT

RELATING TO RECREATIONAL ACTIVITIES AND NOISE ABATEMENT; AMENDING SECTION 67-7125, IDAHO CODE, TO DELETE THE CORRECTION FACTOR APPLIED TO THE BASE LEVEL IN ASSESSING A VIOLATION OF ANY NOISE SUPPRESSING SYSTEM.

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

SECTION 1. That Section 67-7125, Idaho Code, be, and the same is hereby amended to read as follows:

67-7125. NOISE ABATEMENT. (1) Except as hereinafter provided, every vehicle subject to registration under section 67-7122, Idaho Code, shall comply with the provisions of this section. Every vehicle subject to the provisions of this section shall at all times be equipped with an exhaust system in good working order and in constant operation. If the vehicle was originally equipped with a noise suppressing system or if the vehicle is required by law or regulation of this state or the federal government to have a noise suppressing system, that system shall be maintained in good working order. No person shall disconnect, modify or alter any part of that system in any manner which will amplify or increase the vehicle's noise emission above the noise limits established in subsection (3) of this section, except temporarily in order to make repairs, replacements or adjustments. No person shall operate and no owner shall cause or permit to be operated any vehicle while the vehicle's noise emission exceeds the noise limits established in subsection (3) of this section or while the vehicle's noise suppressing system is disconnected, modified or altered in violation of the provisions of this section.

(2) No person shall operate a vehicle subject to the provisions of this section unless that vehicle is equipped with a spark arrester device, affixed to the exhaust system, of a type qualified and rated by the United States forest service. The provisions of this subsection shall not apply to vehicles being operated off the highway in an organized racing or competitive event which is conducted on private land with the consent of the landowner.

(3) Any vehicle subject to the provisions of this section shall at all times be equipped with a noise suppressing system or other device which limits noise emission to a base level of not more than ninety-six (96) decibels when measured on the "A" scale using standards and procedures established by the society of automotive engineers (SAE), specifically SAE standard J1287, June, 1988, describing a test of a stationary vehicle with sound measured twenty (20) inches and forty-five (45) degrees from the exhaust outlet, or as otherwise described. ~~For enforcement purposes, a correction factor of plus two (+2) decibels measured on the "A" scale for site variation and plus one (+1) decibel measured on the "A" scale for instrumentation error shall be applied to the base level in assessing any violation.~~ The provisions of this subsection shall not apply to vehicles being operated off the highway in an organized racing or competitive event which is conducted on private land with the consent of the landowner or on public land under permit.

(a) The department shall adopt regulations in accordance with chapter 52, title 67, Idaho Code, establishing the test procedures and instrumentation to be utilized. These procedures shall incorporate requirements for the test site environment and sound measuring equipment as set forth in SAE standard J1287, June, 1988.

(b) Instrumentation shall include but not be limited to a sound level meter meeting the type 1, type S1A, type 2, or type S2A requirements of the American national standards institute (ANSI) specification for sound level meters, S1.4-1983; a sound level

calibrator, microphone wind screen, external engine speed tachometer.

(4) A showing that the noise emission level of any vehicle subject to and not otherwise exempt from the provisions of this section exceeds ninety-six (96) decibels, as described and tested in subsection (3) of this section, shall be prima facie evidence of a violation of subsection (1) of this section.

Approved March 28, 2005.

CHAPTER 165
(S.B. No. 1135)

AN ACT

RELATING TO CONCEALED WEAPONS; AMENDING SECTION 18-3302, IDAHO CODE, TO AUTHORIZE THE ATTORNEY GENERAL TO NEGOTIATE RECIPROCAL AGREEMENTS WITH OTHER STATES RELATED TO THE RECOGNITION OF LICENSES TO CARRY CONCEALED WEAPONS AND TO PROVIDE THAT THE IDAHO STATE POLICE SHALL KEEP A RECORD OF RECIPROCAL AGREEMENTS.

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

SECTION 1. That Section 18-3302, Idaho Code, be, and the same is hereby amended to read as follows:

18-3302. ISSUANCE OF LICENSES TO CARRY CONCEALED WEAPONS. (1) The sheriff of a county shall, within ninety (90) days after the filing of an application by any person who is not disqualified from possessing or receiving a firearm under state or federal law, issue a license to the person to carry a weapon concealed on his person within this state for four (4) years from the date of issue. The citizen's constitutional right to bear arms shall not be denied to him, unless he:

(a) Is ineligible to own, possess or receive a firearm under the provisions of state or federal law; or

(b) Is formally charged with a crime punishable by imprisonment for a term exceeding one (1) year; or

(c) Has been adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding one (1) year; or

(d) Is a fugitive from justice; or

(e) Is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. 802; or

(f) Is currently suffering or has been adjudicated as follows, based on substantial evidence:

(i) Lacking mental capacity as defined in section 18-210, Idaho Code; or

(ii) Mentally ill as defined in section 66-317, Idaho Code; or

(iii) Gravely disabled as defined in section 66-317, Idaho Code; or

(iv) An incapacitated person as defined in section 15-5-101(a), Idaho Code; or

(g) Is or has been discharged from the armed forces under dishonorable conditions; or

(h) Is or has been adjudicated guilty of or received a withheld judgment or suspended sentence for one (1) or more crimes of violence constituting a misdemeanor, unless three (3) years has elapsed since disposition or pardon has occurred prior to the date on which the application is submitted; or
(i) Has had entry of a withheld judgment for a criminal offense which would disqualify him from obtaining a concealed weapon license; or
(j) Is an alien illegally in the United States; or
(k) Is a person who having been a citizen of the United States, has renounced his or her citizenship; or
(l) Is under twenty-one (21) years of age; or
(m) Is free on bond or personal recognizance pending trial, appeal or sentencing for a crime which would disqualify him from obtaining a concealed weapon license; or
(n) Is subject to a protection order issued under chapter 63, title 39, Idaho Code, that restrains the person from harassing, stalking or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.

The license application shall be in triplicate, in a form to be prescribed by the director of the Idaho state police, and shall ask the name, address, description and signature of the licensee, date of birth, social security number, military status, and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. The application shall indicate that provision of the social security number is optional. The license application shall contain a warning substantially as follows:
CAUTION: Federal law and state law on the possession of weapons and firearms differ. If you are prohibited by federal law from possessing a weapon or a firearm, you may be prosecuted in federal court. A state permit is not a defense to a federal prosecution.

The sheriff shall require any person who is applying for original issuance of a license to submit his fingerprints in addition to the other information required in this subsection. Within five (5) days after the filing of an application, the sheriff shall forward the application and fingerprints to the Idaho state police for a records check of state and national files. The Idaho state police shall conduct a national fingerprint-based records check and return the results to the sheriff within seventy-five (75) days. The sheriff shall not issue a license before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria listed in paragraphs (a) through (n) of subsection (1) of this section.

The license will be in a form substantially similar to that of the Idaho driver's license. It will bear the signature, name, address, date of birth, picture of the licensee, expiration date and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. Upon issuing a license under the provisions of this section, the sheriff will notify the Idaho state police on a form or in a manner prescribed by the state police. Information relating to an applicant

or licensee received or maintained pursuant to this section by the sheriff or Idaho state police is confidential and exempt from disclosure under section 9-338, Idaho Code.

(2) The fee for original issuance of a four (4) year license shall be twenty dollars ($20.00) paid to the sheriff for the purpose of enforcing the provisions of this chapter. The sheriff may collect any additional fees necessary to cover the cost of processing fingerprints lawfully required by any state or federal agency or department, and the cost of materials for the license lawfully required by any state agency or department, which costs shall be paid to the state.

(3) The fee for renewal of the license shall be twelve dollars ($12.00). The sheriff may collect any additional fees necessary to cover the processing costs lawfully required by any state or federal agency or department, and the cost of materials for the license lawfully required by any state agency or department, which costs shall be paid to the state. If a licensee applying for renewal has not previously been required to submit fingerprints, the sheriff shall require the licensee to do so and may collect any additional fees necessary to cover the cost of processing fingerprints lawfully required by any state or federal agency or department.

(4) A licensee may renew a license if the licensee applies for renewal at any time before or within ninety (90) days after the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete an application. The sheriff shall submit the application to the Idaho state police for a records check of state and national databases. The Idaho state police shall conduct the records check and return the results to the sheriff within thirty (30) days. The sheriff shall not issue a renewal before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria listed in subsection (1), paragraphs (a) through (n) of this section. A renewal license shall be valid for a period of four (4) years. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license shall pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee. The fee shall be paid to the sheriff for the purpose of enforcing the provisions of this chapter.

(5) Notwithstanding the requirements of this section, the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section.

(6) A city, county or other political subdivision of this state shall not modify the requirements of this section, nor may a political subdivision ask the applicant to voluntarily submit any information not required in this section. A civil action may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section. The civil action may be brought in the county in which the application was made or in Ada county at the discretion of the petitioner. Any person who prevails against a public agency in any action in the courts for a violation of subsections (1) through (5) of this section, shall be awarded costs, including reasonable attorney's fees incurred in connection with the legal action.

(7) Except in the person's place of abode or fixed place of business, a person shall not carry a concealed weapon without a license to

carry a concealed weapon. For the purposes of this section, a concealed weapon means any dirk, dirk knife, bowie knife, dagger, pistol, revolver, or any other deadly or dangerous weapon. The provisions of this section shall not apply to any lawfully possessed shotgun or rifle.

(8) A county sheriff, deputy sheriff, or county employee who issues a license to carry a concealed weapon under this section shall not incur any civil or criminal liability as the result of the performance of his duties under this section.

(9) While in any motor vehicle, inside the limits or confines of any city or inside any mining, lumbering, logging or railroad camp a person shall not carry a concealed weapon on or about his person without a license to carry a concealed weapon. This shall not apply to any pistol or revolver located in plain view whether it is loaded or unloaded. A firearm may be concealed legally in a motor vehicle so long as the weapon is disassembled or unloaded.

(10) In implementing the provisions of this section, the sheriff shall make applications readily available at the office of the sheriff or at other public offices in his jurisdiction.

(11) The sheriff of a county may issue a license to carry a concealed weapon to those individuals between the ages of eighteen (18) and twenty-one (21) years who in the judgment of the sheriff warrants the issuance of the license to carry a concealed weapon. Such issuance shall be subject to limitations which the issuing authority deems appropriate. Licenses issued to individuals between the ages of eighteen (18) and twenty-one (21) shall be easily distinguishable from regular licenses.

(12) The requirement to secure a license to carry a concealed weapon under this section shall not apply to the following persons:

(a) Officials of a county, city, state of Idaho, the United States, peace officers, guards of any jail, court appointed attendants or any officer of any express company on duty;

(b) Employees of the adjutant general and military division of the state where military membership is a condition of employment when on duty;

(c) Criminal investigators of the attorney general's office, criminal investigators of a prosecuting attorney's office, prosecutors and their deputies;

(d) Any person outside the limits of or confines of any city, or outside any mining, lumbering, logging or railroad camp, located outside any city, while engaged in lawful hunting, fishing, trapping or other lawful outdoor activity;

(e) Any publicly elected Idaho official;

(f) Retired peace officers with at least ten (10) years of service with the state or a political subdivision as a peace officer and who have been certified by the peace officer standards and training council;

(g) Any person who has a valid permit from a state or local law enforcement agency or court authorizing him to carry a concealed weapon. A permit issued in another state will only be considered valid if the permit is in the licensee's physical possession.

(13) When issuing a license pursuant to this section, the sheriff may require the applicant to demonstrate familiarity with a firearm by any of the following, provided the applicant may select which one:

(a) Completion of any hunter education or hunter safety course approved by the department of fish and game or a similar agency of another state; or

(b) Completion of any national rifle association firearms safety or training course, or any national rifle association hunter education course; or

(c) Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, community college, college, university, or private or public institution or organization or firearms training school, utilizing instructors certified by the national rifle association or the Idaho state police; or

(d) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement agency; or

(e) Presents evidence or equivalent experience with a firearm through participation in organized shooting competition or military service; or

(f) Is licensed or has been licensed to carry a firearm in this state or a county or municipality, unless the license has been revoked for cause; or

(g) Completion of any firearms training or training or safety course or class conducted by a state certified or national rifle association certified firearms instructor.

(14) A person carrying a concealed weapon in violation of the provisions of this section shall be guilty of a misdemeanor.

(15) The sheriff of the county where the license was issued or the sheriff of the county where the person resides shall have the power to revoke a license subsequent to a hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, for any of the following reasons:

(a) Fraud or intentional misrepresentation in the obtaining of a license; or

(b) Misuse of a license, including lending or giving a license to another person, or duplicating a license, or using a license with the intent to unlawfully cause harm to a person or property; or

(c) The doing of an act or existence of a condition which would have been grounds for the denial of the license by the sheriff; or

(d) The violation of any of the terms of this section; or

(e) The applicant is adjudicated guilty of or receives a withheld judgment for a crime which would have disqualified him from initially receiving a license.

(16) A person twenty-one (21) years of age or older issued a license to carry a concealed weapon or a license renewal on or after July 1, 1995, is exempt from any requirement to undergo a records check at the time of purchase or transfer of a firearm from a federally licensed firearms dealer. However, a temporary emergency license issued under subsection (5) of this section shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(17) The attorney general is authorized to negotiate reciprocal agreements with other states related to the recognition of licenses to carry concealed weapons. The Idaho state police shall keep a copy and

maintain a record of all such agreements, which shall be made available to the public.

(18) The provisions of this section are hereby declared to be severable and if any provision of this section or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this section.

Approved March 28, 2005.

CHAPTER 166
(S.B. No. 1153)

AN ACT

RELATING TO VULNERABLE ADULTS; AMENDING SECTION 18-1505, IDAHO CODE, TO REVISE PUNISHMENT PROVISIONS APPLICABLE TO THE ABUSE, EXPLOITATION OR NEGLECT OF A VULNERABLE ADULT, TO REVISE DEFINITIONS AND TO CLARIFY APPLICABILITY; AMENDING SECTION 18-1505A, IDAHO CODE, TO REVISE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 39-5310, IDAHO CODE, TO REVISE LANGUAGE REFERENCING PUNISHMENT PROVISIONS APPLICABLE TO THE ABUSE, EXPLOITATION OR NEGLECT OF A VULNERABLE ADULT AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 18-1505, Idaho Code, be, and the same is hereby amended to read as follows:

18-1505. ABUSE, EXPLOITATION OR NEGLECT OF A VULNERABLE ADULT. (1) Any person who abuses~~, exploits~~ or neglects a vulnerable adult under circumstances likely to produce great bodily harm or death is guilty of a ~~misdemeanor~~ felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar ($25,000) fine.

(2) Any person who abuses or neglects a vulnerable adult under circumstances other than those likely to produce great bodily harm or death is guilty of a misdemeanor.

(3) Any person who exploits a vulnerable adult is guilty of a misdemeanor, unless the monetary damage from such exploitation exceeds one thousand dollars ($1,000), in which case the person is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar ($25,000) fine.

(4) As used in this section:

(a) "Abuse" means the intentional or negligent infliction of physical pain, injury or mental injury. Intentional abuse shall be punished under subsection (1) or (2) of this section depending upon the harm inflicted. Abuse by negligent infliction shall only be punished under subsection (2) of this section.

(b) "Caretaker" means any individual or institution that is responsible by relationship, contract or court order to provide food, shelter or clothing, medical or other life-sustaining necessities to a vulnerable adult.

(c) "Exploitation" or "exploit" means an action which may include, but is not limited to, the misuse of a vulnerable adult's funds, property or resources by another person for profit or advantage.

(d) "Neglect" means failure of a caretaker to provide food, clothing, shelter or medical care to a vulnerable adult, in such a manner as to jeopardize the life, health and safety of the vulnerable adult.

(e) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person.

(~~3~~5) Nothing in this section shall be construed to mean a person is abused, neglected or exploited for the sole reason he is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this section be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.

(6) Nothing in this section shall be construed to mean that an employer or supervisor of a person who abuses, exploits or neglects a vulnerable adult may be prosecuted unless there is direct evidence of a violation of this statute by the employer or supervisor.

SECTION 2. That Section 18-1505A, Idaho Code, be, and the same is hereby amended to read as follows:

18-1505A. ABANDONING A VULNERABLE ADULT. (1) Any person who abandons a vulnerable adult, as that term is defined in section 18-1505, Idaho Code, in deliberate disregard of the vulnerable adult's safety or welfare, regardless of whether the vulnerable adult suffered physical harm from the act of abandonment, shall be guilty of a felony and shall be imprisoned in the state prison for a period not in excess of five (5) years, or by a fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment. It shall not be a defense to prosecution under the provisions of this section that the perpetrator lacked the financial ability or means to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult.

(2) As used in this section "abandon" means the desertion or willful forsaking of a vulnerable adult by any individual, caretaker as defined by subsection (~~2~~4)(b) of section 18-1505, Idaho Code, or entity which has assumed responsibility for the care of the vulnerable adult by contract, receipt of payment of care, any relationship arising from blood or marriage wherein the vulnerable adult has become the dependent of another or by order of a court of competent jurisdiction; provided that abandon shall not mean the termination of services to a vulnerable adult by a physician licensed under chapter 18, title 54, Idaho Code, or anyone under his direct supervision, where the physician determines, in the exercise of his professional judgment, that termination of such services is in the best interests of the patient.

SECTION 3. That Section 39-5310, Idaho Code, be, and the same is hereby amended to read as follows:

39-5310. REPORT TO LAW ENFORCEMENT -- PROSECUTION. (1) If, as the result of any investigation initiated under the provisions of this chapter, it appears that the abuse, neglect, or exploitation has caused injury or a serious imposition on the rights of the vulnerable adult, the commission shall immediately notify the appropriate law enforcement agency which shall initiate an investigation and shall determine whether criminal proceedings should be initiated against the caretaker or other persons in accordance with applicable state law. Notwithstanding the prohibition against disclosure of names of persons associated with the written report of an investigation as provided in section 39-5304, Idaho Code, the commission shall disclose names associated with the written report when notification is made as required in this section.

(2) The abuse, neglect~~,~~ or exploitation of a vulnerable adult is a ~~misdemeanor~~ crime under section 18-1505, Idaho Code, and is subject to punishments provided in that section ~~18-113,--Idaho--Code,~~ and other applicable state law.

Approved March 28, 2005.

CHAPTER 167
(S.B. No. 1169)

AN ACT

RELATING TO PRACTICES GOVERNING ORE PROCESSING BY CYANIDATION; AMENDING SECTION 39-103, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-118A, IDAHO CODE, TO SPECIFY REQUIREMENTS FOR A PERMIT FROM THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR A FACILITY TO CONDUCT ORE PROCESSING BY CYANIDATION AND TO GOVERN APPLICATION OF PROVISIONS DURING TRANSITION; AMENDING SECTION 47-1501, IDAHO CODE, TO INCLUDE CLOSURE OF CYANIDATION FACILITIES WITHIN PURPOSES OF THE CHAPTER AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 47-1502, IDAHO CODE, TO SPECIFY SCOPE OF THE CHAPTER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1503, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1505, IDAHO CODE, TO INCLUDE CLOSURE ACTIVITIES OF A CYANIDATION FACILITY WITHIN DUTIES OF THE BOARD OF LAND COMMISSIONERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1506, IDAHO CODE, TO ENUMERATE DUTIES OF A CYANIDATION FACILITY OPERATOR AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1507, IDAHO CODE, TO GOVERN APPROVAL OR REJECTION OF A PERMANENT CLOSURE PLAN AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1508, IDAHO CODE, TO GOVERN SUBMISSION OF AN AMENDED OR SUPPLEMENTAL PLAN, TO PROVIDE APPLICATION OF CLOSURE REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1512, IDAHO CODE, TO GOVERN SUBMISSION OF A BOND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1513, IDAHO CODE, TO PROVIDE FORFEITURE OF BOND AND PENALTIES FOR OPERATOR'S FAILURE TO COMPLY WITH PERMANENT CLOSURE PLAN OF A CYANIDATION FACILITY, TO PROVIDE FOR REVIEW AND REVISION OF PLANS AND TO MAKE TECHNICAL CORREC-

TIONS; AMENDING SECTION 47-1514, IDAHO CODE, TO PROVIDE FOR APPEAL FROM AN ORDER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1517, IDAHO CODE, TO SPECIFY REQUIREMENTS FOR CONDUCT OF A CYANIDATION FACILITY; AMENDING SECTION 47-1518, IDAHO CODE, TO GOVERN APPLICATION OF THE CHAPTER AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 42-202B, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Section 39-103, Idaho Code, be, and the same is hereby amended to read as follows:

39-103. DEFINITIONS. Whenever used or referred to in this act chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Air contaminant" or "air contamination" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, radionuclide, vapor, gas or other gaseous fluid or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.

(2) "Air pollution" means the presence in the outdoor atmosphere of any contaminant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.

(3) "Board" means the board of environmental quality.

(4) "Cyanidation" means the method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction.

(5) "Cyanidation facility" means that portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water.

(6) "Department" means the department of environmental quality.

(~~5~~7) "Director" means the director of the department of environmental quality or the director's designee.

(~~6~~8) "Emission" means any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air contaminant or combination thereof. Emission also includes any release or discharge of any air contaminant from a stack, vent or other means into the outdoor atmosphere that originates from an emission unit.

(~~7~~9) "Laboratory" means not only facilities for biological, serological, biophysical, cytological and pathological tests, but also facilities for the chemical or other examination of materials from water or other substances.

(~~8~~10) "Medical waste combustor" means any device, incinerator, furnace, boiler or burner, and any and all appurtenances thereto, which burns or pyrolyzes medical waste consisting of human or animal tissues, medical cultures, human blood or blood products, materials contaminated with human blood or tissues, used or unused surgical wastes, used or unused sharps, including hypodermic needles, suture needles, syringes and scalpel blades.

(~~9~~11) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(~~10~~12) "Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use in incorporated municipalities; or unincorporated communities where ten (10) or more separate premises or households are being served or intended to be served; or any other supply which serves water to the public and which the department declares to have potential health significance.

(~~11~~13) "Solid waste" means garbage, refuse, radionuclides and other discarded solid materials, including solid waste materials resulting from industrial, commercial and agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

(~~12~~14) "Solid waste disposal" means the collection, storage, treatment, utilization, processing or final disposal of solid waste.

(~~13~~15) "State" means the state of Idaho.

(~~14~~16) "Substantive" means that which creates, defines or regulates the rights of any person or implements, interprets or prescribes law or policy, but does not include statements concerning only the internal management of the department and not affecting private rights or procedures available to the public.

(~~15~~17) "Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, esthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(~~16~~18) "Waters" means all accumulations of water, surface and underground, natural and artificial, public and private or parts thereof which are wholly or partially within, flow through or border upon this state except for private waters as defined in section 42-212, Idaho Code.

SECTION 2. That Section 39-118A, Idaho Code, be, and the same is hereby amended to read as follows:

39-118A. ORE PROCESSING BY CYANIDATION. (1) All plans and specifications for the construction of ~~that part of a new ore processing facility, or for modification or expansion to an existing ore processing facility, that is intended to contain, treat, or dispose process water or process contaminated water containing cyanide~~ a cyanidation facility shall be submitted to and approved by the department before construction

may begin, and all construction shall be in compliance therewith. Within thirty (30) days of the completion of such construction, modification or expansion, complete and accurate plans and specifications depicting that actual construction, modification or expansion does not deviate from the original approved plans and specifications, shall be submitted to the department. All plans and specifications submitted to satisfy the requirements of this section shall be certified by registered professional engineers.

(2) ~~That portion of a new ore processing facility, or a modification or expansion of an existing ore processing facility, which utilizes cyanidation and is intended to contain, treat or dispose process water or process contaminated water containing cyanide~~

(a) A cyanidation facility shall not be constructed, operated, or closed prior to a permit being obtained from the department.

(b) Weather permitting, the director shall deliver to the operator within one hundred eighty (180) days after the receipt of a complete permit application the notice of rejection or notice of approval of the permit, as the case may be, provided however, that, subject to the provisions of subsection (3) of this section, if the director fails to deliver a notice of approval or notice of rejection within the time period, the permit submitted shall be deemed to comply with this chapter, and the operator may commence to build, operate or close the cyanidation facility covered by the permit, as the case may be, as if a notice of approval of the permit had been received from the director. Provided however, that if weather conditions prevent the director from inspecting the cyanidation facility to obtain information needed to approve or reject a submitted permit, he may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(c) The director may require a reasonable fee for processing permit applications~~, and financial assurance for permanent closure of a new ore processing facility, or a modification or expansion to an existing ore processing facility~~.

(3) ~~An existing facility which utilizes cyanidation water or process contaminated water containing cyanide shall not be subject to the provisions of subsections (1) and (2) of this section if such facility shall be registered by the owner or operator using a form provided by the director of the department. Failure to register an existing facility shall subject such facility to the provisions of subsections (1) and (2) of this section.~~

(a) Prior to the effective date of rules promulgated under chapter 15, title 47, Idaho Code, the department is authorized to issue a permit under subsection (2) of this section if the cyanidation facility has provided financial assurance under the provisions of IDAPA 58.01.13 in an amount determined by the department to be the estimated reasonable costs to complete the activities specified in the permanent closure plan required in IDAPA 58.01.13, in the event of the failure of an operator to complete those activities, plus ten percent (10%) of such costs. In setting the amount of financial assurance, the department shall avoid duplication with any financial assurance, bonds and sureties deposited with other governmental agencies.

(b) After the effective date of rules promulgated under chapter 15, title 47, Idaho Code, the department shall not issue a permit under

subsection (2) of this section unless the cyanidation facility has satisfied the financial assurance requirements of chapter 15, title 47, Idaho Code, relating to ore processing by cyanidation.

(4) A cyanidation facility with an existing permit approved by the department prior to July 1, 2005, shall be subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005. If there is a material modification or a material expansion of a cyanidation facility after June 30, 2005, all provisions of this chapter shall apply to the modification or expansion; provided however, that reclamation or closure related activities at a facility with an existing cyanidation permit approved by the department that did not actively add cyanide after January 1, 2005, shall not be considered to be material modifications or a material expansion of the facility.

(5) The department shall promulgate temporary rules by August 1, 2005, to implement the provisions of this act; however, no rulemaking is necessary, nor shall be required, to increase the amount of financial assurance provided by the department's interim authority under subsection (3)(a) of this section.

SECTION 3. That Section 47-1501, Idaho Code, be, and the same is hereby amended to read as follows:

47-1501. PURPOSE OF CHAPTER. It is the purpose of this ~~act~~ chapter to provide for the protection of the public health, safety and welfare, through measures to reclaim the surface of all the lands within the state disturbed by exploration and surface mining operations and measures to assure the proper closure of cyanidation facilities and thereby conserve natural resources, aid in the protection of wildlife, domestic animals, aquatic resources, and reduce soil erosion.

SECTION 4. That Section 47-1502, Idaho Code, be, and the same is hereby amended to read as follows:

47-1502. SHORT TITLE. This act may be known and cited as "the Idaho surface mining act." The reclamation provisions of t~~T~~his act shall not apply to surface mining operations regulated by the Idaho ~~B~~dredge and ~~P~~placer ~~M~~mining ~~P~~protection ~~A~~act.

SECTION 5. That Section 47-1503, Idaho Code, be, and the same is hereby amended to read as follows:

47-1503. DEFINITIONS. Wherever used or referred to in this ~~act~~ chapter, unless a different meaning clearly appears from the context:

(1~~.~~) "Board" means the state board of land commissioners or such department, commission, or agency as may lawfully succeed to the powers and duties of such board.

(2~~.~~) "Cyanidation" means the method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for the extraction.

(3) "Cyanidation facility" means that portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water.

(4) "Director" means the head of the department of lands or such officer as may lawfully succeed to the powers and duties of said director.

~~3.~~(5) "Affected land" means the land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds and other areas disturbed at the surface mining operation site.

~~4.~~(6) "Mineral" shall mean coal, clay, stone, sand, gravel, metalliferous and nonmetalliferous type of ores, and any other similar solid material or substance of commercial value to be excavated from natural deposits on or in the earth.

~~5.~~(7) "Surface mining operations" means the activities performed on a surface mine in the extraction of minerals from the ground, including the excavating of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, (~~1~~a) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or (~~2~~b) which, exclusive of exploration roads, result during a period of twelve (12) consecutive months in newly affected land consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen ~~per--cent~~ percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of this ~~act~~ chapter.

~~6.~~(8) "Exploration operations" means activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof.

~~7.~~(9) "Surface mine" means an area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed.

~~8.~~(10) "Mined area" means surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes.

~~9.~~(11) "Overburden" means material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles.

~~10.~~(12) "Overburden disposal area" means land surface upon which overburden is piled or planned to be piled.

~~11.~~(13) "Exploration drill holes" means holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof.

~~12.~~(14) "Exploration roads" means roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof.

~~13.~~(15) "Exploration trenches" means trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof.

~~14.~~(16) "Peak" means a projecting point of overburden.

~~15.~~(17) "Mine panel" means that portion of a mine designated by an operator as a panel of a surface mine on the map submitted pursuant to section 47-1506, Idaho Code.

~~16.~~(18) "Mineral stockpile" means minerals extracted during surface mining operations and retained at the surface mine for future rather than immediate use.

(19) "Permanent closure plan" means a description of the procedures,

methods, and schedule that will be implemented to meet the intent and purposes of this chapter in treating and disposing of cyanide containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site specific conditions.

~~17.~~(20) "Pit" means an excavation created by the extraction of minerals or overburden during surface mining operations.

~~18.~~(21) "Ridge" means a lengthened elevation of overburden.

~~19.~~(22) "Road" means a way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof.

~~20.~~(23) "Operator" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial~~,~~ including, but not limited to, every public or governmental agency engaged in surface mining or exploration operations or in operating a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of this ~~act~~ chapter.

~~21.~~(24) "Hearing officer" means that person selected by the board to hear proceedings under section 47-1513, Idaho Code.

~~22.~~(25) "Final order of the board" means a written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available.

~~23.~~(26) "Tailings pond" means an area on a surface mine ~~inclosed~~ enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine.

SECTION 6. That Section 47-1505, Idaho Code, be, and the same is hereby amended to read as follows:

47-1505. DUTIES AND POWERS OF BOARD. In addition to the other duties and powers of the board prescribed by law, the board is granted and shall be entitled to exercise the following authority and powers and perform the following duties:

(1) To administer and enforce the provisions of this ~~act~~ chapter and the rules and orders promulgated thereunder as provided in this ~~act~~ chapter.

(2) To conduct and promote the coordination and acceleration of research, studies, surveys, experiments, demonstrations and training in carrying out the provisions of this ~~act~~ chapter. In carrying out the activities authorized by this section, the board may enter into contracts with and make grants to institutions, agencies, organizations and individuals, and shall collect and make available any information obtained therefrom.

(3) To adopt and promulgate reasonable rules respecting the administration of this ~~act~~ chapter and such rules as may be necessary to

carry out the intent and purposes of this ~~act~~ chapter, provided that no rules shall be adopted which require reclamation activities in addition to those set forth in this ~~act~~ chapter. All such rules shall be adopted in accordance with and subject to the provisions of chapter 52, title 67, Idaho Code.

(4) To enter upon affected lands at all reasonable times, for the purpose of inspection, to determine whether the provisions of this ~~act~~ chapter have been complied with. Such inspections shall be conducted in the presence of the operator or his duly authorized employees or representatives, and the operator shall make such persons available for the purpose of inspections.

(5) To reclaim affected land with respect to which a bond has been forfeited, and, in the board's discretion, with the permission of the landowner, to reclaim such other land which becomes affected land.

(6) To complete closure activities with respect to a cyanidation facility for which a permanent closure bond has been forfeited.

(7) (a) Upon receipt of a proposed reclamation or permanent closure plan or amended or supplemental ~~reclamation~~ plan, the director shall notify the cities and counties in which the surface mining operation or cyanidation facility is proposed. The notice shall include the name and address of the operator and shall describe the procedure and the schedule by which the plan may be approved or denied. This notification requirement shall not apply to exploration operations.

(b) Cities and counties may review the nonconfidential portions of the plan at the department's office and may provide comments to the director concerning the plan. Nothing in this section shall extend the time limit for the board to deliver to the operator a notice of rejection or approval of the plan or affect the confidentiality provisions of section 47-1515, Idaho Code.

(c) No city or county shall enact or adopt any ordinance, rule or resolution to regulate exploration or surface mining operations or a permanent closure plan in this state which conflicts with any provision of this chapter or the rules promulgated thereunder. This subpart shall not affect the planning and zoning authorities available to cities and counties pursuant to chapter 65, title 67, Idaho Code.

SECTION 7. That Section 47-1506, Idaho Code, be, and the same is hereby amended to read as follows:

47-1506. OPERATOR -- DUTIES PRIOR TO OPERATION -- SUBMISSION OF MAPS AND PLANS. (a) Any operator desiring to conduct surface mining operations within the state of Idaho for the purpose of immediate or ultimate sale of the minerals in either the natural or processed state, shall submit to the board prior to commencing such surface mining operations a reclamation plan that contains the following:

(1) A map of the mine panel on which said operator desires to conduct surface mining operations, which sets forth with respect to said panel the following:

(i) The location of existing roads and anticipated access and main haulage roads planned to be constructed in conducting the surface mining operations.

(ii) The approximate boundaries of the lands to be utilized in the process of surface mining operations.

(iii) The approximate location and, if known, the names of all streams, creeks, or bodies of water within the area where surface mining operations shall take place.

(iv) The name and address of the person to whom notices, orders, and other information required to be given to the operator pursuant to this ~~act~~ chapter may be sent.

(v) The drainage adjacent to the area where the surface is being utilized by surface mining operations.

(vi) The approximate boundaries of the lands that will become affected lands as a result of surface mining operations during the year immediately following the date that a reclamation plan is approved as to said panel, together with the number of acres included within said boundaries.

(vii) A description of foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices that will be used to control such nonpoint source impacts.

(viii) A description of foreseeable, site-specific impacts from acid rock drainage and the best management practices that will be used to mitigate the impacts, if any, from such acid rock drainage.

(2) Diagrams showing the planned location of pits, mineral stockpiles, overburden piles and tailings ponds on said panel.

(3) A description of the action which said operator intends to take to comply with the provisions of this ~~act~~ chapter as to the surface mining operations conducted on such mine panel.

(b) Any operator who is not required to submit an operating plan for a surface mining operation to an entity of the federal government shall submit to the board, as part of the reclamation plan, an operating plan with regards to that surface mining operation. The operating plan shall include:

(1) Maps showing the location of existing roads and anticipated access and main haulage roads planned to be constructed for surface mining operations.

(2) The boundaries and acreage of the lands to be utilized in the process of surface mining operations.

(3) Maps showing the planned location of pits, mineral stockpiles, ~~over-burden~~ overburden piles and tailings ponds for the surface mining operations.

(4) The location and, if known, the names of all streams, creeks, or bodies of water within the area where surface mining operations shall take place.

(5) The drainage adjacent to the area where the surface is being utilized by surface mining operations.

(6) The approximate boundaries and acreage of the lands that will become affected during the first year of construction of surface mining operations.

(7) The board shall promulgate rules or guidelines to allow the content of a nonfederal operating plan to be determined based upon the type and size of the surface mining operation.

(c) No operator who is required to submit an operating plan for a surface mining operation to an entity of the federal government shall be required to submit an operating plan to the board. This provision shall apply to all lands, regardless of surface or mineral ownership, covered

by the operating plan submitted to the entity of the federal government.

(d) No operator shall commence surface mining operations on any mine panel without first having a reclamation plan approved by the state board of land commissioners.

(e) Any operator desiring to conduct exploration operations within the state of Idaho using motorized earth-moving equipment in order to locate minerals for immediate or ultimate sale in either the natural or the processed state shall notify the board by certified mail as soon after beginning exploration operations as possible and in any event within seven (7) days after beginning exploration operations. The letter shall include the following:

(1) The name and address of the operator;

(2) The location of the operation and the starting date and estimated completion date;

(3) The anticipated size of the operation, and the general method of operation.

The letter shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(f) Any operator desiring to operate a cyanidation facility within the state of Idaho shall submit to the board prior to the operation of such a facility a permanent closure plan that contains the following:

(1) The name and address of the operator;

(2) The location of the operation;

(3) The objectives, methods and procedures the operator will use to attain permanent closure;

(4) An estimate of the cost of attaining permanent closure as well as an estimate of the costs to achieve critical phases of the closure plan;

(5) Any other information specified in the rules adopted to carry out the intent and purposes of this chapter.

(g) The board may require a reasonable fee for reviewing and approving a permanent closure plan. The fee may include the reasonable cost to employ a qualified independent party, acceptable to the operator and the board, to verify the accuracy of the cost estimate required in subsection (f)(3) of this section.

(h) The board shall coordinate its review of activities in the permanent closure plan under the statutory responsibility of the department of environmental quality with that department, but that coordination shall not extend the time limit in which the board must act on a plan submitted.

(i) No operator shall commence operation of a cyanidation facility without first having a permanent closure plan approved by the board.

SECTION 8. That Section 47-1507, Idaho Code, be, and the same is hereby amended to read as follows:

47-1507. ~~RECLAMATION~~ PLAN -- APPROVAL OR REJECTION BY BOARD -- HEARING. (a) Upon determination by the board that a reclamation or permanent closure plan or any amended plan submitted by an operator meets the requirements of this ~~act~~ chapter, the board shall deliver to the operator, in writing, a notice of approval of such ~~reclamation~~ plan, and thereafter said plan shall govern and determine the nature and extent of the ~~reclamation~~ obligations of the operator for compliance with this ~~act~~ chapter, with respect to the mine panel or cyanidation facility for

which the plan was submitted.

(b) If the board determines that a reclamation or permanent closure plan or amended plan fails to fulfill the requirements of this ~~act~~ chapter, it shall deliver to the operator, in writing, a notice of rejection of the ~~reclamation~~ plan and shall set forth in said notice of rejection the reasons for such rejection, the factual findings upon which such rejection is based, the manner in which the plan fails to fulfill said requirements, and the requirements necessary to comply with this ~~act~~ chapter. Upon receipt of said notice of rejection, said operator may submit amended plans. Upon further determination by the board that the amended plan still does not fulfill the requirements of said section, it shall deliver to the operator, in writing, a notice of rejection of the amended ~~reclamation~~ plan in the same form as set out above.

(c) Weather permitting, the board shall deliver to the operator within sixty (60) days after the receipt of any reclamation plan or amended reclamation plan, or within one hundred eighty (180) days after the receipt of any permanent closure plan or amended permanent closure plan the notice of rejection or notice of approval of said plan, as the case may be, provided, however, that if the board fails to deliver a notice of approval or notice of rejection within said time period, the plan submitted shall be deemed to comply with this ~~act~~ chapter, and the operator may commence and conduct his surface mining operations on the mine panel or operate the cyanidation facility covered by such plan as if a notice of approval of said plan had been received from the board; provided, however, that if weather conditions prevent the board from inspecting the mine panel or cyanidation facility to obtain information needed to approve or reject a submitted plan, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(d) For the purpose of determining whether a proposed ~~reclamation~~ plan or amended or supplemental ~~reclamation~~ plan complies with the requirements of this ~~act~~ chapter, the board may, in its discretion, call for a public hearing. The hearing shall be held under such rules as promulgated by the board. Any interested person may appear at the hearing and give testimony. At the discretion of the board, the director may conduct the hearing and transmit a summary thereof to the board. Any hearing held shall not extend the period of time limit in which the board must act on a plan submitted.

SECTION 9. That Section 47-1508, Idaho Code, be, and the same is hereby amended to read as follows:

47-1508. AMENDED ~~RECLAMATION~~ PLAN -- SUPPLEMENTAL PLAN -- SUBMISSION. (a) In the event that a material change in circumstances arises which the operator, or the board, believes requires a change in an approved ~~reclamation~~ plan, including any amended ~~reclamation~~ plan, then the operator shall submit to the board a supplemental plan setting forth the proposed changes and the board shall likewise set forth its proposed changes and stating the reasons therefor. Upon determination by the board that a supplemental ~~reclamation~~ plan or any amended supplemental plan submitted by the operator meets the requirements of this ~~act~~ chapter, it shall deliver to the operator, in writing, a notice of approval of said supplemental plan, and thereafter said supplemental plan shall govern and determine the nature and extent of the ~~reclamation~~ obliga-

tions of the operator for compliance with respect to the mine panel or cyanidation facility for which the plan was submitted.

(b) If the board determines that a supplemental ~~reclamation~~ plan fails to fulfill the requirements of this ~~act~~ chapter, it shall deliver to the operator, in writing, a notice of rejection of the supplemental ~~reclamation~~ plan and shall set forth in said notice of rejection the manner in which said plan fails to fulfill said requirements and shall stipulate the corrective requirements necessary to comply with said sections. Upon receipt of said notice of rejection, the operator may submit amended supplemental plans. Upon further determination by the board that an amended supplemental plan does not fulfill the requirements of said sections, it shall deliver to the operator, in writing, a notice of rejection of amended supplemental plan, and shall set forth in said notice of rejection the manner in which such amended supplemental plan fails to fulfill said requirements, and shall stipulate the requirements necessary to comply with said sections.

(c) The board shall, weather permitting, deliver to the operator within sixty (60) days after the receipt of any supplemental reclamation plan or amended supplemental reclamation plan, or within one hundred eighty (180) days after the receipt of any supplemental permanent closure plan or amended supplemental permanent closure plan, the notice of rejection, setting forth in detail the reasons for such rejection and the factual findings upon which such rejection is based, or notice of approval of said plan as the case may be, provided, however, that if the board fails to deliver a notice of approval or notice of rejection within said time period, the plan submitted shall be deemed to comply with this ~~act~~ chapter and the operator may commence and conduct or continue, as the case may be, his surface mining operations or operate the cyanidation facility as if a notice of approval of said plan had been received from the board. If weather conditions prevent the board from inspecting the mine panel or cyanidation facility to obtain information needed to approve or reject a submitted plan, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(d) If an operator determines that unforeseen events or unexpected conditions require immediate changes in or additions to an approved reclamation or permanent closure plan, the operator may continue ~~surface mining~~ operations in accordance with the procedures dictated by the changed conditions, pending submission and approval of a supplemental plan, even though such operations do not comply with the approved plan, provided, however, that nothing herein stated shall be construed to excuse the operator from complying with the reclamation requirements of sections 47-1509 and 47-1510, Idaho Code, of this ~~act~~ chapter or from the applicable closure requirements of a permit issued under section 39-118A, Idaho Code. Notice of such unforeseen events or unexpected conditions shall be given to the board within ten (10) days after discovery thereof, and a proposed supplemental plan shall be submitted within thirty (30) days after discovery thereof.

SECTION 10. That Section 47-1512, Idaho Code, be, and the same is hereby amended to read as follows:

47-1512. PERFORMANCE BOND -- REQUISITES. (a) Prior to conducting any surface mining operations on a mine panel covered by an approved

reclamation plan or operating a cyanidation facility covered by an approved permanent closure plan, an operator shall submit to the board a bond meeting the requirements of this section.

(1) The penalty of the initial reclamation bond filed prior to conducting any surface mining operations on a mine panel shall be in an amount determined by the board to be the estimated reasonable costs of reclamation required in this chapter, in the event of failure to reclaim by an operator, of affected lands proposed to be mined during the next calendar year plus ten percent (10%) of such costs as to the acreage of affected land designated by the operator pursuant to section 47-1506(a)(1)(vi), Idaho Code, and subsection (b) of this section.

(2) The penalty of the initial permanent closure bond filed prior to operating a cyanidation facility shall be in an amount determined by the board to be the estimated reasonable costs to complete the activities specified in the permanent closure plan required in this chapter, in the event of the failure of an operator to complete those activities, plus ten percent (10%) of such costs. In setting the bond amount, the board shall avoid duplication with bonds and sureties deposited with other governmental agencies.

(3) The determination of the bond amount shall constitute a final decision subject to judicial review as set forth in subsection (a) of section 47-1514, Idaho Code. In lieu of any bond required hereunder, the operator may deposit cash and governmental securities with the board, in an amount equal to that of the required bond, on the conditions as prescribed in this section.

(b) Prior to the time that lands designated to become affected lands on a mine panel, in addition to those designated pursuant to section 47-1506(a)(1)(vi), Idaho Code, become affected land, the operator shall submit to the board a bond meeting the requirements of section 47-1512(c), Idaho Code, and the penalty of such bond shall be in the amount necessary to insure the performance of the duties of the operator under this ~~act~~ chapter as to such affected lands actually proposed to be mined within the next calendar year. If additional acreage is subsequently proposed to be mined by an operator, the penalty of such bond shall be in an amount determined by the board to be the estimated reasonable costs of reclamation required by this chapter, in the event of failure to reclaim by an operator, of affected lands proposed to be mined during the next calendar year plus ten percent (10%) of such costs.

(c) Except as provided in this subsection, no bond for reclamation submitted pursuant to this ~~act~~ chapter shall exceed two thousand five hundred dollars ($2,500) for any given acre of such affected land. The board may require a bond in excess of two thousand five hundred dollars ($2,500) for any given acre of affected land only when the following conditions have been met:

(1) The board has determined that such bond is necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho Code.

(2) The board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary.

(3) The board has conducted a hearing where the operator is allowed to give testimony to the board concerning the amount of the proposed bond. The hearing shall be held under such rules as promulgated by

the board. This requirement for a hearing may be waived, in writing, by the operator. Any hearing held shall, ~~not~~ at the discretion of the director, extend the ~~period of~~ time, ~~limit~~ up to thirty (30) days, in which the board must act on a plan submitted.

(d) Except as provided in this subsection, no bond submitted for permanent closure of a cyanidation facility pursuant to this chapter shall exceed five million dollars ($5,000,000). The board may require a bond in excess of five million dollars ($5,000,000) for a cyanidation facility only when the following conditions have been met:

(1) The board has determined that such bond is necessary to meet the requirements of this chapter.

(2) The board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary.

(3) The board has conducted a hearing where the operator is allowed to give testimony to the board concerning the amount of the proposed bond. The hearing shall be held under such rules as promulgated by the board. This requirement for a hearing may be waived, in writing, by the operator. Any hearing held shall, at the discretion of the director, extend the time, up to sixty (60) days, in which the board must act on the permanent closure plan submitted.

(e) Any bond required under this ~~act~~ chapter to be filed and maintained with the board shall be in such form as the board prescribes, payable to the state of Idaho, conditioned that the operator shall faithfully perform all requirements of this ~~act~~ chapter and comply with all rules of the board in effect as of the date of approval of the ~~reclamation~~ plan ~~approved for said lands made~~ in accordance with the provisions of this ~~act~~ chapter. An operator may at any time file a single bond in lieu of separate bonds filed or to be filed pursuant to this ~~act~~ chapter, provided that the penalty of such single bond shall be equal to the total of the penalties of the separate bonds being combined into a single bond. Further, any bond provided to ~~an entity of the federal government~~ another governmental agency that also meets the requirements in this section shall be deemed to be sufficient surety for the purposes of this ~~act~~ chapter.

(~~e~~f) A bond filed as above prescribed shall not be canceled by the surety, except after not less than ninety (90) days' notice to the board. Upon failure of the operator to make substitution of surety prior to the effective date of cancellation of the bond or within thirty (30) days following notice of cancellation by the board, whichever is later, the board shall have the right to issue a cease and desist order and seek injunctive relief to stop the operator from conducting operations ~~upon the lands~~ covered by such bond until such substitution has been made.

(~~f~~g) If the license to do business in this state of any surety, upon a bond filed with the board pursuant to this ~~act~~ chapter, shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the board, shall substitute for such surety a good and sufficient corporate surety licensed to do business in this state or other surety acceptable to the board. Upon failure of the operator to make substitution of surety, the board shall have the right to issue a cease and desist order and seek injunctive relief to stop the operator from conducting operations ~~upon the lands~~ covered by such bond until such substitution has been made.

(~~g~~h) When an operator shall have completed all reclamation requirements under the provisions of this ~~act~~ chapter as to any affected land, he shall notify the board. Within thirty (30) days after the receipt of such notice, the board shall notify the operator as to whether or not the reclamation performed meets the requirements of the reclamation plan pertaining to the land in question. Upon the determination by the board that the requirements of the reclamation plan in question have been met as to said lands, the amount of bond in effect as to such lands shall be reduced by an amount designated by the board to reflect the reclamation done.

(i) When an operator shall have completed an activity specified in an approved permanent closure plan he may notify the board. Within thirty (30) days after the receipt of such notice, the board shall notify the operator as to whether or not the activity performed meets the requirements of the permanent closure plan. In determining whether or not an activity under the statutory responsibility of the department of environmental quality meets the requirements of the permanent closure plan, the board shall consult with that department. Upon the determination by the board that the activity meets the requirements of the permanent closure plan, the bond for permanent closure shall be reduced by an amount designated by the board to reflect the activity completed.

(~~h~~j) An operator may withdraw any land previously designated as affected land within a mine panel, provided that it is not already affected land, and in such event, he shall notify the board and the amount of the bond in effect as to the lands in that mine panel shall be reduced by an amount designated by the board as the amount which would have been necessary to reclaim such lands.

SECTION 11. That Section 47-1513, Idaho Code, be, and the same is hereby amended to read as follows:

47-1513. OPERATOR'S FAILURE TO COMPLY -- FORFEITURE OF BOND -- PENALTIES -- RECLAMATION FUND. (a) Whenever the board determines that an operator has not complied with the provisions of this ~~act~~ chapter, the board may notify the operator of such noncompliance, and may by private conference, conciliation, and persuasion, endeavor to remedy such violation. In the event of a violation referred to in subsections (d) and (e) of this section, the board may proceed without an administrative action, hearing or decision to exercise the remedies set forth in said subsections. Additionally, no administrative action, hearing or decision shall be required from the Idaho board of environmental quality prior to the board proceeding under subsections (d) and (e) of this section. In the event of the failure of any conference, conciliation and persuasion to remedy any alleged violation, the board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which shall specify the provisions of this ~~act~~ chapter which the operator allegedly is violating, and a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this ~~act~~ chapter. Such complaint may be served by certified mail, and return receipt signed by the operator, an officer of a corporate operator, or the designated agent of the operator shall constitute service. The operator shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are dis-

puted. If the operator fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the operator, and the board may proceed to cancel the reclamation or permanent closure plan and forfeit the bond in the amount necessary to reclaim affected lands or complete the permanent closure activities. Upon request for a hearing by an operator, the board shall schedule a hearing before a hearing officer appointed by the board at a time not less than thirty (30) days after the date the operator requests a hearing. The board shall issue subpoenas at the request of the director of the department of lands and at the request of the charged operator, and the matter shall be otherwise handled and conducted in accordance with chapter 52, title 67, Idaho Code. The hearing officer shall, pursuant to said hearing, enter an order in accordance with chapter 52, title 67, Idaho Code, which, if adverse to the operator, shall designate a time period within which corrective action should be taken. The time period designated shall be long enough to allow the operator, in the exercise of reasonable diligence, to rectify any failure to comply designated in said order. In the event that the operator takes such action as is necessary to comply with the order within the time period designated in said order, no further action shall be taken by the board to compel performance under the act.

(b) Upon request of the board, the attorney general shall institute proceedings to have the bond of an operator forfeited for the violation by the operator of an order entered pursuant to this section.

(c) The forfeiture of such bond shall fully satisfy all obligations of the operator to reclaim the affected land or complete permanent closure activities under the provisions of this ~~act~~ chapter. If the violation involves an operator that has not furnished a bond required by this ~~act~~ chapter, or an operator that is not required to furnish a bond pursuant to this ~~act~~ chapter, or an operator who violates this ~~act~~ chapter by performing an act not included in the original approved reclamation plan or the original approved permanent closure plan, and such departure from the plan is not subsequently approved, such operator shall be subject to a civil penalty for his failure to comply with such order in the amount determined by the board to be the anticipated cost of reasonable reclamation of affected lands or permanent closure of the cyanidation facility. Nothing in this subsection shall relieve the operator of any obligation, including the obligation to complete closure requirements, pursuant to a permit issued by the department of environmental quality under section 39-118A, Idaho Code, or limit that department's authority to require compliance with such permit requirements.

(d) Notwithstanding any other provisions of this ~~act~~ chapter, the board may commence an action without bond or undertaking, in the name of the state of Idaho to enjoin any operator who is conducting operations without an approved ~~reclamation~~ plan required by section 47-1506, Idaho Code, or without the bond required by this ~~act~~ chapter. The court, or a judge thereof at chambers, if satisfied from the complaint or by affidavits that such acts have been or are being committed, shall issue a temporary restraining order without notice or bond, enjoining the defendant, his agents, and employees from conducting such operations without said ~~reclamation~~ plan or bond. Upon a showing of good cause therefor, the temporary restraining order may require the defendant to perform reclamation of the mined area in conformity with sections 47-1509 and 47-1510, Idaho Code, or to complete permanent closure activities, pend-

ing final disposition of the action. The action shall then proceed as in other cases for injunctions. If it is established at trial that the defendant has operated without an approved ~~reclamation~~ plan or bond, the court shall enter, in addition to any other order, a decree enjoining the defendant, his agents and employees from thereafter conducting such activities or similar actions in violation of this ~~act~~ chapter. The board may, in conjunction with its injunctive procedures, proceed in the same or in a separate action to recover from an operator who is conducting surface mining or exploration operations or operating a cyanidation facility without the required plan or bond, the cost of performing the reclamation activities required by sections 47-1509 and 47-1510, Idaho Code, or the cost of permanent closure activities from any such operator who has not filed a bond to cover the cost of the ~~reclamation~~ required activities.

(e) Notwithstanding any other provision of this ~~act~~ chapter, the board may, without bond or undertaking and without any administrative action, hearing or decision, commence an action in the name of the state of Idaho (1) to enjoin a permitted surface mining operation or cyanidation facility when, under an existing approved plan, an operator violates the terms of the plan and where immediate and irreparable injury, loss or damage may result to the state and (2) to recover the penalties and to collect civil damages provided for by law.

(f) In addition to the procedures set forth in subsections (a), (d) and (e) of this section, and in addition to the civil penalty provided in subsection (c) of this section, any operator who violates any of the provisions of this ~~act~~ chapter or rules adopted pursuant thereto, or who fails to perform the duties imposed by these provisions, or who violates any determination or order promulgated pursuant to the provisions of this ~~act~~ chapter, shall be liable to a civil penalty of not less than five hundred dollars ($500) nor more than two thousand five hundred dollars ($2,500) for each day during which such violation continues, and in addition may be enjoined from continuing such violation. Such penalties shall be recoverable in an action brought in the name of the state of Idaho by the attorney general in the district court for the county where the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides. All sums recovered shall be placed in the state treasury and credited to the surface mining reclamation fund, which is hereby created, to be used to reclaim affected lands and to administer this ~~act~~ chapter.

(g) Any person who ~~wilfully~~ willfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or ~~wilfully~~ willfully fails, neglects, or refuses to comply with any of the provisions of this ~~act~~ chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) or imprisonment not to exceed one (1) year or both.

(h) Reclamation plans approved by the board as of January 1, 1997, shall be deemed to be in full compliance with the requirements of this ~~act~~ chapter. However, the board may periodically review, and revise if necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho Code, the amount, terms and conditions of any bond when there is a material change in the reclamation plan or a material change in the estimated reasonable costs of reclamation determined pursuant to section 47-1512, Idaho Code. Any revision to the amount, terms

and conditions of a bond due to a material change in the reclamation plan shall apply only to the affected lands covered by the material change in the reclamation plan.

(i) A cyanidation facility with an existing permit approved by the department of environmental quality under section 39-118A, Idaho Code, as of July 1, 2005, shall be deemed to be in full compliance with the requirements of this chapter. If there is a material modification or a material expansion of a cyanidation facility after July 1, 2005, the provisions of this chapter shall apply to the modification or expansion. Provided however, that reclamation or closure related activities at a facility with an existing cyanidation permit that did not actively add cyanide after January 1, 2005, shall not be considered to be material modifications or a material expansion of the facility.

(j) For a permanent closure plan approved by the board after July 1, 2005, the board shall periodically review, and revise if necessary to meet the requirements of this chapter, the amount, terms and conditions of any bond when there is a material change in the permanent closure plan or a material change in the estimated reasonable costs of permanent closure determined pursuant to section 47-1512, Idaho Code. The board may require a fee sufficient to employ a qualified independent party, acceptable to the operator and the board, to verify any revised estimate of the reasonable costs of permanent closure.

SECTION 12. That Section 47-1514, Idaho Code, be, and the same is hereby amended to read as follows:

47-1514. APPEAL FROM FINAL ORDER -- PROCEDURE. (a) Any operator dissatisfied with any final order of the board made pursuant to this ~~act~~ chapter may, within sixty (60) days after notice of such order, obtain judicial review thereof by appealing to the district court of the state of Idaho for the county wherein the operator resides or has a place of business, or to the district court for the county in which the cyanidation facility or the land or any portions thereof affected by the order is located. Such appeal shall be perfected by filing with the clerk of such court, in duplicate, a notice of appeal, together with a complaint against the board, in duplicate, which shall recite the prior proceedings before the board or hearing officer, and shall state the grounds upon which the petitioner claims he is entitled to relief. A copy of the summons and complaint shall be delivered to the board or such person or persons as the board may designate to receive service of process. The clerk of the court shall immediately forward a copy of the notice of appeal and complaint to the board, which shall forthwith prepare, certify and file in said court, a true copy of any decision, findings of fact, conclusions or order, together with any pleadings upon which the case was heard and submitted to the board or hearing officer, and shall, upon order of the court, provide transcripts of any record, including all exhibits and testimony of any proceedings in said matter before the board or any of its subordinates. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits, including, but not limited to, the rights of appeal to the ~~S~~supreme ~~C~~court of the state of Idaho.

(b) When the board finds that justice so requires, it may postpone the effective date of a final order made, pending judicial review. The reviewing court, including the court to which a case may be taken on

appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings.

(c) Notwithstanding any other provision of this ~~act~~ chapter concerning administrative or judicial proceedings, whenever the board determines that an operator has not complied with the provisions of this ~~act~~ chapter, the board may file a civil action in the district court for the county wherein the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides. The board may request the court to issue an appropriate order to remedy the violation. The right of appeal to the ~~S~~supreme ~~C~~court of the state of Idaho shall be available.

SECTION 13. That Section 47-1517, Idaho Code, be, and the same is hereby amended to read as follows:

47-1517. CONDUCT OF ~~EXPLORATIONS~~ ACTIVITIES. (a) An operator shall conduct all exploration and mining operations in accordance with all applicable statutes and regulations pertaining to water use and mining safety applicable to exploration and surface mining operations.

(b) An operator desiring to operate a cyanidation facility within the state of Idaho shall conduct all related activities in accordance with all applicable statutes and rules related to cyanidation including, but not limited to, section 39-118A, Idaho Code.

SECTION 14. That Section 47-1518, Idaho Code, be, and the same is hereby amended to read as follows:

47-1518. EFFECTIVE DATE -- APPLICATION OF ~~ACT~~ CHAPTER. ~~This act~~ The reclamation provisions of this chapter shall be in full force and effect on and after May 31, 1971. An operator shall not be required to perform the reclamation activities referred to in this ~~act~~ chapter as to any surface mining operations performed prior to May 31, 1972, and further, shall not be required to perform such reclamation activities as to any pit or overburden pile as it exists prior to May 31, 1972. The cyanidation provisions of this chapter shall be in full force and effect on and after July 1, 2005. The board shall promulgate temporary rules by August 1, 2005, to implement the provisions of this act.

SECTION 15. That Section 42-202B, Idaho Code, be, and the same is hereby amended to read as follows:

42-202B. DEFINITIONS. Whenever used in this title, the term:

(1) "Consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use is not an element of a water right. Consumptive use does not include any water that falls as precipitation directly on the place of use. Precipitation shall not be considered to reduce the consumptive use of a water right. "Authorized consumptive use" means the maximum consumptive use that may be made of a water right. If the use of a water right is for irrigation, for example, the authorized consumptive use reflects irrigation of the most consumptive

vegetation that may be grown at the place of use. Changes in consumptive use do not require a transfer pursuant to section 42-222, Idaho Code.

(2) "Digital boundary" means the boundary encompassing and defining an area consisting of or incorporating the place of use or permissible place of use for a water right prepared and maintained by the department of water resources using a geographic information system in conformance with the national standard for spatial data accuracy or succeeding standard.

(3) "Local public interest" is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

(4) "Municipality" means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution.

(5) "Municipal provider" means:

(a) A municipality that provides water for municipal purposes to its residents and other users within its service area;

(b) Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or

(c) A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(10~~2~~), Idaho Code.

(6) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

(7) "Planning horizon" refers to the length of time that the department determines is reasonable for a municipal provider to hold water rights to meet reasonably anticipated future needs. The length of the planning horizon may vary according to the needs of the particular municipal provider.

(8) "Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans.

(9) "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the

corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

Approved March 28, 2005.

CHAPTER 168
(S.B. No. 1182)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL YEAR 2006; 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 Public Utilities Commission the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Public Utilities Commission Fund	$3,224,200	$1,244,400	$51,900	$4,520,500
Federal Grant Fund	46,600	21,300		67,900
TOTAL	$3,270,800	$1,265,700	$51,900	$4,588,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Public Utilities Commission is authorized no more than forty-nine (49) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 28, 2005.

CHAPTER 169
(S.B. No. 1184)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE COMMISSION ON THE ARTS FOR FISCAL YEAR 2006; 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 the Arts the following amounts from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
COMMISSION ON THE ARTS:				
FROM:				
General Fund	$315,900	$150,200	$372,900	$ 839,000
Miscellaneous Revenue Fund		85,200	16,300	101,500
Federal Grant Fund	261,900	105,200	241,400	608,500
TOTAL	$577,800	$340,600	$630,600	$1,549,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on the Arts is authorized no more than eleven (11) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 28, 2005.

CHAPTER 170
(S.B. No. 1193)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 2006; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Lands 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
I. SUPPORT SERVICES:						
FROM:						
General Fund	$ 437,200	$ 241,000				$ 678,200
Department of Lands Fund	425,800	309,200	$ 27,700			762,700
Indirect Cost Recovery Fund	56,600	128,200				184,800
Endowment Administrative Fund	1,503,300	906,000	110,700			2,520,000
TOTAL	$ 2,422,900	$1,584,400	$138,400			$ 4,145,700
II. FOREST RESOURCES MANAGEMENT:						
FROM:						
General Fund	$ 1,041,000	$ 66,600				$ 1,107,600
Department of Lands Fund	2,009,400	1,546,200	$ 3,000			3,558,600
Indirect Cost Recovery Fund	80,000	320,000				400,000
Endowment Administrative Fund	6,575,400	2,776,600	232,000	$ 483,300		10,067,300
Community Forestry Fund				79,700		79,700
Federal Grant Fund	611,200	944,600		1,306,300		2,862,100
TOTAL	$10,317,000	$5,654,000	$235,000	$1,869,300		$18,075,300
III. LAND, RANGE, AND MINERAL RESOURCE MANAGEMENT:						
FROM:						
General Fund	$ 706,400	$ 118,400				$ 824,800
Department of Lands Fund	18,100	133,700				151,800
Abandoned Mine Reclamation Fund		251,500				251,500
Reclamation Bond Fund		100,000				100,000
Land and Building Rental Fund	1,000	62,800				63,800
Endowment Administrative Fund	1,928,000	1,423,100	$181,200			3,532,300
TOTAL	$ 2,653,500	$2,089,500	$181,200			$ 4,924,200
IV. FOREST AND RANGE FIRE PROTECTION:						
FROM:						
General Fund					$ 2,085,600	$ 2,085,600
Department of Lands Fund					4,563,000	4,563,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
Fire Suppression Deficiency Fund					126,000	126,000
Federal Grant Fund					3,490,100	3,490,100
TOTAL					$10,264,700	$10,264,700
V. SCALING PRACTICES:						
FROM:						
Department of Lands Fund	$ 180,300	$ 45,700				$ 226,000
GRAND TOTAL	$15,573,700	$9,373,600	$554,600	$1,869,300	$10,264,700	$37,635,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Lands is authorized no more than two hundred sixty-three and sixty-one hundredths (263.61) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 28, 2005.

CHAPTER 171
(S.B. No. 1194)

AN ACT

APPROPRIATING MONEYS TO THE BOARD OF LAND COMMISSIONERS FOR THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 2006; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; PROVIDING A CONTINUOUS APPROPRIATION FOR CERTAIN COSTS; EXPRESSING LEGISLATIVE INTENT REGARDING THE TRANSFER OF MONEYS FROM THE EARNINGS RESERVE FUNDS TO THE INCOME FUNDS; DIRECTING THE STATE CONTROLLER TO TRANSFER GENERAL FUND MONEYS TO THE AGRICULTURAL COLLEGE EARNINGS RESERVE FUND; AND DIRECTING THE STATE CONTROLLER TO TRANSFER GENERAL FUND MONEYS TO THE CHARITABLE INSTITUTIONS EARNINGS RESERVE FUND.

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

SECTION 1. There is hereby appropriated to the State Board of Land Commissioners for the Endowment Fund Investment Board the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
ENDOWMENT FUND INVESTMENT BOARD:				
FROM:				
Miscellaneous Revenue Fund	$109,500	$ 53,200	$2,400	$165,100
Endowment Administrative Fund	232,500	153,400	5,100	391,000
TOTAL	$342,000	$206,600	$7,500	$556,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Endowment Fund Investment Board is authorized no more than four (4) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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. The Endowment Fund Investment Board is hereby granted continuous appropriation authority for moneys in the Endowment Administrative Fund for consulting fees, bank custodial fees and portfolio-related external costs for the period July 1, 2005, through June 30, 2006.

SECTION 4. It is legislative intent that for fiscal year 2006, the Endowment Fund Investment Board transfer $40,342,900 as follows: $23,087,100 from the Public School Earnings Reserve Fund to the Public School Income Fund; $3,205,600 from the Normal School Earnings Reserve Fund to the Normal School Income Fund; $2,444,800 from the Penitentiary Earnings Reserve Fund to the Penitentiary Income Fund; $2,848,500 from the Scientific School Earnings Reserve Fund to the Scientific School Income Fund; $5,291,400 from the Mental Hospital Earnings Reserve Fund to the Mental Hospital Income Fund; and $3,465,500 from the University Earnings Reserve Fund to the University Income Fund.

SECTION 5. Notwithstanding the provisions of Section 33-2913A(1), Idaho Code, the State Controller shall transfer $2,130,000 from the General Fund to the Agricultural College Earnings Reserve Fund on July 1, 2005.

SECTION 6. Notwithstanding the provisions of Section 66-1104(1), Idaho Code, the State Controller shall transfer $2,470,000 from the General Fund to the Charitable Institutions Earnings Reserve Fund on July 1, 2005.

Approved March 28, 2005.

CHAPTER 172
(S.B. No. 1195)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 2006; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE WATER RESOURCES ADJUDICATION FUND; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO A COEUR D'ALENE BASIN ADJUDICATION FEASIBILITY ANALYSIS.

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 expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT SERVICES:					
FROM:					
General Fund	$ 893,300	$ 537,200			$ 1,430,500
Indirect Cost Recovery Fund	281,200	131,700			412,900
Water Administration Fund	41,000	21,400			62,400
TOTAL	$ 1,215,500	$ 690,300			$ 1,905,800
II. PLANNING AND TECHNICAL SERVICES:					
FROM:					
General Fund	$ 1,930,800	$ 635,100		$ 894,800	$ 3,460,700
Indirect Cost Recovery Fund	63,300	12,800			76,100
Miscellaneous Revenue Fund		373,300			373,300
Federal Grant Fund	483,300	2,043,000	$ 5,000		2,531,300
TOTAL	$ 2,477,400	$3,064,200	$ 5,000	$ 894,800	$ 6,441,400
III. ENERGY RESOURCES:					
FROM:					
General Fund	$ 34,600	$ 2,900			$ 37,500
Indirect Cost Recovery Fund	48,200	162,700			210,900
Miscellaneous Revenue Fund	130,300	593,100			723,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Petroleum Price Violation Fund	564,500	1,526,100			2,090,600
Federal Grant Fund	529,600	562,900			1,092,500
TOTAL	$ 1,307,200	$2,847,700			$ 4,154,900
IV. SNAKE RIVER BASIN ADJUDICATION:					
FROM:					
General Fund	$ 1,907,400	$ 528,400			$ 2,435,800
Water Resources Adjudication Fund		503,500		$ 200,000	703,500
TOTAL	$ 1,907,400	$1,031,900		$ 200,000	$ 3,139,300
V. WATER MANAGEMENT:					
FROM:					
General Fund	$ 2,913,700	$ 646,500	$ 9,100		$ 3,569,300
Indirect Cost Recovery Fund	49,000	4,600			53,600
Water Administration Fund	658,500	264,400			922,900
Miscellaneous Revenue Fund	635,600	181,100			816,700
Federal Grant Fund	244,900	189,600			434,500
TOTAL	$ 4,501,700	$1,286,200	$ 9,100		$ 5,797,000
GRAND TOTAL	$11,409,200	$8,920,300	$14,100	$1,094,800	$21,438,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Water Resources is authorized no more than one hundred seventy-nine (179) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 the provisions of Section 39-3630, Idaho Code, the State Controller is hereby directed to transfer $456,400 from the Water Pollution Control Fund to the Water Resources Adjudication Fund for the period July 1, 2005, through June 30, 2006. The State Controller shall coordinate cash transfers with the Department of Environmental Quality and the Department of Water Resources to minimize potential cash flow problems.

SECTION 4. It is legislative intent that the Department of Water Resources work with the Rathdrum Ground Water Management Plan Advisory Committee and local elected officials to determine the feasibility, cost and potential funding mechanisms to begin adjudication of water rights

in the Coeur d'Alene Basin. The Department is requested to include the preferred alternative in its Fiscal Year 2007 budget request along with any legislation necessary to undertake the adjudication.

Approved March 28, 2005.

CHAPTER 173
(H.B. No. 18)

AN ACT

RELATING TO STUDENT EDUCATION INCENTIVE LOAN FORGIVENESS CONTRACTS; AMENDING SECTION 33-3722, IDAHO CODE, TO REVISE ELIGIBILITY FOR APPLICATION TO THE STUDENT EDUCATION INCENTIVE LOAN FORGIVENESS CONTRACT, TO AUTHORIZE AWARD OF UNUSED CONTRACTS AND TO DESIGNATE EASTERN IDAHO TECHNICAL COLLEGE AS A PARTICIPATING INSTITUTION AND TO MAKE A TECHNICAL CHANGE.

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

SECTION 1. That Section 33-3722, Idaho Code, be, and the same is hereby amended to read as follows:

33-3722. STUDENT EDUCATION INCENTIVE LOAN FORGIVENESS CONTRACT. (1) It is hereby declared that it is in the public interest to encourage and assist individuals who wish to pursue a teaching career or professional nursing career within this state to enroll in an Idaho postsecondary institution and to work in Idaho.

(2) Any Idaho student pursuing a teaching career may sign a loan forgiveness contract and promissory note for payment of all full-time undergraduate matriculation, facility and activity fees at any Idaho institution of higher learning who:

(a) ~~Has--graduated-from-a-secondary-school-in-Idaho-within-the-previous-two-(2)-years;-and~~

~~(b)--Is-academically-situated-within-the-upper-fifteen-percent-(15%)-of-his-graduating-class-based-on-a-ranking-of-all-students--in--that-class--according--to--grade-point-average-or-has-earned-a-cumulative-grade-point-average-of-3.0-or-higher;-and~~

~~(c)~~ Will maintain full-time student status and shall maintain a grade point average of 3.0 or better in the first two (2) semesters and for the remaining semesters; and

(~~d~~b) Will pursue a program of study which will qualify the student to receive an Idaho teaching certificate upon completion of his studies; and

(~~e~~c) Will pursue a teaching career within the state of Idaho for a minimum of two (2) years, which time requirement will commence upon obtaining a teaching position.

(3) Any Idaho student pursuing a licensed nursing career may sign a loan forgiveness contract and promissory note for payment of all undergraduate matriculation, facility and activity fees at any Idaho institution of higher learning who:

(a) Will maintain full-time student status and shall maintain a grade point average of 3.0 or better in the first two (2) semesters and for the remaining semesters; and

(b) Will pursue a program of study which will qualify the student to write the licensure examination approved by the board of nursing for registered nurse upon completion of his studies; and

(c) Will pursue a licensed professional nursing career within the state of Idaho for a minimum of two (2) years, which time requirement will commence within one (1) year after a professional nursing license is obtained.

(4) Availability of student education incentive loan forgiveness contracts for potential teachers will be limited to sixteen (16) each year, with three (3) to be let by the University of Idaho, three (3) by Boise State University, three (3) by Idaho State University, three (3) by Lewis Clark State College, two (2) by North Idaho College and two (2) by the College of Southern Idaho; for potential registered nurses, contracts will be limited to thirteen (13) each year, with three (3) to be let by Boise State University, three (3) by Idaho State University, three (3) by Lewis Clark State College, two (2) by North Idaho College and two (2) by the College of Southern Idaho.

(a) Preference in selecting potential registered nurses will be given to applicants who indicate willingness to practice in rural Idaho.

(b) The length of each contract and promissory note shall not exceed a maximum of eight (8) years, and the beginning date and expiration date shall be specified in each contract.

(5) The state board of education may reassign unused contracts to other participating institutions. For purposes of reassignment of unused contracts, Eastern Idaho Technical College may be considered as a participating institution and may be awarded student education incentive loan forgiveness contracts for potential registered nurses.

(6) The student loan office of each institution of higher learning is directed to administer the loan forgiveness program provisions of this section, including the supplying of all necessary forms and the verifying, before each registration and at the expiration of the contract, of each person's compliance with the terms of the contract and collect and account for any necessary repayment of funds. Upon successful completion of the terms of the contract, the promissory note shall be forgiven. The state board of education shall annually determine the interest rate for new promissory notes. Loan repayments shall be allocated to support new student education incentive loan forgiveness contracts.

(6~~7~~) Any violation of the terms of the contract shall obligate the person to repay all fees which the person as a student was allowed to waive, as determined by the affected institution.

(7~~8~~) Each affected institution shall in its preparation of future budgets include therein costs resultant from fee loss for reimbursement from appropriations of state funds.

Approved March 28, 2005.

CHAPTER 174
(H.B. No. 40)

AN ACT

RELATING TO AERONAUTICS AND DEFINITIONS; AMENDING SECTION 21-101, IDAHO CODE, TO EXPAND THE DEFINITION OF "AIRPORT," TO REDEFINE "AIRPORT HAZARD" AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 21-106, IDAHO CODE, TO CHANGE TERMINOLOGY OF AIRPORT HAZARDS TO AVIATION HAZARDS AND OBSTRUCTION TO HAZARD AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 21-501, IDAHO CODE, TO REDEFINE "AIRPORT" AND "AIRPORT HAZARD," TO CHANGE TERMINOLOGY OF AIRPORT HAZARD AREA TO AVIATION HAZARD AREA AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 21-502, IDAHO CODE, TO CHANGE TERMINOLOGY OF AIRPORT HAZARDS TO AVIATION HAZARDS; AMENDING SECTION 21-503, IDAHO CODE, TO CHANGE TERMINOLOGY OF AIRPORT HAZARDS TO AVIATION HAZARDS AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 21-504, IDAHO CODE, TO CHANGE TERMINOLOGY OF AIRPORT HAZARDS TO AVIATION HAZARDS; AMENDING SECTIONS 21-505, 21-505A AND 21-506, IDAHO CODE, TO CHANGE TERMINOLOGY OF AIRPORT HAZARDS TO AVIATION HAZARDS AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 21-515, IDAHO CODE, TO CHANGE TERMINOLOGY OF OBSTRUCTIONS TO HAZARDS AND TO REDEFINE "STRUCTURE"; AMENDING SECTION 21-516, IDAHO CODE, TO CHANGE TERMINOLOGY OF OBSTRUCTIONS TO HAZARDS; AMENDING SECTION 21-517, IDAHO CODE, TO CHANGE TERMINOLOGY OF OBSTRUCTIONS TO HAZARDS AND TO MAKE TECHNICAL CHANGES; AND AMENDING SECTION 21-701, IDAHO CODE, TO DEFINE "AIRPORT," TO DELETE THE DEFINITION OF "LANDING AREA" AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. That Section 21-101, Idaho Code, be, and the same is hereby amended to read as follows:

21-101. DEFINITIONS. As used in this ~~act~~ chapter, unless the context otherwise requires:

(a) "Aeronautics" means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(b) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(c) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. The term "airport" shall include such other common terms as aviation field, airfield, intermediate landing field, landing field, landing area, airstrip and landing strip. For the purposes of this chapter, the term "airport" refers to a publicly owned and managed facility that is open for public use without operational restrictions on its use.

(d) "Department" means the Idaho transportation department.

(e) "Director" means the director of the Idaho transportation department.

(f) "State" or "this state" means the state of Idaho.

(g) "Air navigation facility" means any facility, --other than one owned or operated by the United States, --used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe ~~taking-off~~ takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(h) "Operation of aircraft" or "operate aircraft" means the navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(i) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances, and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances, to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

(j) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics; but excludes any instructor in a public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, only in the performance of his duties at such school, university or institution.

(k) "Air school" means: (1) any aeronautics instructor who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics; and (2) any person who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward; but excludes any public school, or university, or institution of higher learning duly accredited and approved for carrying on collegiate work.

(l) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(m) "Municipality" means any county, city, district or other political subdivision or public corporation, of this state. "Municipal" means pertaining to a municipality as herein defined.

(n) "~~Airport~~Aviation hazard" means any new or existing structure, object of natural growth, ~~or~~ use of land, or modification thereto, which ~~obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off~~ endangers the lives and property of users of an airport, or of occupants of land in its vicinity, and that reduces the size of the area available for landing, taking off and maneuvering of aircraft, or extends up into the airspace between airports to cause disastrous and needless loss of life and property.

(o) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the board as a route suitable for air navigation.

(p) "Board" means the Idaho transportation board.

(q) "Public transportation" means rail, mass transit, and any other public transportation activities in which the state may become involved.

SECTION 2. That Section 21-106, Idaho Code, be, and the same is hereby amended to read as follows:

21-106. STATE AIRPORTS. (a) Establishment, Operation, Maintenance. The department is authorized on behalf of and in the name of the state, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities, either within or without the state. For such purposes the department may, by purchase, gift, devise, lease, condemnation or otherwise, acquire property, real or personal, or any interest therein including easements in ~~airport~~ aviation hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, ~~obstruction~~hazard-marking or ~~obstruction~~hazard-lighting of ~~airport~~ aviation hazards, or to prevent the establishment of ~~airport~~ aviation hazards. In like manner the department may acquire existing airports and air navigation facilities, provided however it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of such municipality. The department may by sale, lease, or otherwise, dispose of any such property, airport, air navigation facility, or portion thereof or interest therein. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposals to any municipality or state government or the United States for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the department may deem in the best interest of the state.

(b) Airport Zoning. Nothing contained in this ~~act~~ chapter shall be construed to limit any right, power or authority of the state or a municipality to regulate ~~airport~~ aviation hazards by zoning.

(c) Joint Operations. The department may exercise any powers granted by this section jointly with any municipalities or agencies of the state government, with other states or their municipalities, or with the United States.

(d) Condemnation. In the condemnation of property authorized by this section, the department shall proceed in the name of the state in

the manner provided by chapter 7, ~~of~~ title 7, Idaho Code. For the purpose of making surveys and examinations, relative to any condemnation proceedings, it shall be lawful to enter upon any land, doing no unnecessary damage.

(e) Federal Aid. The department is authorized to accept, receive, receipt for, disburse and expend federal moneys, and other moneys public or private, made available to accomplish, in whole or in part, any of the purposes of this section. All federal moneys accepted under this section shall be accepted and expended by the department upon such terms and conditions as are prescribed by the United States. In accepting federal moneys under this section, the department shall have the same authority to enter into contracts on behalf of the state as is granted to the department under section 21-105(c), Idaho Code, with respect to federal moneys accepted on behalf of municipalities. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purpose of which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available.

SECTION 3. That Section 21-501, Idaho Code, be, and the same is hereby amended to read as follows:

21-501. DEFINITIONS. Definitions as used in this ~~act~~ chapter, unless the context otherwise requires:

(1) "Airport" means any area of land or water ~~designed--and--set aside--for--the--landing--and-taking-off-of-aircraft-and-utilized-in-the interest-of-the-public-for-such-purposes~~ which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. The term "airport" shall include such other common terms as aviation field, airfield, intermediate landing field, landing field, landing area, airstrip, and landing strip. For the purposes of this chapter, the term "airport" refers to a publicly owned and managed facility that is open for public use without operational restrictions on its use.

(2) "~~Airport~~Aviation hazard" means any new or existing structure, ~~or-tree-or~~ object of natural growth, use of land, or modification thereto, which ~~obstructs--the-airspace-required-for-the-flight-of-aircraft-in-landing-or-taking-off-at-any-airport-or-is-otherwise--hazardous to--such-landing-or-taking-off-of-aircraft~~ endangers the lives and property of users of an airport, or of occupants of land in its vicinity, and that reduces the size of the area available for landing, taking off and maneuvering of aircraft, or extends up into the airspace between airports to cause disastrous and needless loss of life and property.

(3) "~~Airport~~Aviation hazard area" means any area of land or water upon which an ~~airport~~ aviation hazard ~~might~~ be established if not prevented as provided in this ~~act~~ chapter.

(4) "Political subdivision" means any municipality, city or county.

(5) "Person" means any individual, firm, copartnership, corpora-

tion, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth.

(8) "State" or "this state" means the state of Idaho.

(9) "Department" means the Idaho transportation department.

(10) "Director" means the director of the Idaho transportation department or his agent.

(11) "Board" means the Idaho transportation board.

SECTION 4. That Section 21-502, Idaho Code, be, and the same is hereby amended to read as follows:

21-502. ~~AIRPORT~~ AVIATION HAZARDS CONTRARY TO PUBLIC INTEREST. It is hereby found that an ~~airport~~ aviation hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

(a) That the creation or establishment of an ~~airport~~ aviation hazard is a public nuisance and an injury to the community served by the airport in question;

(b) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of ~~airport~~ aviation hazards be prevented;

(c) That this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.

It is further declared that both the prevention of the creation or establishment of ~~airport~~ aviation hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing ~~airport~~ aviation hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land and property interests therein.

SECTION 5. That Section 21-503, Idaho Code, be, and the same is hereby amended to read as follows:

21-503. AIRPORT ZONING REGULATIONS. (1) Power to Adopt Regulations. In order to prevent the creation or establishment of ~~airport~~ aviation hazard, the state of Idaho, by and through the Idaho transportation department, may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for ~~airport~~ aviation hazard areas within the state, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Method of Adopting Zoning Regulations. The department shall promulgate and adopt in the manner and in conformance with the procedure set forth in this ~~act~~ chapter such reasonable regulations for the zoning

of airports, ~~airport~~ aviation hazard areas and ~~airport~~ aviation hazards within the state as may be reasonably necessary to accomplish the highest degree of safety for airflight operations. Prior to adopting any zoning regulations:

(~~A~~a) The director shall cause to be prepared a map or maps as the individual situation may require, for each airport, and surrounding ~~airport~~ aviation hazard area to be zoned. Such map shall contain a description of the exterior boundaries of the area to be included within the zoning regulations, the boundaries and runways of the airport and shall disclose the existing and any planned approaches to the subject airport, the proposed glide angles and restricted areas deemed necessary by the director, and such other information as may be deemed helpful by the director to fairly portray the areas involved and the airspace required.

(~~B~~b) The director shall also cause to be prepared proposed regulations setting forth the various zones within the area and the restrictions applicable to each. Zones may be named or numbered or otherwise designated to distinguish one zone from another.

(~~C~~c) Such proposed regulations and the map or maps of the area involved shall be filed with the county recorder of the county or counties in which the airport or any part thereof is situated.

(~~D~~d) To amend any adopted zoning regulations the director shall proceed in the same manner set forth for the adoption of regulations except that he need only give notice and file maps and regulations that relate to the particular amendment to be made.

Upon the approval and designation of any airport in this state the department may immediately thereafter take such steps necessary under this ~~act~~ chapter to zone the ~~airport~~ aviation hazard area adjacent to such airport and the department shall, if requested by the owners of any existing airport which has heretofore been approved and designated and which is open to public use, take such steps necessary under this ~~act~~ chapter to zone the ~~airport~~ aviation hazard area adjacent to such airport, or the director may proceed to zone any such area without such a request.

SECTION 6. That Section 21-504, Idaho Code, be, and the same is hereby amended to read as follows:

21-504. PROCEDURE FOR ZONING AN ~~AIRPORT~~ AVIATION HAZARD AREA. No ~~airport~~ aviation hazard shall be zoned or an existing zoning amended or changed by the department except after a public hearing in relation thereto, at which hearing parties in interest and any citizen shall have an opportunity to be heard. At least fifteen (15) days' notice of such hearing shall be published in a newspaper of general circulation printed in the county in which such ~~airport~~ aviation hazard is situated and if there be no such newspaper, then by posting a copy of the notice in three (3) of the most public places in the county.

The notice shall refer all persons interested to the maps of the area involved and the proposed regulations on file with the county recorder of the county in which the airport is located. The date, time and place of the hearings shall also be set forth in the notice. At such hearing all persons interested may appear either in person, in writing or by counsel and make any objections they may have to the proposed regulations. The director shall preside at the hearing and a record of all

objections filed shall be kept on file in the office of the director. The meeting may be continued from day to day to permit all who appear on the day of the hearing adequate time to be heard and the proposed regulations may at the conclusion of the hearing be declared adopted by the director or he may amend the regulations by lessening the requirements contained therein and declare the amended regulations adopted but the director shall not increase the regulations without repeating the notice provided for by this section. After the regulations have been adopted copies thereof and copies of the maps corrected to reflect the regulations as approved by the director shall be permanently filed with the county recorder of the county in which the airport or any part thereof is situated.

SECTION 7. That Section 21-505, Idaho Code, be, and the same is hereby amended to read as follows:

21-505. AIRPORT ZONING REQUIREMENTS. All airport zoning regulations and ~~orders~~ rules promulgated under this ~~act~~ chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purpose of this ~~act~~ chapter. In determining what regulations shall be adopted, the department shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the ~~airport~~ aviation hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

SECTION 8. That Section 21-505A, Idaho Code, be, and the same is hereby amended to read as follows:

21-505A. PERMITS AND VARIANCES -- MARKING AND LIGHTING. Any airport zoning regulations adopted under this ~~act~~ chapter may require that a permit be obtained from the director before any new structure or use may be constructed or established within the zoned area. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this ~~act~~ chapter may apply to the director of the Idaho transportation department for a special permit authorizing such action. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty and unnecessary hardship and the relief granted would not be contrary to the public interest or create undue hazards to air flight. Any such special permits may be allowed subject to such reasonable conditions as the director may deem necessary to effectuate the purposes of the regulations, including the condition that the owners of the structure or tree in question permit the department or other political subdivision of this state having an interest in the airport in question to install, operate and maintain thereon at its own expense such markers and lights as may be necessary to indicate to flyers the presence of an ~~airport~~ aviation hazard.

SECTION 9. That Section 21-506, Idaho Code, be, and the same is hereby amended to read as follows:

21-506. JUDICIAL REVIEW. Any person aggrieved, or any taxpayer affected, by any decision of the department may appeal any zoning regulation or order affecting such person or taxpayer to the district court of the judicial district in which the ~~airport~~ aviation hazard area involved is situated, in the same manner in which appeals are taken from the board of county commissioners to the district court.

The court shall have jurisdiction to affirm, modify or set aside the regulations appealed from but the invalidity of one (1) regulation shall not affect the validity of the remaining regulations. In any case in which airport zoning regulations adopted under this ~~act~~ chapter, although generally reasonable, are held by the court having jurisdiction to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States such holding shall not affect the application of such regulations to other structures or parcels of land.

SECTION 10. That Section 21-515, Idaho Code, be, and the same is hereby amended to read as follows:

21-515. MARKING OF ~~OBSTRUCTIONS~~ HAZARDS TO AIR FLIGHT. Any structure ~~which obstructs the air space more than one hundred fifty (150) feet above the ground or water level~~ when determined by the director of the Idaho transportation department to be a hazard or potential hazard to the safe flight of aircraft shall be plainly marked, illuminated, painted, lighted or designated in a manner to be approved by the director, so that the same will be clearly visible to airmen.

SECTION 11. That Section 21-516, Idaho Code, be, and the same is hereby amended to read as follows:

21-516. DETERMINATION OF ~~OBSTRUCTIONS~~ HAZARDS. In determining the structures which are or may be a hazard to air flight the director shall consider the terrain, character of the neighborhood, uses to which the structure and surrounding property may be adaptable, and the character of the flying operations expected to be conducted in the area.

SECTION 12. That Section 21-517, Idaho Code, be, and the same is hereby amended to read as follows:

21-517. PROCEDURE FOR DETERMINATION OF ~~OBSTRUCTIONS~~ HAZARDS. When the director determines that a structure is a probable ~~obstruction~~ hazard within the meaning of this ~~act~~ chapter, he shall notify the owner of the land, or operator or owner of the structure who shall have twenty (20) days after the receipt of such notice to show cause why such structure should not be determined to be ~~an obstruction~~ hazard.

SECTION 13. That Section 21-701, Idaho Code, be, and the same is hereby amended to read as follows:

21-701. DEFINITIONS. The following words and phrases when used in this ~~act~~ chapter are defined to mean the following:

(a) "Aircraft" means any contrivance now known or hereafter invented used or designed for navigation of or flight in the air.

(b) "Aircraft engine" means an engine used or intended to be used for propulsion of aircraft and includes all parts, appurtenances and accessories thereof other than propellers.

(c) "Aircraft navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and ~~take-off~~ takeoff of aircraft.

(d) "Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. The term "airport" shall include such other common terms as aviation field, airfield, intermediate landing field, landing field, landing area, airstrip, and landing strip. For purposes of this chapter the term "airport" refers to a publicly owned and managed facility that is open for public use without operational restrictions on its use.

(e) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight, including parachutes and including radio and communication equipment and any other mechanism or mechanisms whether or not installed in or attached to aircraft during flight.

~~(e)--"Landing--area"--means--any--locality,-either-of-land-or-water,-including-airports-and-intermediate-landing-fields,-which--is--used,--or-intended--to--be-used,-for-the-landing-and-take-off-of-aircraft,-whether-or-not-facilities-are-provided-for-the-shelter,-servicing,-or-repair--of-aircraft,-or-for-receiving-or-discharging-of-passengers-or-cargo.~~

(f) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(g) "Propeller" includes all parts, appurtenances, and accessories thereof.

(h) "Spare parts" means parts, appurtenances, and accessories of aircraft ~~of--aircraft~~ (other than aircraft engines and propellers), of aircraft engines (other than propellers), of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

Approved March 28, 2005.

CHAPTER 175
(H.B. No. 64)

AN ACT

APPROPRIATING EIGHT HUNDRED NINETY THOUSAND DOLLARS TO THE DEPARTMENT OF COMMERCE AND LABOR OF THE STATE OF IDAHO PURSUANT TO SECTION 903 OF THE FEDERAL SOCIAL SECURITY ACT, AS AMENDED, FOR EXPENSES INCURRED FOR COMPUTER ENHANCEMENTS THAT WILL IMPROVE THE ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE PROGRAM AND PROVIDING THAT SAID APPROPRIATION IS AUTHORIZED BY AND SUBJECT TO THE LIMITATIONS OF SECTION 72-1346(4), IDAHO CODE; AND DECLARING AN EMERGENCY.

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 Commerce and Labor of the State of Idaho, pursuant to Section 903 of the federal Social Security Act, as amended, the sum of $890,000 for the payment of expenses incurred for enhancements to the department's computer systems that will improve the administration of the Unemployment Insurance Program. The enhancements include the creation of an Internet application that would allow the department to maintain a list of employer contact information for unemployment insurance benefit claims; the creation of an Internet application that would allow employers to report claimants who were discharged for misconduct; the creation of an Internet application that would allow the department to provide employers with a list of their former employees who are receiving unemployment insurance benefits that will be charged to the employer's experience rating account; the modification of the department's computer system so it can assess interest on unemployment insurance benefit overpayments and penalties on unemployment insurance overpayments that resulted from fraud; and an upgraded document imaging system. This appropriation is authorized by and subject to the limitations of Section 72-1346(4), 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 28, 2005.

CHAPTER 176
(H.B. No. 67)

AN ACT

RELATING TO FOREST PRACTICES ASSESSMENTS; AMENDING SECTION 38-134, IDAHO CODE, TO REVISE THE ASSESSMENT FOR FOREST LAND OWNERS OF TWENTY-FIVE ACRES OR LESS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 38-134, Idaho Code, be, and the same is hereby amended to read as follows:

38-134. FOREST PRACTICES ACT ADMINISTRATION -- FUNDING. The director of the department of lands is charged in section 38-1305, Idaho Code, to administer and enforce the forest practices act on all private forest lands within the state. Funding for this activity shall come from an annual budget request from the general ~~account~~ fund and from an annual assessment to be paid by every private owner of forest land in the state. The assessment for private owners of forest lands whose total acres of forest lands are twenty-five (25) acres or fewer shall be ~~a sum of one dollar and twenty five cents ($1.25), and~~ equal to the per acre cost multiplied by twenty-five (25). ~~F~~for private owners of forest lands whose total acres of forest lands are twenty-six (26) acres or more, the assessment shall be determined by the state board of land commissioners not to exceed ten cents (10¢) an acre per year. The assessment shall be collected in the same fashion and at the same time as the forest protection assessment described in section 38-111, Idaho Code.

Approved March 28, 2005.

CHAPTER 177
(H.B. No. 94, As Amended)

AN ACT

RELATING TO PRISONERS; AMENDING SECTION 18-101A, IDAHO CODE, TO REVISE DEFINITIONS IN ORDER TO PROVIDE REFERENCES TO PERSONS ON PAROLE OR PROBATION AND TO MAKE A TECHNICAL CHANGE; AND AMENDING SECTION 18-6110, IDAHO CODE, TO PROHIBIT SEXUAL CONTACT BETWEEN PRISONERS AND EMPLOYEES OF THE IDAHO DEPARTMENT OF CORRECTION WHEN THEY ARE NOT SPOUSES AND TO DELETE OBSOLETE LANGUAGE.

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

SECTION 1. That Section 18-101A, Idaho Code, be, and the same is hereby amended to read as follows:

18-101A. DEFINITIONS. As used in titles 18, 19 and 20, Idaho Code, and elsewhere in the Idaho Code, unless otherwise specifically provided or unless the context clearly indicates or requires otherwise, the following terms shall be defined as follows:

(1) "Correctional facility" means a facility for the confinement of prisoners. The term shall be construed to include references to terms including, but not limited to, "prison," "state prison," "state penitentiary," "governmental detention facility," "penal institution (facility)," "correctional institution," "detention institution (facility)," "county jail," "jail," "private prison (facility)" or "private correctional facility."

(2) "In-state prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated or on parole or probation for that crime or in custody for trial and sentencing, and who is being housed in any state, local or private correctional facility, or who is being transported in any manner within or through the state of Idaho.

(3) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include references to "county jail," or "jail." The term

shall also include a private correctional facility housing prisoners under the custody of the state board of correction, the county sheriff or other local law enforcement agency.

(4) "Out-of-state prisoner" or "out-of-state inmate" means a person who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is on parole or probation in Idaho or being housed in any state, local or private correctional facility in the state of Idaho, or who is being transported in any manner within or through the state of Idaho.

(5) "Prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated or on parole or probation for that crime or in custody for trial and sentencing, or who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility, or who is being transported in any manner within or through the state of Idaho. The term shall be construed to include references to terms including, but not limited to, "inmate," "convict," "detainee," and other similar terms, and shall include "out-of-state prisoner" and "out-of-state inmate."

(6) "Private correctional facility" or "private prison (facility)" means a correctional facility constructed or operated in the state of Idaho by a private prison contractor.

(7) "Private prison contractor" means any person, organization, partnership, joint venture, corporation or other business entity engaged in the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private correctional facilities or any combination of these services.

(8) "State correctional facility" means a facility for the confinement of prisoners, owned or operated by or under the control of the state of Idaho. The term shall include references to "state prison," "state penitentiary" or "state penal institution (facility)." The term shall also include a private correctional facility housing prisoners under the custody of the board of correction.

SECTION 2. That Section 18-6110, Idaho Code, be, and the same is hereby amended to read as follows:

18-6110. SEXUAL CONTACT WITH A PRISONER. It is a felony for any employee of the Idaho department of correction or any officer, employee or agent of a state, local or private correctional facility, as those terms are defined in section 18-101A, Idaho Code, to have sexual contact with a prisoner, not their spouse, whether an in-state or out-of-state prisoner, as those terms are defined in section 18-101A, Idaho Code~~, housed--in--such-facility~~. For the purposes of this section "sexual contact" means sexual intercourse, genital-genital, manual-anal, manual-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex.

Any person found guilty of sexual contact with a prisoner is punishable by imprisonment in the state prison for a term not to exceed life.

Approved March 28, 2005.

CHAPTER 178
(H.B. No. 99)

AN ACT

RELATING TO AN ELECTION ON PROPERTY TAX RELATED MATTERS; AMENDING SECTION 63-802, IDAHO CODE, TO PROVIDE THAT ANY TAXING DISTRICT MAY SUBMIT TO THE ELECTORS WITHIN THE DISTRICT THE QUESTION OF WHETHER THE BUDGET FROM PROPERTY TAX REVENUES MAY BE INCREASED BEYOND THE AMOUNT AUTHORIZED, BUT NOT BEYOND THE LEVY AUTHORIZED BY STATUTE, TO PROVIDE THAT THE ADDITIONAL AMOUNT MUST BE APPROVED BY SIXTY-SIX AND TWO-THIRDS PERCENT OR MORE OF THE VOTERS VOTING ON THE QUESTION AT AN ELECTION CALLED FOR THAT PURPOSE AND TO PROVIDE THAT WHEN A NONSCHOOL DISTRICT CONSOLIDATES WITH ANOTHER NONSCHOOL DISTRICT OR DISSOLVES AND A NEW DISTRICT PERFORMING SIMILAR GOVERNMENTAL FUNCTIONS AS THE DISSOLVED DISTRICT FORMS WITH THE SAME BOUNDARIES WITHIN THREE YEARS, THE MAXIMUM AMOUNT OF A BUDGET OF THE DISTRICT FROM PROPERTY TAX REVENUES SHALL NOT BE GREATER THAN THE SUM OF THE AMOUNTS THAT WOULD HAVE BEEN AUTHORIZED FOR THE DISTRICT ITSELF OR FOR THE DISTRICTS THAT WERE CONSOLIDATED OR DISSOLVED AND INCORPORATED INTO A NEW DISTRICT; AMENDING SECTION 31-1420, IDAHO CODE, TO DELETE LANGUAGE REGARDING AN ELECTION BY VOTERS IN A FIRE PROTECTION DISTRICT TO HAVE THE DISTRICT REACH A CERTAIN LEVY AMOUNT; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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 (3) 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 an annual budget that exceeds the greater of:

(a) The dollar amount of 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 described in subsection (4) 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 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 state tax commission for market values of operating property of public utilities and by the county assessor; or

(b) The dollar amount of 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 <u>except as may be provided in subsection (1)(h) of this section</u>; 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 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; or

(f) In the case of cities, if the immediately preceding year's levy subject to the limitation provided by this section, is less than 0.004, the city may increase its budget by an amount not to exceed the difference between 0.004 and actual prior year's levy multiplied by the prior year's market value for assessment purposes. The additional amount must be approved by sixty percent (60%) of the voters voting on the question at an election called for that purpose and held on the date in May or November provided by law, and may be included in the annual budget of the city for purposes of this section; or

(g) A ~~library~~ taxing district may submit to the electors within the district the question of whether the budget from property tax revenues may be increased beyond the amount authorized in this section, but not beyond the levy authorized ~~in section 33-2724, Idaho Code~~ by statute. The additional amount must be approved by sixty-six and two-thirds percent (66 2/3%) or more of the voters voting on the question at an election called for that purpose and held on the May or November dates provided by section 34-106, Idaho Code. If approved by the required minimum sixty-six and two-thirds percent (66 2/3%) of the voters voting at the election, the new budget amount shall be the base budget for the purposes of this section; or

(h) When a nonschool district consolidates with another nonschool district or dissolves and a new district performing similar governmental functions as the dissolved district forms with the same boundaries within three (3) years, the maximum amount of a budget of the district from property tax revenues shall not be greater than the sum of the amounts that would have been authorized by this section for the district itself or for the districts that were consolidated or dissolved and incorporated into a new district; or

(i) In the instance or case of cooperative service agencies, the restrictions imposed in sections 33-315 through 33-318, Idaho Code.

(2) In the case of fire districts, during the year immediately following the election of a public utility or public utilities to consent to be provided fire protection pursuant to section 31-1422, Idaho Code, the maximum amount of property tax revenues permitted in subsection (1) of this section may be increased by an amount equal to the current year's taxable value of the consenting public utility or public utilities multiplied by that portion of the prior year's levy subject to the limitation provided by subsection (1) of this section.

(3) 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.

(4) The amount of property tax revenues to finance an annual budget does not include revenues from 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.

SECTION 2. 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 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 63-802, 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 63-802, 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), Idaho Code.

~~(3) Notwithstanding the provisions of section 63-802, Idaho Code, fire protection districts adversely impacted by abnormally low levies at the time of enactment of section 63-2220A, Idaho Code, and recodified as section 63-802, Idaho Code, may seek voter approval to reach a fire protection district levy 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 additional budget amount must be approved by sixty six and two thirds percent (66 2/3%) of the voters on the question at an election called for that purpose and held on the dates provided by section 34-106, Idaho Code. If approved by the voters, the additional budget amount may be included in each succeeding annual budget.~~

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2005.

Approved March 28, 2005.

CHAPTER 179
(H.B. No. 132)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-201, IDAHO CODE, TO PROVIDE THAT ALL METHODS OF TAKE SHALL BE AUTHORIZED FOR THE MANAGEMENT OF WOLVES IN ACCORDANCE WITH EXISTING LAWS OR APPROVED MANAGEMENT PLANS REGARDLESS OF THE CLASSIFICATION ASSIGNED TO WOLVES.

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

SECTION 1. That Section 36-201, Idaho Code, be, and the same is hereby amended to read as follows:

36-201. FISH AND GAME COMMISSION AUTHORIZED TO CLASSIFY WILDLIFE. With the exception of predatory animals, the Idaho fish and game commission is hereby authorized to define by classification or reclassification all wildlife in the state of Idaho. Such definitions and classifications shall include:

(a) Game animals
(b) Game birds
(c) Game fish
(d) Fur-bearing animals
(e) Migratory birds
(f) Threatened or endangered wildlife
(g) Protected nongame species
(h) Unprotected wildlife

Predatory wildlife shall include:

1. Coyote
2. Jackrabbit
3. Skunk
4. Weasel
5. Starling

Notwithstanding the classification assigned to wolves, all methods of take including, but not limited to, all methods utilized by the United States fish and wildlife service and the United States department of agriculture wildlife services, shall be authorized for the management of wolves in accordance with existing laws or approved management plans.

Approved March 28, 2005.

CHAPTER 180
(H.B. No. 133)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1101, IDAHO CODE, TO CLARIFY THAT SPECIFIED LAW SHALL NOT LIMIT OR PROHIBIT THE LAWFUL CONTROL OF WOLVES THROUGH THE USE OF HELICOPTERS IF DEEMED NECESSARY BY FEDERAL OR STATE AGENCIES IN ACCORDANCE WITH EXISTING LAWS OR MANAGEMENT PLANS.

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

SECTION 1. That Section 36-1101, Idaho Code, be, and the same is hereby amended to read as follows:

36-1101. TAKING OF WILDLIFE UNLAWFUL EXCEPT BY STATUTE OR COMMISSION RULE OR PROCLAMATION -- METHODS PROHIBITED -- EXCEPTIONS. (a) It is unlawful, except as may be otherwise provided by Idaho law, including this title or commission rules or proclamations promulgated pursuant thereto, for any person to take any of the game animals, birds or furbearing animals of this state.

(b) Except as may be otherwise provided under this title or commission rules or proclamations promulgated pursuant thereto, it is unlawful for any person to:

1. Hunt from Motorized Vehicles. Hunt any of the game animals or game birds of this state from or by the use of any motorized vehicle except as provided by commission rule; provided however, that the commission shall promulgate rules which shall allow a physically handicapped person to apply for a special permit which would allow the person to hunt from a motorized vehicle which is not in motion. A physically handicapped person means a person:

(A) Who has lost, or has lost the use of, one (1) or both lower extremities or both hands, or who has significant limitation in the use of the lower extremities, or who has a diagnosed disease or disorder which substantially impairs or interferes with mobility, or who is so severely disabled as to be unable to move without the aid of an assistance device.

(B) Who suffers from lung disease to the extent that his forced (respiratory) expiratory volume for one (1) second when measured by spirometry is less than one (1) liter or his arterial oxygen tension (pO_2) is less than 60 mm/Hg on room air at rest.

(C) Who is impaired by cardiovascular disease to the extent that his functional limitations are classified in severity as class III or class IV according to standards accepted by the American Heart Association.

The commission shall specify the form of application for and design of the special permit which shall allow a physically handicapped person to hunt from a motorized vehicle which is not in motion. No fee shall be charged for the issuance of the special permit and the issuance of a special permit shall not exempt a person from otherwise properly purchasing or obtaining other necessary licenses, permits and tags in accordance with this title and rules promulgated pursuant thereto. The special permit shall not be transferable and may only be used by the person to whom it is issued. A person who has been issued a special permit which allows a physically handicapped person to hunt from a motorized vehicle not in motion shall have that permit prominently displayed on any vehicle the person is utilizing to hunt from and the person shall produce, on demand, the permit and other identification when so requested by a conservation officer of the department of fish and game. A person possessing a special permit shall not discharge any firearm from or across a public highway. In addition to other penalties any unauthorized use of the special permit shall be grounds for revocation of the permit.

2. Molest with Motorized Vehicles. Use any motorized vehicle to molest, stir up, rally or drive in any manner any of the game animals or game birds of this state.

3. Communicate from Aircraft. Make use of aircraft in any manner to spot or locate game animals, game birds or fur-bearing animals of this state from the air and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person then on the ground.

4. Hunt from Helicopter. Make use of any helicopter in any manner in the taking of game or loading, transporting, or unloading hunters, game or hunting gear in any manner except when such use is at recognized airports or airplane landing fields, or at heliports which have been previously established on private land or which have been established by a department or agency of the federal, state or local government or when said use is in the course of emergency or search and rescue operations. Provided however, that nothing in this chapter shall limit or prohibit the lawful control of wolves through the use of helicopters when such measures are deemed necessary by federal or state agencies in accordance with existing laws or management plans.

5. Artificial Light. Hunt any animal or bird except raccoon by the aid of a spotlight, flashlight or artificial light of any kind. The act of casting or throwing, after sunset, the beam or rays of any spotlight, headlight or other artificial light capable of utilizing six (6) volts or more of electrical power upon any field, forest or other place by any person while having in his possession or under his control any uncased firearm or contrivance capable of killing any animal or bird, shall be prima facie evidence of hunting with an artificial light. Provided nothing in this subsection shall apply where the headlights of a motor vehicle, operated and proceeding in a normal manner on any highway or roadway, cast a light upon animals or birds on or adjacent to such highway or roadway and there is no intent or attempt to locate such animals or birds. Provided further, nothing in this subsection shall prevent the hunting of unprotected or predatory wildlife with the aid of artificial light when such hunting is for the purpose of protecting property or livestock, is done by landowners or persons authorized in writing by them to do so and is done on property they own, lease or control; and provided further that the hunting and taking of unprotected or predatory wildlife with the aid of artificial light on public lands is authorized after obtaining a permit to do so from the director. The director may, for good cause, refuse to issue such permit.

Other provisions of this subsection notwithstanding, the commission may establish rules allowing the hunting of raccoon with the aid of an artificial light.

6. Regulation of Dogs.

(A) No person shall make use of a dog for the purpose of pursuing, taking or killing any of the big game animals of this state except as otherwise provided by rules of the commission.

(B) Any person who is the owner of, or in possession of, or who harbors any dog found running at large and which is actively tracking, pursuing, harassing or attacking, or which injures or kills deer or any other big game animal within this state shall be guilty as provided in section 36-1401(a)1.(F),

Idaho Code. It shall be no defense that such dog or dogs were pursuing said big game animals without the aid or direction of the owner, possessor, or harborer.

(C) Any dog found running at large and which is actively tracking, pursuing, harassing, attacking or killing deer or any other big game animal may be destroyed without criminal or civil liability by the director, or any peace officer, or other persons authorized to enforce the Idaho fish and game laws.

7. Attempt to take Simulated Wildlife.

(A) Attempt to take, by firearm or any other contrivance capable of killing an animal or bird, simulated wildlife in violation of any of the provisions of this title or commission rules applicable to the taking of the wildlife being simulated, when the simulated wildlife is being used by a conservation officer or other person authorized to enforce Idaho fish and game laws or rules promulgated pursuant thereto. No person shall be found guilty of violating this subpart provided that no other law or rule has been violated.

(B) Any person pleading guilty to, convicted of or found guilty for attempting to take simulated wildlife within this state shall be guilty of a misdemeanor and shall be punished as provided in either subsection (b) or (d) of section 36-1402, Idaho Code.

Approved March 28, 2005.

CHAPTER 181
(H.B. No. 157)

AN ACT

RELATING TO JAILS; AMENDING SECTION 20-618, IDAHO CODE, TO PROVIDE THAT COUNTY JAILS ARE AUTHORIZED TO CREATE A SELF-PERPETUATING COMMISSARY FUND AND TO PROVIDE THE PURPOSE OF THE COMMISSARY FUND; AND AMENDING SECTION 20-619, IDAHO CODE, TO PROVIDE FOR COMMISSARY OR PERSONAL ACCOUNTS, TO INCREASE THE FEE THAT COUNTY SHERIFF DEPARTMENTS MAY CHARGE A NONINDIGENT INMATE FOR HEALTH CARE VISITS, TO PROVIDE FOR COLLECTION OF DEBTS INCURRED FOR HEALTH CARE VISITS, TO PROVIDE THAT AN INMATE PROVIDE HEALTH INSURANCE INFORMATION AND TO PROVIDE THAT THE SHERIFF IS AUTHORIZED TO SUBMIT MEDICAL COSTS TO THE INMATE'S HEALTH INSURANCE COMPANY ON BEHALF OF THE INMATE.

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

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

20-618. JAIL COMMISSARY FUND. County jails which provide commissary items to inmates, and collect the costs or a portion of the costs for such items from an inmate with sufficient funds to pay for items, are authorized to create a self-perpetuating commissary fund. The purpose of the commissary fund is to both supply ~~inmates with~~ and provide a fund from which reimbursement can be made to the county for an inmate's use

or purchases of necessary hygiene items, recreational devices and other inmate care items, ~~and deposit the funds from the sale of items in this fund~~ medical items and services, and any other debts incurred pursuant to this chapter. This fund shall be subject to a yearly audit authorized by the board of county commissioners.

SECTION 2. That Section 20-619, Idaho Code, be, and the same is hereby amended to read as follows:

20-619. FEE FOR MEDICAL SERVICE. (1) County sheriff departments administering county jails may charge a nominal fee of ~~five~~ twenty dollars ($~~5~~20.00) to any nonindigent inmate who has sufficient funds in his commissary~~/personal~~ or personal account for the purpose of seeing the jail provided doctor or nurse for a medical complaint. In the event that an inmate is indigent, such service shall be provided by the county at no cost.

(2) The county sheriff departments administering county jails may charge actual costs to any nonindigent inmate who has sufficient funds in his commissary~~/personal~~ or personal account for pharmaceuticals prescribed or authorized by jail medical staff.

(3) A "nonindigent" inmate, for purposes of this section, is an inmate who has money in his commissary~~/personal~~ or personal account normally used for the purchase of personal items for the inmate.

(4) All debts incurred pursuant to this section may be collected from the inmate's commissary or personal account, in whole or in part, at any time during the period of incarceration, whenever moneys exist in or are placed into the inmate's commissary or personal account, provided that the jail has in place a process by which the affected inmate may contest the assessment of moneys owed. Collection of moneys owed may occur at any time, in whole or in part, until such time as the full balance of the moneys owed is completely retired, provided that there shall be no further efforts to collect the debt after four (4) years from the date in which the debt was actually incurred.

(5) The county sheriff may require the inmate to provide health insurance information including, but not limited to, group, plan and identification numbers. The county sheriff is authorized to submit medical costs to the inmate's health insurance company on behalf of the inmate.

Approved March 28, 2005.

CHAPTER 182
(H.B. No. 182)

AN ACT

RELATING TO MOTOR VEHICLE OPERATING FEES AND PENALTIES; AMENDING SECTION 49-434A, IDAHO CODE, TO CLARIFY PENALTIES FOR FAILURE TO PAY OPERATING FEES AND TO DELETE A REFERENCE TO A REPEALED CODE SECTION; AND AMENDING SECTION 49-1013, IDAHO CODE, TO PROVIDE PENALTIES FOR FAILURE TO PAY VEHICLE OPERATING FEES AND FOR EXCEEDING THE REGISTERED GROSS WEIGHT OR PERMITTED MAXIMUM REGISTERED GROSS WEIGHT OF A VEHICLE.

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

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

49-434A. PENALTIES FOR FAILURE TO PAY OPERATING FEES. Any motor vehicle or combination of vehicles ~~owned by a nonresident and~~ operated in Idaho for which the proper registration and operating fees in Idaho have not been paid under the provisions of section 49-432, ~~49-433,~~ 49-434 or 49-435, Idaho Code, shall have committed a misdemeanor punishable as provided in section 49-1013, Idaho Code, and shall, upon discovery, be subject to the following additional penalties:

Seizure and detention for up to seventy-two (72) hours by any law enforcement agency or port of entry personnel of the vehicle and its entire cargo if the cargo does not consist of perishable food products or livestock;

(1) Release from detention shall be accomplished only by presentation of proper evidence that the applicable fees have been paid; or

(2) Off-loading of any cargo onto a properly licensed and registered vehicle.

SECTION 2. 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 49-434A, 49-1003 and 49-1006 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 49-438, 49-1001, 49-1002, 49-1004 and 49-1005, 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 additional 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 an infraction or misdemeanor for violating two (2) or more of the provisions of section 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 an infraction or misdemeanor shall be assessed a penalty of ten dollars ($10.00) for each additional misdemeanor conviction or five dollars ($5.00) for each additional infraction 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 28, 2005.

CHAPTER 183
(H.B. No. 185, As Amended)

AN ACT

RELATING TO NEIGHBORHOOD ELECTRIC VEHICLES; AMENDING SECTION 49-105, IDAHO CODE, TO EXPAND THE DEFINITION OF "DEALER" TO INCLUDE BUYING, SELLING OR EXCHANGING NEW OR USED NEIGHBORHOOD ELECTRIC VEHICLES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-115, IDAHO CODE, TO PROVIDE A REFERENCE FOR THE DEFINITION OF "NEIGHBORHOOD ELECTRIC VEHICLE" AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-123, IDAHO CODE, TO DEFINE "NEIGHBORHOOD ELECTRIC VEHICLE"; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE FOR REGISTRATION OF NEIGHBORHOOD ELECTRIC VEHICLES; AND AMENDING CHAPTER 6, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-663, IDAHO CODE, TO PROVIDE FOR RESTRICTED USE OF NEIGHBORHOOD ELECTRIC VEHICLES ON HIGHWAYS.

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, <u>new or used neighborhood electric vehicles,</u> 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 state police, 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 state police.

(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.

(8) "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.

(9) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

(10) "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.

(11) "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 lim-

its 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.

(12) "Documented vessel" means a vessel having a valid marine document as a vessel of the United States.

(13) "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.

(14) "Driver" means every person who drives or is in actual physical control of a vehicle.

(15) "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.

(16) "Driver's license -- ~~c~~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, agri-chemical 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.

(18) "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/~~t~~Triple trailer" means this endorsement is required on a class A, B or C 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.

(19) "Driveway" means a private road giving access from a public way to a building on abutting grounds.

(20) "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 49-115, Idaho Code, be, and the same is hereby amended to read as follows:

49-115. DEFINITIONS -- N. (1) "Neighborhood electric vehicle." (See "Vehicle," section 49-123, Idaho Code)

(2) "Noncommercial vehicle." (See "Vehicle," section 49-123, Idaho Code)

(~~2~~3) "Nonresident" means every person who is not a resident of this state.

(~~3~~4) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in this state.

SECTION 3. That Section 49-123, Idaho Code, be, and the same is hereby amended to read as follows:

49-123. DEFINITIONS -- V. (1) "Variable load suspension axle" means an axle or axles designed to support a part of the vehicle and load and which can be regulated to vary the amount of load supported by such an axle or axles and which can be deployed or lifted by the operator of the vehicle. See also section 49-117, Idaho Code.

(a) "Fully raised" means that the variable load suspension axle is in an elevated position preventing the tires on such axle from having any contact with the roadway.

(b) "Fully deployed" means that the variable load suspension axle is supporting a portion of the weight of the loaded vehicle as controlled by the preset pressure regulator valve.

(2) "Vehicle" means:

(a) General. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(b) Authorized emergency vehicle. Vehicles operated by any fire department or law enforcement agency of the state of Idaho or any political subdivision of the state, ambulances, vehicles belonging to personnel of voluntary fire departments while in performance of official duties only, vehicles belonging to, or operated by EMS personnel certified or otherwise recognized by the EMS bureau of the Idaho department of health and welfare while in the performance of emergency medical services, sheriff's search and rescue vehicles which are under the immediate supervision of the county sheriff, wreckers which are engaged in motor vehicle recovery operations and are blocking part or all of one (1) or more lanes of traffic, other emergency vehicles designated by the director of the Idaho state police or vehicles authorized by the Idaho transportation board and used in the enforcement of laws specified in section 40-510, Idaho Code, pertaining to vehicles of ten thousand (10,000) pounds or greater.

(c) Commercial vehicle or commercial motor vehicle. For the purposes of chapter 3 of this title, (driver's licenses), a motor vehicle or combination of motor vehicles designed or used to transport passengers or property if the motor vehicle:

1. Has a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds inclusive of a towed unit with a manufacturer's gross vehicle weight rating (GVWR) of more than ten thousand (10,000) pounds; or

2. Has a manufacturer's gross vehicle weight rating (GVWR) in

excess of twenty-six thousand (26,000) pounds; or

3. Is designed to transport sixteen (16) or more people, including the driver; or

4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the hazardous material transportation act and which require the motor vehicle to be placarded under the hazardous materials regulations (49 CFR part 172, subpart F).

For the purposes of chapter 4, title 49, Idaho Code, (motor vehicle registration), a vehicle or combination of vehicles of a type used or maintained for the transportation of persons for hire, compensation or profit, or the transportation of property for the owner of the vehicle, or for hire, compensation, or profit, and shall include fixed load specially constructed vehicles exceeding the limits imposed by chapter 10, title 49, Idaho Code, and including drilling rigs, construction, drilling and wrecker cranes, log jammers, log loaders, and similar vehicles which are normally operated in an overweight or oversize condition or both, but shall not include those vehicles registered pursuant to sections 49-402 and 49-402A, Idaho Code, or exempted by section 49-426, Idaho Code. A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen (15) persons, including the driver, shall not be a "commercial vehicle" under the provisions of this title relating to equipment requirements, rules of the road, or registration.

(d) Farm vehicle. A vehicle or combination of vehicles owned by a farmer or rancher, which are operated over public highways, and used exclusively to transport unprocessed agricultural, dairy or livestock products raised, owned and grown by the owner of the vehicle to market or place of storage; and shall include the transportation by the farmer or rancher of any equipment, supplies or products purchased by that farmer or rancher for his own use, and used in the farming or ranching operation or used by a farmer partly in transporting agricultural products or livestock from the farm of another farmer that were originally grown or raised on the farm, or when used partly in transporting agricultural supplies, equipment, materials or livestock to the farm of another farmer for use or consumption on the farm but not transported for hire, and shall not include vehicles of husbandry or vehicles registered pursuant to sections 49-402 and 49-402A, Idaho Code.

(e) Foreign vehicle. Every vehicle of a type required to be registered under the provisions of this title brought into this state from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(f) Glider kit vehicle. Every large truck manufactured from a kit manufactured by a manufacturer of large trucks which consists of a frame, cab complete with wiring, instruments, fenders and hood and front axles and wheels. The "glider kit" is made into a complete assembly by the addition of the engine, transmission, rear axles, wheels and tires.

(g) Motor vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved

solely by human power, electric personal assistive mobility devices and motorized wheelchairs.

(h) Multipurpose passenger vehicle (MPV). For the purposes of section 49-966, Idaho Code, a motor vehicle designed to carry ten (10) or fewer persons which is constructed either on a truck chassis or with special features for occasional off-road operation.

(i) Neighborhood electric vehicle (NEV). A self-propelled, electrically-powered, four-wheeled motor vehicle which is emission free and conforms to the definition and requirements for low-speed vehicles as adopted in the federal motor vehicle safety standards for low speed vehicles under federal regulations at 49 CFR part 571. An NEV shall be titled, registered and insured according to law as provided respectively in chapters 4, 5 and 12, title 49, Idaho Code, and shall only be operated by a licensed driver. Operation of an NEV on a highway shall be allowed as provided in section 49-663, Idaho Code.

(j) Noncommercial vehicle. For the purposes of chapter 4, title 49, Idaho Code, (motor vehicle registration), a noncommercial vehicle shall not include those vehicles required to be registered under sections 49-402 and 49-402A, Idaho Code, and means all other vehicles or combinations of vehicles which are not commercial vehicles or farm vehicles, but shall include motor homes. A noncommercial vehicle shall include those vehicles having a combined gross weight not in excess of sixty thousand (60,000) pounds and not held out for hire, used for purposes related to private use and not used in the furtherance of a business or occupation for compensation or profit or for transporting goods for other than the owner.

(~~j~~k) Passenger car. For the purposes of section 49-966, Idaho Code, a motor vehicle, except a multipurpose passenger vehicle, motorcycle or trailer, designed to carry ten (10) or fewer persons.

(~~k~~l) Reconstructed or repaired vehicle. Every vehicle that has been rebuilt or repaired using like make and model parts and visually appears as a vehicle that was originally constructed under a distinctive manufacturer. This includes a salvage vehicle which is damaged to the extent that a "reconstructed vehicle" or "repaired vehicle" brand is required, and other vehicles which have been reconstructed by the use of a kit designed to be used to construct an exact replica of a vehicle which was previously constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles. A glider kit vehicle is not a reconstructed vehicle.

(~~l~~m) Salvage vehicle. Any vehicle for which a salvage certificate, salvage bill of sale or other documentation showing evidence that the vehicle has been declared salvage or which has been damaged to the extent that the owner, or an insurer, or other person acting on behalf of the owner, determines that the cost of parts and labor minus the salvage value makes it uneconomical to repair or rebuild. When an insurance company has paid money or has made other monetary settlement as compensation for a total loss of any motor vehicle, such motor vehicle shall be considered to be a salvage vehicle.

(~~m~~n) Specially constructed vehicle. Every vehicle of a type required to be registered not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original

construction and cannot be visually identified as a vehicle produced by a particular manufacturer. This includes:

1. A vehicle that has been structurally modified so that it does not have the same appearance as a similar vehicle from the same manufacturer; or

2. A vehicle that has been constructed entirely from homemade parts and materials not obtained from other vehicles; or

3. A vehicle that has been constructed by using major component parts from one (1) or more manufactured vehicles and cannot be identified as a specific make or model; or

4. A vehicle constructed by the use of a custom kit that cannot be visually identified as a specific make or model.

(no) Total loss vehicle. Every vehicle that is deemed to be uneconomical to repair due to scrapping, dismantling or destruction. A total loss shall occur when an insurance company or any other person pays or makes other monetary settlement to the owner when it is deemed to be uneconomical to repair the damaged vehicle. The compensation for total loss as defined herein shall not include payments by an insurer or other person for medical care, bodily injury, vehicle rental or for anything other than the amount paid for the actual damage to the vehicle.

(3) "Vehicle identification number." (See "Identifying number," section 49-110, Idaho Code)

(4) "Vehicle salesman" means any person who, for a salary, commission or compensation of any kind, is employed either directly or indirectly, or regularly or occasionally by any dealer to sell, purchase or exchange, or to negotiate for the sale, purchase or exchange of vehicles. (See also "full-time salesman," section 49-107, Idaho Code, and "part-time salesman," section 49-117, Idaho Code)

(5) "Vessel." (See section 67-7003, Idaho Code)

(6) "Veteran." (See section 65-509, Idaho Code)

(7) "Violation" means a conviction of a misdemeanor charge involving a moving traffic violation, or an admission or judicial determination of the commission of an infraction involving a moving traffic infraction, except bicycle infractions.

SECTION 4. 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, each neighborhood electric vehicle and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds shall be:

Vehicles one (1) and two (2) years old $48.00
Vehicles three (3) and four (4) years old $36.00
Vehicles five (5) and six (6) years old $36.00
Vehicles seven (7) and eight (8) years old $24.00
Vehicles over eight (8) years old $24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers 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 mid-

night 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 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 twenty-four dollars ($24.00).

(3) For all motorcycles and all-terrain vehicles operated upon the public highways the annual fee shall be nine dollars ($9.00). For operation of an all-terrain vehicle or motorcycle off the public highways, the fee specified in section 67-7122, Idaho Code, shall be paid. Registration exemptions provided in section 49-426(2) and (3), Idaho Code, apply to all-terrain vehicles and motorcycles used for the purposes described in subsections (2) and (3) of section 49-426, Idaho Code.

(4) 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.

(5) Registration fees shall not be subject to refund.

(6) 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.

(7) 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 for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416, 49-418 and 49-418D, 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 49-416A, 49-417, 49-417A, 49-417B, 49-417C, 49-418A, 49-418B, 49-418C, 49-419, 49-419A, 49-419B, 49-419C, 49-419D, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, 49-420E and 49-420G, 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 appli-

cable 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, unless otherwise specified by law.

SECTION 5. That Chapter 6, 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 49-663, Idaho Code, and to read as follows:

49-663. RESTRICTED USE OF NEIGHBORHOOD ELECTRIC VEHICLES ON HIGHWAYS. (1) It is unlawful to operate a neighborhood electric vehicle on any highway with a posted speed limit of over twenty-five (25) miles per hour.

(2) It is unlawful for a person operating a neighborhood electric vehicle to cross any highway with a posted speed limit greater than twenty-five (25) miles per hour.

Approved March 28, 2005.

CHAPTER 184
(H.B. No. 191)

AN ACT

RELATING TO THE PRACTICE OF PHYSICAL THERAPY; AMENDING SECTION 54-2213, IDAHO CODE, TO SET FORTH CONTINUING EDUCATION REQUIREMENTS FOR RENEWAL OF ACTIVE LICENSES; AND AMENDING SECTION 54-2214, IDAHO CODE, TO REQUIRE PROOF OF COMPLETION OF CONTINUING EDUCATION REQUIREMENTS.

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

SECTION 1. That Section 54-2213, Idaho Code, be, and the same is hereby amended to read as follows:

54-2213. LICENSE RENEWAL. (1) A license shall be issued for a period of not less than one (1) year nor more than five (5) years, in conformance with administrative rules adopted by the board. Each license shall set forth its expiration date on the face of the certificate. The failure of any licensee to renew his or her license, as required herein and by the administrative rules of the board shall not deprive such person of the right to renewal, except as provided for in section 54-2214(2), Idaho Code.

(2) On and after July 1, 2007, each individual applicant for renewal of an active license shall, on or before the expiration of the license, submit satisfactory proof to the board of successful completion of not less than thirty-two (32) hours of board-approved continuing education every two (2) years and as set forth in administrative rules adopted pursuant to this chapter. The board, in its discretion, may require such additional evidence as is necessary to verify compliance.

(3) Fees for licensure of physical therapists and physical therapist assistants shall be fixed by the board in its administrative rules. All fees shall be transmitted to the state treasurer for credit to the board's account.

(~~3~~4) All licensed physical therapists or physical therapist assistants shall report to the board any name change or changes in business and home addresses prior to the expiration of thirty (30) days after the change becomes final.

SECTION 2. That Section 54-2214, Idaho Code, be, and the same is hereby amended to read as follows:

54-2214. REINSTATEMENT OF LICENSE. (1) Reinstatement of a lapsed license shall require the payment of a renewal fee, satisfactory proof of successful completion of the continuing education requirement set forth in section 54-2213(2), Idaho Code, and a reinstatement fee in accordance with the administrative rules adopted by the board, provided however, that no reinstatement fee shall be greater in amount than fifty dollars ($50.00).

(2) Reinstatement of a license that has lapsed for a period of more than three (3) consecutive years shall require reapplying for a license and payment of fees in accordance with the administrative rules adopted by the board. The individual shall successfully demonstrate to the board competency in the practice of physical therapy. The board may also require the applicant to take an examination, remedial courses, or both, as shall be determined by the board.

Approved March 28, 2005.

CHAPTER 185
(H.B. No. 192)

AN ACT

RELATING TO THE PRACTICE OF PHYSICAL THERAPY; AMENDING SECTION 54-2203, IDAHO CODE, TO DEFINE THE TERM "LICENSURE BOARD" AND TO REMOVE LANGUAGE REFERENCING AN ADVISORY COMMITTEE; AMENDING SECTION 54-2205, IDAHO CODE, TO PROVIDE FOR THE PHYSICAL THERAPY LICENSURE BOARD; AND AMENDING SECTION 54-2219, IDAHO CODE, TO PROVIDE REFERENCES TO THE LICENSURE BOARD.

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

SECTION 1. That Section 54-2203, Idaho Code, be, and the same is hereby amended to read as follows:

54-2203. DEFINITIONS. As used in this chapter:

(1) "Board" means the Idaho state board of medicine.

(2) ~~"Committee"~~ "Licensure board" means the physical therapy ~~advisory committee~~ licensure board.

(3) "Physical therapist" means a person who meets all the requirements of this chapter and who engages in the practice of physical therapy.

(4) "Physical therapist assistant" means a person who meets the requirements of this chapter and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist.

(5) "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist.

(6) The "practice of physical therapy" means the exercise of the profession of physical therapy by a person who engages in the following health care activities:

(a) Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations, and disability or other health and movement related conditions in order to determine a diagnosis for physical therapy and prognosis for physical therapy, plan of therapeutic intervention, and to assess the ongoing effects of intervention.

(b) Alleviating impairments and functional limitations by designing, implementing and modifying therapeutic interventions that include, but are not limited to: therapeutic exercise; functional mobility training in self-care and in-home, community or work reintegration; manual therapy; assistive, adaptive, protective and supportive devices and equipment; bronchopulmonary hygiene; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient related instruction; and to reduce the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and quality of life in all age populations. The practice of physical therapy shall not include the use of radiology, surgery or medical diagnosis of disease.

(c) Engaging in administration, consultation, testing, education and research as related to paragraphs (a) and (b) of this subsection.

(7) "Supportive personnel" means a person or persons trained under the direction of a physical therapist who performs designated and supervised routine physical therapy tasks.

SECTION 2. That Section 54-2205, Idaho Code, be, and the same is hereby amended to read as follows:

54-2205. PHYSICAL THERAPY ~~ADVISORY COMMITTEE~~ LICENSURE BOARD. (1) There is hereby established a physical therapy ~~advisory committee~~ licensure board to the Idaho state board of medicine. The ~~committee~~ licensure board shall consist of five (5) members appointed by the board, three (3) of whom shall be licensed physical therapists, ~~nominated by the Idaho physical therapy association and appointed by the Idaho state board of medicine. Each member will serve a term of four (4) years and terms shall be staggered. The initial committee shall have one (1) member whose term expires July 1, 2002, one (1) member whose term expires July 1, 2003, and one (1) member whose term expires July 1, 2004. A member may be appointed to serve for one (1) additional four (4) year term upon the expiration of the member's first term. The committee shall elect a chairman from its membership~~ one (1) of whom may be a licensed physical therapist assistant or a licensed physical therapist, and one (1) of whom shall be a member of the public with an interest in the rights of the consumers of health services. All members of the licensure board shall be residents of Idaho at the time of their appointment and for their term of service. The persons appointed to the licensure board who are required to be licensed under this chapter shall have been engaged in rendering physical therapy or physical therapy assistant care

services, respectively, to the public, in teaching, or in research in physical therapy or physical therapy assistant care services, respectively, for at least three (3) years immediately preceding their appointments. These members, excepting the public member, shall at all times be holders of valid licenses and be in good standing without restriction upon such license for the practice of physical therapy or physical therapy assistant, respectively, in Idaho.

(2) The board, within sixty (60) days after the effective date of this act, shall appoint two (2) licensure board members for a term of one (1) year; two (2) members for a term of two (2) years; and one (1) member for a term of three (3) years. Appointments made thereafter shall be for three (3) year terms, but no person shall be appointed to serve more than two (2) consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed in this section.

(3) The members of the licensure board shall be selected by the board after considering a list of three (3) qualified applicants for each such vacancy submitted by the Idaho physical therapy association.

(4) The licensure board, within sixty (60) days after the effective date of this act, and annually thereafter, shall hold a meeting and elect a chairman who shall preside at meetings of the licensure board. In the event the chairman is not present at any licensure board meeting, the licensure board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the licensure board shall constitute a quorum. Other meetings may be convened at the call of the chairman or upon the written request of any two (2) licensure board members.

(5) Each member of the licensure board shall be compensated as provided in section 59-509(h), Idaho Code.

(6) The ~~committee~~ licensure board shall work in conjunction with the Idaho state board of medicine to enforce the provisions of this chapter and shall perform the duties and functions assigned to the ~~committee~~ licensure board by the board, including, but not limited to:

(~~1~~a) Evaluating the qualifications of applicants for licensure, administering examinations, and issuing and renewing licenses;

(~~2~~b) Performing investigations of misconduct and making recommendations regarding discipline; ~~and~~

(~~3~~c) Maintaining a list of licensed physical therapists and physical therapist assistants in this state;

(d) Evaluating curricula of nationally accredited schools of physical therapy and physical therapy assistant;

(e) Reviewing and recommending fees to be assessed by the board for the issuance and renewal of licenses; and

(f) Establishing criteria and recommending administrative rules.

(7) Members shall disqualify themselves and, upon the motion of any interested party may, upon proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias that interferes with their fair and impartial service.

(8) The board may remove any member of the licensure board from the membership of the licensure board who is guilty of malfeasance, misfeasance or nonfeasance.

SECTION 3. That Section 54-2219, Idaho Code, be, and the same is hereby amended to read as follows:

54-2219. DISCIPLINE ACTIONS AND PROCEDURES. (1) The board shall regulate the practice of physical therapy in the state of Idaho. The ~~physical therapy advisory committee~~ licensure board shall serve as an advisor to the board as prescribed in section 54-2205, Idaho Code. The board is authorized to institute any investigation, hearing or other legal proceeding necessary to effect compliance with this chapter.

(2) The board or its hearing officer, upon a finding that action is necessary, shall have the power pursuant to this chapter to administer oaths, take depositions of witnesses within or without the state in the manner provided by the administrative rules adopted by the board, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where such witness resides or may be found which shall be served and returned. The board may require a licensee to be examined to determine his or her mental or physical competence when the board has probable cause to believe the licensee is suffering from an impairment that might impede his or her ability to practice competently.

(3) When it is brought to the attention of the board by the written statement of any person that a person licensed under this chapter has done any act or thing in violation of any provision of this chapter, the board or licensure board shall immediately make an investigation of such person, and if the board or licensure board finds that there is probable cause to institute proceedings against such person, it shall without unnecessary delay transmit to that person by mail, a copy of the charges and shall fix a day not less than fourteen (14), nor more than ninety (90), days after said mailing for a hearing upon the matter, said hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code, and with the administrative rules adopted by the board.

(4) The board or licensure board may investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of physical therapy. If an investigation indicates that a person may be practicing physical therapy unlawfully, the board or licensure board shall inform the person of the alleged violation. The board may refer the matter for prosecution whether or not the person ceases the unlawful practice of physical therapy.

(5) The board may, in the name of the people of the state of Idaho, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of this chapter. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this chapter.

Approved March 28, 2005.

CHAPTER 186
(H.B. No. 204)

AN ACT

RELATING TO COURT JURISDICTION; AMENDING SECTION 19-2601, IDAHO CODE, TO PROVIDE THAT UNDER CERTAIN CIRCUMSTANCES THE COURT MAY DECIDE WHETHER TO PLACE A DEFENDANT ON PROBATION OR RELEASE JURISDICTION WITHIN A REASONABLE TIME AFTER THE ONE HUNDRED EIGHTY DAY PERIOD OF RETAINED JURISDICTION HAS EXPIRED.

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

SECTION 1. That Section 19-2601, Idaho Code, be, and the same is hereby amended to read as follows:

19-2601. COMMUTATION, SUSPENSION, WITHHOLDING OF SENTENCE -- PROBATION. Whenever any person shall have been convicted, or enter a plea of guilty, in any district court of the state of Idaho, of or to any crime against the laws of the state, except those of treason or murder, the court in its discretion, may:

1. Commute the sentence and confine the defendant in the county jail, or, if the defendant is of proper age, commit the defendant to the custody of the state department of juvenile corrections; or

2. Suspend the execution of the judgment at the time of judgment or at any time during the term of a sentence in the county jail and place the defendant on probation under such terms and conditions as it deems necessary and expedient; or

3. Withhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation; or

4. Suspend the execution of the judgment at any time during the first one hundred eighty (180) days of a sentence to the custody of the state board of correction. The court shall retain jurisdiction over the prisoner for the first one hundred eighty (180) days or, if the prisoner is a juvenile, until the juvenile reaches twenty-one (21) years of age. The prisoner will remain committed to the board of correction if not affirmatively placed on probation by the court. In extraordinary circumstances, where the court concludes that it is unable to obtain and evaluate the relevant information within the one hundred eighty (180) day period of retained jurisdiction, or where the court concludes that a hearing is required and is unable to obtain the defendant's presence for such a hearing within such period, the court may decide whether to place the defendant on probation or release jurisdiction within a reasonable time, not to exceed thirty (30) days, after the one hundred eighty (180) day period of retained jurisdiction has expired. Placement on probation shall be under such terms and conditions as the court deems necessary and expedient. The court in its discretion may sentence a defendant to more than one (1) period of retained jurisdiction after a defendant has been placed on probation in a case. In no case shall the board of correction or its agent, the department of correction, be required to hold a hearing of any kind with respect to a recommendation to the court for the grant or denial of probation. Probation is a matter left to the sound discretion of the court. Any recommendation made by the department to the court regarding the prisoner shall be in the nature of an adden-

dum to the presentence report. The board of correction and its agency, the department of correction, and their employees shall not be held financially responsible for damages, injunctive or declaratory relief for any recommendation made to the district court under this section.

5. If the crime involved is a felony and if judgment is withheld as provided in subsection 3. of this section or if judgment and a sentence of custody to the state board of correction is suspended at the time of judgment in accordance with subsection 2. of this section or as provided by subsection 4. of this section and the court shall place the defendant upon probation, it shall be to the board of correction, to a county juvenile probation department, or any other person or persons the court, in its discretion, deems appropriate.

6. If the crime involved is a misdemeanor, indictable or otherwise, or if the court should suspend any remaining portion of a jail sentence already commuted in accordance with subsection 1. of this section, the court, if it grants probation, may place the defendant on probation. If the convicted person is a juvenile held for adult criminal proceedings, the court may order probation under the supervision of the county's juvenile probation department.

7. The period of probation ordered by a court under this section under a conviction or plea of guilty for a misdemeanor, indictable or otherwise, may be for a period of not more than two (2) years; and under a conviction or plea of guilty for a felony the period of probation may be for a period of not more than the maximum period for which the defendant might have been imprisoned.

Approved March 28, 2005.

CHAPTER 187
(H.B. No. 205)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-505, IDAHO CODE, TO PROVIDE THAT JUVENILE VIOLATORS UNDER THE AGE OF EIGHTEEN MAY BE SUBJECT TO JURISDICTION IN CERTAIN CASES.

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

SECTION 1. That Section 20-505, Idaho Code, be, and the same is hereby amended to read as follows:

20-505. JURISDICTION. Subject to the prior jurisdiction of the United States, the court shall have exclusive, original jurisdiction over any juvenile and over any adult who was a juvenile at the time of any act, omission or status, in the county in which the juvenile resides, or in the county in which the act, omission or status allegedly took place, in the following cases:

(1) Where the act, omission or status is prohibited by federal, state, local or municipal law or ordinance by reason of minority only, regardless of where the same occurred;

(2) Where the act or omission is a violation of any federal, state, local or municipal law or ordinance which would be a crime if committed by an adult, regardless of where the same occurred;

(3) Concerning any juvenile where the juvenile comes under the purview of the interstate compact on juveniles as set forth in chapter 19, title 16, Idaho Code;

(4) This chapter shall not apply to juvenile violators of beer, wine or other alcohol and tobacco laws; except that a juvenile violator under the age of ~~fourteen~~ eighteen (~~14~~8) years at the time of the violation may, at the discretion of the court, be treated under the provisions of this chapter;

(5) This chapter shall not apply to the violent juvenile offender, as defined in this chapter;

(6) This chapter shall not apply to juvenile violators of traffic, watercraft, fish and game, failure to obey a misdemeanor citation and criminal contempt laws; except that a juvenile violator under the age of ~~fourteen~~ eighteen (~~14~~8) years at the time of such violation may, at the discretion of the court, be treated under the provisions of this chapter;

(7) This chapter shall not apply to juvenile sex offenders who violate the provisions of section 18-8414, Idaho Code.

Approved March 28, 2005.

CHAPTER 188
(H.B. No. 206)

AN ACT

RELATING TO SENIOR JUDGES; AMENDING SECTIONS 1-2005 AND 1-2221, IDAHO CODE, TO REFER TO FISCAL YEARS AND TO PROVIDE THAT PAYMENT LIMITATIONS SHALL NOT APPLY IF THE CHIEF JUSTICE OF THE SUPREME COURT DETERMINES THAT EXTENDED SERVICE BY A SENIOR JUDGE IS REQUIRED BECAUSE OF EXTRAORDINARY CIRCUMSTANCES.

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

SECTION 1. That Section 1-2005, Idaho Code, be, and the same is hereby amended to read as follows:

1-2005. SENIOR JUDGE -- ASSIGNMENT -- DUTIES AND POWERS -- COMPENSATION AND EXPENSES -- QUALIFICATIONS AND OATH. (1) A justice or judge who leaves office or retires from the supreme court, court of appeals or a district court, except a justice or judge retired under the provisions of section 1-2001(4), Idaho Code, may be designated a senior judge of the state of Idaho by the supreme court.

(2) Upon filing with the secretary of state an oath of office as a senior judge as prescribed in subsection (7) of this section, a senior judge is eligible for temporary assignment by the supreme court to a state court as provided in this subsection, whenever the supreme court determines that the assignment is reasonably necessary and will promote the more efficient administration of justice. A senior judge may sit as a district or magistrate judge of the district court of any county or may sit with the supreme court or court of appeals or may perform such other duties pertaining to the judicial department of government as may be requested.

(3) The assignment of a senior judge shall be made by an order which shall designate the court or duties to which the judge is assigned and the duration of the assignment. Promptly after assignment of a senior judge under this section, the supreme court shall cause a certified copy of the order to be sent to the senior judge and another certified copy to the court to which the judge is assigned.

(4) Each senior judge assigned as provided in this section has all the judicial powers and duties, while serving under the assignment, of a regularly qualified judge of the court to which the senior judge is assigned.

(5) A senior judge assigned as provided in this section, other than one performing services required by section 1-2001(2)(b), Idaho Code, shall receive as compensation for each day the senior judge is actually engaged in the performance of duties under the assignment an amount equal to eighty-five percent (85%) of the daily salary of the highest office in which the senior judge served. However, a retired judge shall not receive for services as a senior judge during any ~~calendar~~ fiscal year a sum of money which when added to the amount of any judicial retirement pay received by the senior judge for the year exceeds the current annual salary of the highest office in which the senior judge served; except that this limitation shall not apply if the chief justice of the supreme court determines that extended service by one (1) or more senior judges is required because of extraordinary circumstances, such as a natural disaster or a judge's absence from service due to military service or medical disability. Services by a senior judge under an assignment and receipt of compensation for services shall not reduce or otherwise affect the amount of any retirement pay to which the senior judge otherwise would be entitled. Such additional compensation above the retirement compensation benefits accruing to such senior judge shall be paid from the general fund in accordance with appropriations provided by the legislature.

(6) A senior judge assigned to a court located outside the county in which the senior judge regularly resides shall receive, in addition to any daily compensation, reimbursement for traveling and subsistence expenses necessarily incurred in the performance of duties under the assignment. The expenses shall be paid upon presentation of an itemized statement of the expenses, certified by the senior judge to be correct.

(7) To be eligible for assignment, a senior judge must: maintain a residence within the state; not engage in the practice of law other than as a mediator or arbitrator or similar alternate dispute resolution function; not accept a position in another branch of state government or any political subdivision; not accept a position in the government of the United States or of another state or nation; and take, subscribe and file with the secretary of state, the following oath or affirmation:

> "I, ..., do solemnly swear (or affirm, as the case may be) that as a senior judge of the state of Idaho, I will support the Constitution of the United States and the Constitution of the State of Idaho, and that upon hereafter accepting any assignment to serve as a judge of a court of this state I will faithfully discharge the duties thereof to the best of my ability.".

(8) Except as provided in section 1-2001(2)(b), Idaho Code, any period of service rendered by a senior judge shall not in any way be computed for additional retirement benefits, and the state controller

shall not receive or deduct any sum for transfer to the judges' retirement fund or to the public employee retirement system of Idaho.

SECTION 2. That Section 1-2221, Idaho Code, be, and the same is hereby amended to read as follows:

1-2221. SENIOR JUDGE -- ASSIGNMENT -- DUTIES AND POWERS -- COMPENSATION AND EXPENSES -- QUALIFICATIONS AND OATH. (1) A magistrate judge who leaves office or retires from the magistrates division of a district court, except a magistrate judge retired under the provisions of section 59-1352, Idaho Code, may be designated a senior judge of the state of Idaho by the supreme court.

(2) Upon filing with the secretary of state an oath of office as a senior judge as prescribed in subsection (7) of this section, a senior judge is eligible for temporary assignment, with the consent of the senior judge, by the supreme court to a state court as provided in this subsection, whenever the supreme court determines that the assignment is reasonably necessary and will promote the more efficient administration of justice. A senior judge may sit as a judge of the district court of any county or may sit with the supreme court or court of appeals or may perform such other duties pertaining to the judicial department of government as may be requested.

(3) The assignment of a senior judge shall be made by an order which shall designate the court or duties to which the senior judge is assigned and the duration of the assignment. Promptly after assignment of a senior judge under this section, the supreme court shall cause a certified copy of the order to be sent to the senior judge and another certified copy to the court to which the senior judge is assigned.

(4) Each senior judge assigned as provided in this section has all the judicial powers and duties, while serving under the assignment, of a regularly qualified judge of the court to which the senior judge is assigned.

(5) A senior judge assigned as provided in this section shall receive as compensation for each day the senior judge is actually engaged in the performance of duties under the assignment an amount equal to eighty-five percent (85%) of the daily salary of an active magistrate judge. However, a retired magistrate judge shall not receive for services as a senior judge during any ~~calendar~~ fiscal year a sum of money which when added to the amount of any judicial retirement pay received by the senior judge for the year exceeds the current annual salary of an active magistrate judge; except that this limitation shall not apply if the chief justice of the supreme court determines that extended service by one (1) or more senior judges is required because of extraordinary circumstances, such as a natural disaster or a judge's absence from service due to military service or medical disability. Services by a senior judge under an assignment and receipt of compensation for services shall not reduce or otherwise affect the amount of any retirement pay to which the senior judge otherwise would be entitled. Such additional compensation above the retirement compensation benefits accruing to such senior judge shall be paid from the general fund in accordance with appropriations provided by the legislature.

(6) A senior judge assigned to a court located outside the county in which the senior judge regularly resides shall receive, in addition to any daily compensation, reimbursement for traveling and subsistence

expenses necessarily incurred in the performance of duties under the assignment. The expenses shall be paid upon presentation of an itemized statement of the expenses, certified by the senior judge to be correct.

(7) To be eligible for assignment, a senior judge must: maintain a residence within the state; not engage in the practice of law other than as a mediator or arbitrator or similar alternate dispute resolution function; not accept a position in another branch of state government or any political subdivision; not accept a position in the government of the United States or of another state or nation; and take, subscribe and file with the secretary of state, the following oath or affirmation:

"I, ..., do solemnly swear (or affirm, as the case may be) that as a senior judge of the state of Idaho, I will support the Constitution of the United States and the Constitution of the State of Idaho, and that upon hereafter accepting any assignment to serve as a senior judge of a court of this state I will faithfully discharge the duties thereof to the best of my ability.".

(8) Any period of service rendered by a senior judge shall not in any way be computed for additional retirement benefits, and the state controller shall not receive or deduct any sum for transfer to the public employee retirement system of Idaho.

Approved March 28, 2005.

CHAPTER 189
(H.B. No. 214, As Amended)

AN ACT

RELATING TO STRAY CURRENT AND VOLTAGE; AMENDING TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 8, TITLE 61, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSES, TO DEFINE TERMS, TO REQUIRE THE IDAHO PUBLIC UTILITIES COMMISSION TO PROMULGATE CERTAIN RULES, TO PROVIDE FOR THE REVIEW AND REVISION OF PROMULGATED RULES, TO PROVIDE FOR CLAIMS, TO REQUIRE CERTAIN NOTICES AND TO PROVIDE FOR RESPONSE BY UTILITIES, TO PROVIDE FOR THE EXCLUSIVE INITIAL JURISDICTION OF THE COMMISSION, TO SPECIFY POST-HEARING COMMISSION REQUIREMENTS, TO PROVIDE FOR COMMISSION ORDERS AND TO SPECIFY CONDITIONS RELATING TO COMMENCEMENT OF CERTAIN CIVIL ACTIONS, TO PROVIDE FOR THE APPLICATION OF COMMISSION RULES OF PRACTICE AND PROCEDURE, TO PROVIDE FOR CIVIL ACTIONS, TO PROVIDE FOR DAMAGES AND TO LIMIT CLAIMS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 8, Title 61, Idaho Code, and to read as follows:

CHAPTER 8
STRAY CURRENT AND VOLTAGE REMEDIATION ACT

61-801. LEGISLATIVE FINDINGS AND PURPOSES. The legislature of the state of Idaho finds that the efficient and safe distribution of electricity is critical to the well-being of the citizens and the economy of the state, including the business of agriculture, and that this enactment is necessary for the protection of the public welfare and benefit. The legislature also finds that the potential impact of stray current or voltage on dairy cows is a matter of interest and concern to dairy producers with dairies situated near and served by a multi-grounded wye electrical distribution system, which is the type of distribution system used by utilities in this state. Scientific research has established a level of stray current or voltage, at or below which no effect on a dairy cow's behavior, health or milk production has been shown. To provide for the continued, safe and efficient availability of electricity while addressing complaints regarding stray current or voltage, it is necessary and appropriate to: establish a uniform preventive action level; establish uniform procedures and protocols for measurements of stray current or voltage; require, when necessary, that the sources of stray current or voltage be identified; require, when necessary, adequate remediation; and establish procedures for handling complaints.

61-802. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

(1) "Adequate remediation" means corrective action by a utility which results in, and is reasonably likely to sustain, a reduction of stray current or voltage attributable to the utility's distribution system of fifty percent (50%) or less of the preventive action level.

(2) "Commission" means the Idaho public utilities commission as established pursuant to section 61-201, Idaho Code.

(3) "Cow contact points" means any two (2) electrically conductive points which a dairy cow may, in its normal environment, unavoidably and simultaneously contact.

(4) "Preventive action level" is stray current or voltage that is either:

(a) A steady-state, root mean square (rms), alternating current (AC) of 2.0 milliamp (mA) or more through a 500 ohm resistor connected between cow contact points, as measured by a true rms meter; or

(b) A steady-state, rms, AC voltage of 1.0 volts or more, across (in parallel with) a 500 ohm resistor connected between cow contact points, as measured by a true rms meter.

(5) "Steady-state" is the value of a current or voltage after an amount of time where all transients have decayed to a negligible value.

(6) "Stray current or voltage" is:

(a) Any steady-state, 60 hertz (Hz) (including harmonics thereof), root mean square (rms), alternating current (AC) of less than 20 milliamp (mA) through a 500 ohm resistor connected between cow contact points, as measured by a true rms meter; or

(b) Any steady-state, 60 Hz (including harmonics thereof), rms, AC voltage of less than 10 volts, across (in parallel with) a 500 ohm resistor connected between cow contact points, as measured by a true rms meter. Stray current or voltage is a normal, inherent and

unavoidable result of electricity traveling through grounded electrical systems, including a dairy producer's on-farm system and a utility's distribution system, which systems are required by the national electrical code and the national electrical safety code to be grounded to the earth to ensure continuous safety and reliability.

(7) "Utility" means a public utility as defined in section 61-332A, Idaho Code.

61-803. RULES. Within six (6) months of the effective date of this chapter, the commission shall promulgate temporary rules and proposed rules, referred to collectively in this chapter as "commission rules," establishing uniform procedures and protocols for the measurement of stray current or voltage. The commission shall review the rules from time to time, or upon petition to the commission, to ensure that the uniform procedures and protocols continue to be the most scientifically and technologically accurate and reliable means of detecting stray current or voltage. If the commission determines that it is appropriate to revise the rules because of advances in science or technology, it is encouraged to do so by the adoption of temporary rules which would confer a benefit on utilities and dairy producers by making better science available for the measurement of stray current or voltage. Any measurements of stray current or voltage not made in compliance with commission rules shall be inadmissible before the commission or in any civil action. The commission rules shall be applicable to dairy producers, utilities, and all persons or entities involved in any way in the measurement or remediation of stray current or voltage in this state.

61-804. CLAIM -- NOTICE -- RESPONSE OF UTILITY. Any dairy producer in this state who claims that its dairy cows are being affected by any form or type of electrical energy allegedly attributable to a utility including, without limitation, stray current or voltage, shall, as a condition precedent to commencing any civil action against the utility, provide written notice thereof to the utility. The notice shall specify why the dairy producer believes its dairy cows are being affected by electrical energy attributable to the utility. Within fourteen (14) days of receipt of such notice, the utility shall take measurements at cow contact points at the dairy producer's dairy to identify the existence and magnitude of stray current or voltage, if any. If the utility finds a level of stray current or voltage at cow contact points in excess of the preventive action level, the utility shall thereafter promptly identify that portion, if any, of the stray current or voltage that is attributable to the utility's distribution system. If that portion of the stray current or voltage at cow contact points attributable to the utility's distribution system exceeds fifty percent (50%) of the preventive action level, the utility shall, within five (5) business days, commence and diligently pursue to completion, remedial procedures which shall reduce, and are reasonably likely to sustain, that portion of the stray current or voltage at cow contact points attributable to the utility's distribution system to fifty percent (50%) or less of the preventive action level.

61-805. COMMISSION -- JURISDICTION -- ORDERS. The commission shall have exclusive, initial jurisdiction to determine whether a utility has complied with the commission rules regarding measurement of stray current or voltage; whether the utility's measurements demonstrated stray current or voltage at or above the preventive action level; whether the utility has properly identified that portion of the stray current or voltage at cow contact points attributable to the utility's distribution system; and whether the utility has complied with its remediation obligation under this chapter.

(1) If, after hearing, the commission determines that (a) the utility complied with the commission rules regarding measurement of stray current or voltage, and (b) the utility properly identified no stray current or voltage in excess of the preventive action level, then the commission shall issue an order that the utility has provided adequate service pursuant to section 61-302, Idaho Code. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code.

(2) If, after hearing, the commission determines that (a) the utility complied with the commission rules regarding measurement of stray current or voltage, (b) the utility properly identified stray current or voltage in excess of the preventive action level, and (c) the utility properly identified that the portion of stray current or voltage attributable to the utility's distribution system was fifty percent (50%) or less of the preventive action level, then the commission shall issue an order that the utility provided adequate service pursuant to section 61-302, Idaho Code. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code.

(3) If, after hearing, the commission determines that (a) the utility complied with the commission rules regarding measurement of stray current or voltage, (b) the utility properly identified stray current or voltage in excess of the preventive action level, and (c) the utility properly identified that the portion of stray current or voltage attributable to the utility's distribution system exceeded fifty percent (50%) of the preventive action level, then the commission shall thereafter determine the adequacy of the utility's remediation efforts. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code. If the dairy producer has complied with the notice provisions set forth in section 61-804, Idaho Code, and the commission has made a determination that the conditions set forth in this subsection are met, then the dairy producer may, not later than one (1) year following completion of adequate remediation, or one (1) year following the issuance of the commission's final order thereon, whichever occurs later, commence a civil action seeking monetary damages against the utility. In any such civil action, damages shall be limited as set forth in section 61-808, Idaho Code.

(4) If, after hearing, the commission determines that (a) the utility failed to comply with the commission rules regarding measurement of stray current or voltage, (b) the utility failed to properly identify, when required pursuant to section 61-804, Idaho Code, to do so, that portion of stray current or voltage attributable to the utility's distribution system, or (c) the utility failed to provide adequate remediation, then the commission shall order the utility to take measurements of stray current or voltage in conformance with commission

rules, or identify that portion of the stray current or voltage attributable to the utility's distribution system and, if necessary, to provide adequate remediation. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code. If the dairy producer complied with the notice provisions set forth in section 61-804, Idaho Code, and the commission made a determination that the portion of stray current or voltage attributable to the utility's distribution system exceeded fifty percent (50%) of the preventive action level, then the dairy producer may, not later than one (1) year following completion of adequate remediation, or one (1) year following the issuance of the commission's final order thereon, whichever occurs later, commence a civil action seeking monetary damages against the utility. In any such civil action, damages shall be limited as set forth in section 61-808, Idaho Code.

(5) If after hearing, the commission determines that a dairy producer made or pursued a claim in bad faith or for purposes of harassment of the utility, the commission shall require the dairy producer to pay the utility's actual costs of investigation and defense. If, after hearing, the commission determines that a utility acted in bad faith, or for purposes of harassment or delay, the commission shall require the utility to pay the dairy producer's actual costs of investigation, if any, and preparation and presentation of the claim before the commission. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code.

61-806. COMMISSION -- RULES OF PRACTICE AND PROCEDURE. In all matters arising under this chapter which are submitted to the commission for decision, order or review, procedure shall be governed by the commission rules of practice and procedure.

61-807. CIVIL ACTIONS. No civil action may be commenced by a dairy producer against a utility seeking damages or other relief allegedly due to injury caused by stray current or voltage unless the dairy producer has complied with the provisions of section 61-804, Idaho Code, and the commission has issued an order pursuant to section 61-805, Idaho Code. In any civil action against a utility for damages or other relief, after the dairy producer has complied with the provisions of section 61-804, Idaho Code, and the commission has issued an order pursuant to section 61-805, Idaho Code, the commission's order shall be admissible in evidence in such civil action.

61-808. DAMAGES. In any civil action against a utility for damages pursuant to this chapter, a dairy producer shall be limited to those damages which (a) were incurred by the dairy producer during that period of time commencing twelve (12) months prior to the dairy producer's provision of notice to the utility and ending on the date of completion of adequate remediation, and (b) were caused by that portion of the stray current or voltage attributable to the utility's distribution system.

61-809. LIMITATION OF CLAIMS. No claim for nuisance may be asserted against a utility for damages due to stray current or voltage. Claims against a utility for damages due to stray current or voltage shall be limited to claims of negligence, including in the case of a prior determination of the commission pursuant to subsections (3) or (4) of section

61-805, Idaho Code, negligence per se. In determining whether the utility was negligent, the utility's conduct shall be judged using a standard of ordinary care under the existing circumstances.

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 28, 2005.

CHAPTER 190
(H.B. No. 245)

AN ACT

RELATING TO JURIES; AMENDING SECTION 2-204, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 2-205, IDAHO CODE, TO REMOVE A TIME LIMIT APPLICABLE TO JURY COMMISSIONERS; AMENDING SECTION 2-206, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO MASTER JURY LISTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 2-207, IDAHO CODE, TO REVISE DESCRIPTIVE LANGUAGE AND TO REVISE PROVISIONS APPLICABLE TO THE UPDATING OF MASTER JURY LISTS; AMENDING SECTION 2-208, IDAHO CODE, TO REVISE DESCRIPTIVE LANGUAGE AND TO REVISE PROVISIONS APPLICABLE TO THE DRAWING OF NAMES FROM MASTER JURY LISTS, TO PROVIDE FOR THE SERVING OF SUMMONS, TO PROVIDE FOR THE MAILING AND COMPLETION OF QUALIFICATION QUESTIONNAIRE FORMS, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE A CORRECT CODE REFERENCE, TO INCREASE THE FINE FOR FAILING TO APPEAR AS DIRECTED BY THE JURY COMMISSION, TO PROVIDE FOR CONFIDENTIALITY AND TO PROVIDE FOR THE MANNERS IN WHICH A QUALIFICATION QUESTIONNAIRE FORM MAY BE COMPLETED AND RETURNED; AMENDING SECTION 2-209, IDAHO CODE, TO PROVIDE A REFERENCE TO ADMINISTRATIVE DISTRICT JUDGES AND THEIR DESIGNEES, TO REVISE TERMINOLOGY, TO REFERENCE APPLICABLE LAW AND TO SET FORTH PROVISIONS APPLICABLE TO DISQUALIFICATION; AMENDING SECTION 2-210, IDAHO CODE, TO REVISE DESCRIPTIVE LANGUAGE, TO REVISE TERMINOLOGY, TO REVISE PROVISIONS APPLICABLE TO THE DRAWING OF NAMES FROM MASTER JURY LISTS AND TO PROVIDE FOR THE COMPLETION OF THE JUROR SUMMONS AND QUALIFICATION QUESTIONNAIRE FORM; AMENDING SECTION 2-211, IDAHO CODE, TO PROVIDE THAT NO EXEMPTIONS FOR ANY QUALIFIED PROSPECTIVE JUROR MAY BE GRANTED; AMENDING SECTION 2-212, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR THE MAINTENANCE OF DETERMINATION RECORDS, TO PROVIDE THAT CERTAIN PERSONS AGED SEVENTY YEARS OR OLDER MAY BE PERMANENTLY EXCUSED AND REINSTATED, TO PROVIDE FOR A WRITTEN STATEMENT SETTING FORTH THE REASON A PERSON IS REQUESTING A POSTPONEMENT AND THE ANTICIPATED DATE THE REASON WILL NO LONGER EXIST AND TO REFERENCE POSTPONEMENTS THAT ARE GRANTED; AMENDING SECTION 2-213, IDAHO CODE, TO MAKE TECHNICAL CHANGES AND TO REVISE CODE REFERENCES; AMENDING SECTION 2-214, IDAHO CODE, TO PROVIDE THAT CERTAIN RECORDS AND PAPERS SHALL BE PRESERVED FOR A MINIMUM PERIOD OF FOUR YEARS; AND AMENDING SECTION 2-217, IDAHO CODE, TO INCREASE THE PENALTY FOR EVASION OF JURY SERVICE.

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

SECTION 1. That Section 2-204, Idaho Code, be, and the same is hereby amended to read as follows:

2-204. DEFINITIONS. As used in this ~~act~~ chapter:

(1) "Court" means district courts of this state, including the magistrates division, and includes, when the context requires, any judge of the court;

(2) "Clerk" and "clerk of the court" mean the duly elected and acting clerk of the district court and ex officio auditor and recorder and duly appointed deputies;

(3) "Master jury list" means the voter registration lists for the county which shall be supplemented with names from other sources prescribed pursuant to ~~this act (~~section 2-206, Idaho Code~~)~~, in order to foster the policy and protect the rights secured by ~~this act (~~sections 2-202 and 2-203, Idaho Code~~)~~;

(4) "Voter registration lists" means the most current official records, maintained by the county clerk, of persons registered to vote in any national, state, county, or municipal election;

(5) "Jury ~~wheel~~ selection system" means any physical device or ~~electronic~~ automated system for the ~~storage~~ management of the names or identifying numbers of prospective jurors;

~~(6) "Master jury wheel" means the jury wheel in which are placed names or identifying numbers of prospective jurors taken from the master list (section 2-207, Idaho Code);~~

~~(7) "Qualified~~ "Prospective jury ~~wheel~~ panel" means the ~~jury wheel in which are placed the~~ list of names or identifying numbers of prospective jurors ~~whose names are~~ drawn at random from the master jury ~~wheel~~ list pursuant to ~~(~~section 2-208, Idaho Code~~)~~, and who are not disqualified pursuant to ~~(~~section 2-209, Idaho Code~~)~~.

SECTION 2. That Section 2-205, Idaho Code, be, and the same is hereby amended to read as follows:

2-205. JURY COMMISSIONS ESTABLISHED -- COMPOSITION -- QUALIFICATIONS OF COMMISSIONERS -- EXPENSES AND COMPENSATION. A jury commission is established in each county to manage the jury selection process under the supervision and control of the court. The jury commission shall be composed of the clerk of the district court and a jury commissioner appointed ~~for a term of two (2) years~~ by the administrative judge. The jury commissioner shall serve until a successor is appointed and qualifies. The jury commissioner must be a citizen of the United States and a resident in the county in which the jury commissioner serves. The jury commissioner may be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of jury commission duties and may receive compensation at a per diem rate fixed by the administrative judge and payable from county funds, if not otherwise a county employee.

SECTION 3. That Section 2-206, Idaho Code, be, and the same is hereby amended to read as follows:

2-206. MASTER JURY LIST OF REGISTERED VOTERS -- SUPPLEMENTATION BY OTHER LISTS DESIGNATED BY SUPREME COURT -- LIST AVAILABLE TO COMMISSION -- OPEN TO PUBLIC INSPECTION. (1) The jury commission for each county shall compile and maintain a master jury list consisting of ~~all~~ the cur-

rent voter registration lists for the county supplemented with names from other lists of persons resident therein, such as lists of utility customers, property taxpayers, motor vehicle registrations, and drivers' licenses, and state identification cards, which the supreme court from time to time designates. The supreme court shall initially designate the other lists within ninety (90) days following the effective date of this act and exercise the authority to designate from time to time in order to foster the policy and protect the rights secured by sections 2-202 and 2-203, Idaho Code.

(2) In compiling the master jury list the jury commission shall avoid duplication of names.

(~~2~~3) Whoever has custody, possession, or control of any of the lists ~~making--up--or~~ used in compiling the master jury list, including those designated under subsection (1) of this section by the supreme court as supplementary sources of names, shall ~~make-the-list-available to~~ electronically transfer the list, including any changes, deletions and additions, and at the request of the jury commission, the custodian shall prepare a hard copy of the list and make the custodian's records, from which the list was compiled, available for inspection, reproduction, and copying at all reasonable times.

(~~3~~4) The master jury list shall be open to the public for examination as provided by supreme court rule.

SECTION 4. That Section 2-207, Idaho Code, be, and the same is hereby amended to read as follows:

2-207. MASTER JURY ~~WHEEL~~ LIST -- MANNER OF ~~SELECTING--NAMES--FOR~~ UPDATING. (1) ~~The-jury-commission-for-each-county-shall-maintain-a-master-jury-wheel,-into-which-the-commission-shall-place-the-names-or-identifying-numbers-of-prospective-jurors-taken-from-the-master-list.-If-the total-number-of-prospective-jurors-on-the-master-list--is--one--thousand (1,000)--or--less,-the-names-or-identifying-numbers-of-all-of-them-shall be-placed-in-the-master-jury-wheel.-In-all-other-cases,--the--number--of prospective--jurors--to--be-placed-in-the-master-jury-wheel-shall-be-one thousand-(1,000)-plus-not-less-than-one-percent-(1%)-of-the-total-number of-names-on-the-master-list.-From~~ Updated information from the lists of voter registration, drivers' licenses, and state identification cards, including any changes, deletions and additions, shall be made to the master jury list from time to time ~~a-larger-or-additional-number-may-be~~ as determined by the jury commission or as ordered by the administrative judge, ~~to-be-placed-in-the-master-jury-wheel.-In~~ but at a minimum not less frequently than December of each odd-numbered year~~,-or-more-frequently-as-determined-by-the-administrative-judge--of--a--judicial--district,--the--wheel--shall--be-emptied-and-refilled-as-prescribed-in-this act.~~

(2) ~~Unless-all-the-names-on-the-master-list-are-to-be-placed-in-the master-jury-wheel-pursuant-to-subsection-(1)-of-this-section,-the--names or--identifying-numbers-of-prospective-jurors-to-be-placed-in-the-master jury-wheel-shall-be-selected-by-the-jury-commission-at-random--from--the master--list--in--the-following-manner:-the-total-number-of-names-on-the master-list-shall-be-divided-by-the-number-of-names-to-be-placed-in--the master--jury--wheel;--the-whole-number-nearest-the-quotient-shall-be-the "key-number,"-except-that-the-key-number-shall-never-be-less-than--2.--A "starting-number"-for-making-the-selection-shall-then-be-determined-by-a~~

~~random method from the numbers from 1 to the key number, both inclusive. The required number of the names shall then be selected from the master list by taking in order the first name on the master list corresponding to the starting number and then successively the names appearing in the master list at intervals equal to the key number, recommencing if necessary at the start of the list until the required number of names has been selected. Upon recommencing at the start of the list, or if additional names are subsequently to be selected for the master jury wheel, names previously selected from the master list shall be disregarded in selecting the additional names. The jury commission may use an electronic or mechanical system or device in carrying out its duties~~ In the alternative, or in addition to the procedure set forth in subsection (1) of this section, and if ordered by the administrative judge, in December of each odd-numbered year, or more frequently as determined by the administrative judge, the master jury list shall be emptied and refilled as prescribed in section 2-206, Idaho Code.

SECTION 5. That Section 2-208, Idaho Code, be, and the same is hereby amended to read as follows:

2-208. NAMES RANDOMLY DRAWN FROM MASTER JURY ~~WHEEL~~ LIST -- QUALIFICATION QUESTIONNAIRE FORMS FOR PROSPECTIVE JURORS -- MAILING AND RETURN -- ORDER TO APPEAR -- CRIMINAL CONTEMPT -- PENALTY FOR MISREPRESENTATION. (1) ~~From time to time and in a manner prescribed by the administrative judge the jury commission publicly shall draw at random from the master jury wheel the names or identifying numbers of as many prospective jurors as the administrative judge by order requires. The clerk or the jury commissioner shall prepare an alphabetical list of the names drawn~~ The court or any other state or county official having authority to conduct a trial or hearing with a jury within the county may direct the jury commission to draw and assign to that court or official the number of qualified jurors deemed necessary for one (1) or more jury panels or as required by law for a grand jury. Upon receipt of the direction and in a manner prescribed by the court, the jury commission shall publicly draw at random, by use of a manual, mechanical, or automated system, from the master jury list the number of prospective jurors specified. Neither the names drawn nor the list shall be disclosed to any person except upon specific order of the ~~trial~~ presiding judge.

(2) Each person on the prospective jury panel shall be served with a summons, issued by the clerk of the court or the jury commissioner. The summons shall be served either personally, or by regular mail or certified mail, addressed to the prospective juror at that person's usual residence, business or post office address.

(3) The clerk or the jury commissioner shall mail ~~to every prospective juror whose name is drawn from the master jury wheel a juror~~ a qualification questionnaire form, accompanied by instructions, addressed to the prospective jurors at their usual residence, business or post office address. The qualification questionnaire form may be sent together with the summons in a single mailing to a prospective juror. The qualification questionnaire form shall be in a form prescribed by the supreme court. The qualification questionnaire form ~~accompanied by instructions to fill out~~ must be completed and ~~return the form by mail~~ returned to the clerk or the jury commissioner within ten (10) days ~~after its receipt~~ from the date of mailing. The ~~juror~~ qualification

questionnaire form shall ~~be subject to approval by the administrative judge as to matters of form and shall~~ elicit the name, address of residence, and age of the prospective juror and whether the prospective juror: (a) is a citizen of the United States of America and a resident of the county, (b) is able to read, speak and understand the English language, (c) has any disability impairing his capacity to render satisfactory jury service, and (d) has lost the right to ~~vote~~ serve on a jury because of a felony criminal conviction as provided by section 3, article VI, of the constitution of the state of Idaho, and who has not ~~had that right~~ been restored to the rights of citizenship pursuant to section 18-310, Idaho Code, or other applicable law. The ~~juror~~ qualification questionnaire form shall contain the prospective juror's declaration that his responses are true to the best of his knowledge and his acknowledgment that a willful misrepresentation of a material fact may be punished as a misdemeanor. Notarization of the ~~juror~~ completed qualification questionnaire form shall not be required. If the prospective juror is unable to ~~fill out~~ complete the form, another person may do ~~it for him~~ so on his or her behalf and shall indicate that ~~he~~ such person has done so and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk or the jury commissioner shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commission within ten (10) days after its second ~~receipt~~ mailing.

(~~2~~4) Any prospective juror who fails to return a completed ~~juror~~ qualification questionnaire form as instructed shall be directed by the jury commission to appear forthwith before the clerk or the jury commissioner to ~~fill out~~ complete the ~~juror~~ qualification questionnaire form. At the time of his appearance for jury service, or at the time of ~~any~~ interview before the court, clerk, or the jury commissioner, any prospective juror may be required to ~~fill out~~ complete another ~~juror~~ qualification questionnaire form in the presence of the court, clerk, or the jury commissioner, at which time the prospective juror may be questioned, but only with regard to his responses to questions contained on the form and grounds for his excuse or disqualification. Any information thus acquired by the court, clerk, or the jury commissioner shall be noted on the ~~juror~~ qualification questionnaire form.

(~~3~~5) A prospective juror who fails to appear as directed by the commission, pursuant to subsection (~~2~~3) of this section shall be ordered by the court to appear and show cause for his failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for his failure to appear as directed by the jury commission, he is guilty of contempt and upon conviction may be fined not more than one three hundred dollars ($~~1~~300) or imprisoned not more than three (3) days, or both, and postponed to a new ~~jury term~~ prospective jury panel as set by the presiding judge.

(~~4~~6) Any person who willfully misrepresents a material fact on a ~~juror~~ qualification questionnaire form for the purpose of avoiding or securing service as a juror is guilty of a misdemeanor.

(7) The contents of the juror qualification questionnaire form shall be confidential to the extent provided by rules of the Idaho supreme court.

(8) The clerk or the jury commissioner may provide an opportunity to a prospective juror to complete and return the qualification ques-

tionnaire form through electronic mail, facsimile transmission, or other reliable means of communication prior to mailing the qualification questionnaire form to the prospective juror. If the prospective juror completes and returns the qualification questionnaire form in such manner, the qualification questionnaire form need not be mailed to the prospective juror.

SECTION 6. That Section 2-209, Idaho Code, be, and the same is hereby amended to read as follows:

2-209. DETERMINATION OF QUALIFICATION OF PROSPECTIVE JUROR -- QUALIFICATIONS -- PHYSICIAN'S CERTIFICATE OF DISABILITY. (1) The ~~court~~ administrative district judge or administrative district judge's designee, upon request of the clerk or the jury commissioner or a prospective juror or on its own initiative, shall determine on the basis of information provided on the ~~juror~~ qualification questionnaire form or interview with the prospective juror or other competent evidence whether:

(a) The prospective juror is not qualified to serve on a jury because he or she is unable to read, speak, and understand the English language; or

(b) The prospective juror is disqualified from service on a jury because of a disability which renders the prospective juror incapable of performing satisfactory jury service.~~; but a~~ A person claiming this disqualification shall be required to submit a physician's certificate as to the disability, and the certifying physician is subject to inquiry by the court at its discretion.

(2) The clerk or the jury commissioner shall determine on the basis of information provided on the ~~juror~~ qualification questionnaire form or interview with the prospective juror or other competent evidence whether:

(a) The prospective juror is not qualified to serve on a jury because the person is not a citizen of the United States of America, eighteen (18) years of age, and a resident of the county; or

(b) The prospective juror is disqualified from serving on a jury ~~because the person has lost the right to vote~~ because of a felony criminal conviction as provided by section 3, article VI, of the constitution of the state of Idaho, and who has not ~~had--that--right reinstated~~ been restored to the rights of citizenship pursuant to section 18-310, Idaho Code, or other applicable law.

(3) A person who is disqualified from serving on a jury on the basis of any of the grounds set forth in subsections (1) and (2) of this section shall be excused from serving on a jury for a period of two (2) years following the disqualification. The administrative district judge, or a district judge or magistrate judge designated by the administrative district judge, may excuse a person disqualified under subsection (1)(b) of this section for a period of time greater than two (2) years, or may excuse such person permanently from serving on a jury. An order excusing such a person permanently or for a period of time greater than two (2) years shall be based upon a finding as to the nature and duration of the disability, based upon the information provided in the qualification questionnaire form, an interview with the prospective juror, or other competent evidence.

SECTION 7. That Section 2-210, Idaho Code, be, and the same is hereby amended to read as follows:

2-210. NAMES PLACED IN ~~QUALIFIED~~ PROSPECTIVE JURY ~~WHEEL~~ PANEL ~~-- DRAWING PANELS---NOTICE TO PERSONS DRAWN---~~ SUMMONING ADDITIONAL TRIAL JURORS -- NAMES DRAWN TO BE PUBLIC -- EXCEPTION. (1) The jury commission shall maintain a ~~qualified~~ prospective jury ~~wheel~~ panel and shall place therein the names or identifying numbers of all prospective jurors drawn from the master jury ~~wheel~~ list who are not disqualified under section 2-209, Idaho Code.

(2) ~~The--court-or-any-other-state-or-county-official-having-authority-to-conduct-a-trial-or-hearing-with-a--jury--within--the--county--may direct--the-jury-commission-to-draw-and-assign-to-that-court-or-official the-number-of-qualified-jurors-he-deems-necessary-for-one--(1)--or--more jury--panels-or-as-required-by-law-for-a-grand-jury.-Upon-receipt-of-the direction-and-in-a-manner-prescribed-by-the-court,-the--jury--commission shall--publicly--draw-at-random-from-the-qualified-jury-wheel-the-number of-qualified-jurors-specified.-The-qualified-jurors-drawn-for-jury--service--shall--be--assigned-at-random-by-the-clerk-to-each-jury-panel-in-a manner-prescribed-by-the-court.~~

~~(3)--If-a-grand,-trial,-or-other-jury-is-ordered-to--be--drawn,--the clerk--thereafter--shall--cause-each-person-drawn-for-jury-service-to-be served-with-a-summons-either-personally-or-by-first-class-mail-or-certified-mail,-return-receipt-requested,-addressed-to-him-at-his-usual-residence,-business,-or-post-office-address,-requiring--him--to--report--for jury-service-at-a-specified-time-and-place.~~

~~(4)~~ If there is an unanticipated shortage of available trial jurors drawn from a ~~qualified~~ prospective jury ~~wheel~~ panel, the court may require the sheriff to summon a sufficient number of trial jurors selected at random by the clerk from the ~~qualified~~ master jury ~~wheel~~ list in a manner prescribed by the court.

~~(5)~~ The jurors whose names ~~of-qualified-jurors~~ are drawn from the ~~qualified~~ master jury ~~wheel-and-the-contents-of-jury-qualification-forms completed--by--those-jurors-shall-be-made-available-to-the-public-at-the discretion-of-the-trial-court~~ list shall be served with a summons and shall complete the qualification questionnaire form in the manner prescribed in section 2-208, Idaho Code.

SECTION 8. That Section 2-211, Idaho Code, be, and the same is hereby amended to read as follows:

2-211. NO EXEMPTIONS. No exemptions for any qualified prospective juror ~~is-exempt-from-jury-service~~ may be granted.

SECTION 9. That Section 2-212, Idaho Code, be, and the same is hereby amended to read as follows:

2-212. EXCUSING OR POSTPONING JURY SERVICE -- INQUIRY BY COURT -- GROUNDS FOR EXCUSING OR POSTPONING. (1) The court, or a member of the jury commission designated by the court, upon request of a prospective juror or on its own initiative, shall determine on the basis of information provided on the ~~juror~~ qualification questionnaire form or interview with the prospective juror or other competent evidence whether the prospective juror should be excused from jury service or have their jury

service postponed. The clerk or the jury commissioner shall ~~enter--this determination in the space provided on the juror qualification form~~ keep a record of this determination.

(2) A person who is seventy (70) years of age or older ~~may~~ shall be permanently excused if the person ~~submits--in--writing--a statement requesting~~ indicates on the qualification questionnaire form that he or she wishes to be excused. A person who requests to be excused on this basis shall be reinstated to the master jury list by submitting a written request asking to be reinstated for jury service.

(3) A person who is not disqualified for jury service under section 2-209, Idaho Code, may have jury service postponed by the court or the jury commissioner only upon a showing of undue hardship, extreme inconvenience, or public necessity, or upon a showing that the juror is a mother breastfeeding her child.

(a) Any person requesting a postponement shall provide a ~~sworn~~ written statement setting forth the ~~ground~~ reason for the request and the anticipated date that the ~~ground~~ reason will no longer exist.

(b) The court or the jury commissioner may require a person requesting a postponement for any medical reason to provide a statement from a medical provider supporting the request.

(c) The postponement, if granted, shall be for a period of time as the court or the jury commissioner deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the direction of the court or the jury commissioner.

SECTION 10. That Section 2-213, Idaho Code, be, and the same is hereby amended to read as follows:

2-213. STAY OF PROCEEDINGS OR QUASHING INDICTMENT FOR IRREGULARITY IN SELECTING JURY -- EVIDENCE IN SUPPORT OF MOTION -- REMEDIES EXCLUSIVE -- CONTENTS OF RECORDS NOT TO BE DISCLOSED. (1) Within seven (7) days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the trial jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case to quash the indictment, or for other appropriate relief, on the ground of substantial failure to comply with this ~~act~~ chapter in selecting the grand or trial jury.

(2) Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this ~~act~~ chapter, the moving party is entitled to present in support of the motion the testimony of the jury commissioner or the clerk, any relevant records and papers not public or otherwise available used by the jury commissioner or the clerk, and any other relevant evidence. If the court determines that in selecting either a grand jury or a trial jury there has been a substantial failure to comply with this ~~act~~ chapter, the court shall stay the proceedings pending the selection of the jury in conformity with this ~~act~~ chapter, quash an indictment, or grant other appropriate relief.

(3) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the state, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this ~~act~~ chapter.

(4) The contents of any records or papers used by the jury commis-

sioner or the clerk in connection with the selection process and not made public under ~~subsection (3) of~~ section 2-206(4), Idaho Code, ~~and subsection (5) of section 2-210, Idaho Code,~~ shall not be disclosed, except in connection with the preparation or presentation of a motion under subsection (1) of this section~~, until after the master jury wheel has been emptied and refilled (section 2-207, Idaho Code) and all persons selected to serve as jurors before the master jury wheel was emptied have been discharged~~. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (1) of this section.

SECTION 11. That Section 2-214, Idaho Code, be, and the same is hereby amended to read as follows:

2-214. RETENTION PERIOD FOR PAPERS AND RECORDS. All records and papers compiled and maintained by the jury commissioner or the clerk in connection with selection and service of jurors shall be preserved by the clerk for ~~two (2)~~ a minimum period of four (4) years ~~after the master jury wheel used in their selection is emptied and refilled (section 2-207, Idaho Code)~~ and for any longer period ordered by the court.

SECTION 12. That Section 2-217, Idaho Code, be, and the same is hereby amended to read as follows:

2-217. PENALTY FOR EVASION OF JURY SERVICE. A person summoned for jury service who fails to appear or to complete jury service as directed shall be ordered by the court to appear forthwith and show cause for his failure to comply with the summons. If he fails to show good cause for noncompliance with the summons, he is guilty of criminal contempt and upon conviction may be fined not more than ~~one~~ three hundred dollars ($~~1~~300) and imprisoned not more than three (3) days, or both.

Approved March 28, 2005.

CHAPTER 191
(H.B. No. 264)

AN ACT

RELATING TO SCHOOL LEVIES; AMENDING SECTION 33-802, IDAHO CODE, TO AUTHORIZE A SCHOOL DISTRICT TO ADD THE INCREMENT VALUE TO A SCHOOL DISTRICT'S ACTUAL OR ADJUSTED MARKET VALUE FOR ASSESSMENT PURPOSES AS SUCH VALUATION EXISTED ON DECEMBER 31 OF THE PREVIOUS YEAR WHEN CALCULATING THE MAXIMUM SCHOOL MAINTENANCE AND OPERATION LEVIES AND THE LOCAL DISTRICT CONTRIBUTION LEVY IN THE EVENT PROPERTY WITHIN THE DISTRICT IS CONTAINED IN A REVENUE ALLOCATION AREA AND SUCH REVENUE ALLOCATION AREA HAS GIVEN NOTICE OF TERMINATION; AMENDING CHAPTER 8, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-808, IDAHO CODE, TO PROVIDE FOR PUBLIC NOTICE TO TAXPAYERS OF A SCHOOL DISTRICT THAT THE DISTRICT SHALL ADJUST ITS MARKET VALUE FOR ASSESSMENT PURPOSES DUE TO TERMINATION OF A REVENUE ALLOCATION AREA; AND AMENDING SECTION 33-1002D, IDAHO CODE, TO PROVIDE FOR COMPUTATION OF PROPERTY TAX REPLACEMENT OF A PORTION OF THE AUTHORIZED

SCHOOL MAINTENANCE AND OPERATION LEVY BY ADDING THE INCREMENT VALUE TO THE ACTUAL OR ADJUSTED MARKET VALUE FOR ASSESSMENT PURPOSES AS SUCH VALUES EXISTED ON DECEMBER 31 OF THE PREVIOUS YEAR OF A SCHOOL DISTRICT IF APPLICABLE UNDER A CIRCUMSTANCE RELATING TO TERMINATION OF A REVENUE ALLOCATION AREA.

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

SECTION 1. That Section 33-802, Idaho Code, be, and the same is hereby amended to read as follows:

33-802. SCHOOL LEVIES. Any tax levied for school purposes shall be a lien on the property against which the tax is levied. The board of trustees shall determine the levies upon each dollar of taxable property in the district for the ensuing fiscal year as follows:

1. Bond, Interest and Judgment Obligation Levies. Such levies as shall be required to satisfy all maturing bond, bond interest, and judgment obligations.

2. Maximum School Maintenance and Operation Levies. Such levies for maintaining and operating the schools of the district and for the payment of tuition and transportation, that do not exceed an amount equal to four-tenths of one percent (.4%) during tax year 1994, and do not exceed an amount equal to three-tenths of one percent (.3%) during tax year 1995 and thereafter, applied to the actual or adjusted market value for assessment purposes of the district as such valuation existed on December 31 of the previous year, but allowances necessary as a credit for prepaid taxes, as provided in section 63-1607, Idaho Code, shall not be included in such maximum levies. Provided however, that in the event property within a district's boundaries is contained in a revenue allocation area established under chapter 29, title 50, Idaho Code, and such revenue allocation area has given notice of termination thereunder, then, only for the purpose of determining the levy described in this subsection, the district may add the increment value, as defined in section 50-2903, Idaho Code, to the actual or adjusted market value for assessment purposes of the district as such value existed on December 31 of the previous year.

3. Authorized School Maintenance and Operation Levies. Such levies for maintaining and operating the schools of the district and for the payment of tuition and transportation that do not exceed one hundred eleven percent (111%) of the local district's contribution authorized in subsection 2. of section 33-1002, Idaho Code. Implementation of the provisions of this subsection shall be authorized only after approval by a majority of the district's electors voting on the question. Levies otherwise authorized by law shall not require an election.

4. Supplemental Maintenance and Operation Levies. No levy in excess of the levy permitted by subsection 2. or 3. of this section shall be made by a noncharter school district unless such a supplemental levy in a specified amount and for a specified time not to exceed two (2) years be first authorized through an election held pursuant to chapter 4, title 33, Idaho Code, and approved by a majority of the district electors voting in such election. A levy approved pursuant to this subsection may be reduced by a majority vote of the board of trustees in the second year.

5. Charter District Supplemental Maintenance and Operation. Levies pursuant to the respective charter of any such charter district shall be first authorized through an election held pursuant to chapter 4, title 33, Idaho Code, and approved by a majority of the district electors voting in such election.

6. The Local District Contribution. The local school district contribution levy is the amount utilized for calculating local district participation in the educational foundation program, which is applied to the adjusted market value for assessment purposes, as such valuation existed on December 31 of the previous year, together with the increment value, as defined in section 50-2903, Idaho Code, if applicable under the circumstance described in subsection 2. of this section, relating to termination of a revenue allocation area.

7. The board of trustees of any school district that has, for at least seven (7) consecutive years, been authorized through an election held pursuant to chapter 4, title 33, Idaho Code, to certify a supplemental levy that has annually been equal to or greater than twenty percent (20%) of the total general maintenance and operation fund, may submit the question of an indefinite term supplemental levy to the electors of the school district. Such question shall clearly state the dollar amount that will be certified annually and that the levy will be for an indefinite number of years. The question must be approved by a majority of the district electors voting on the question in an election held pursuant to chapter 4, title 33, Idaho Code. The levy approved pursuant to this subsection may be reduced by a majority vote of the board of trustees during any fiscal year.

SECTION 2. That Chapter 8, 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 33-808, Idaho Code, and to read as follows:

33-808. NOTICE OF ADJUSTMENT TO MARKET VALUE FOR ASSESSMENT PURPOSES UPON TERMINATION OF A REVENUE ALLOCATION AREA. (1) A school district that shall adjust its market value for assessment purposes in accordance with the provisions of section 33-802 2., Idaho Code, relating to termination of a revenue allocation area, shall advertise its action by publishing in at least the newspaper of largest paid circulation published in the county of the district, or if there is no such newspaper, then in a newspaper published nearest to the district where the advertisement is required to be published.

(2) For purposes of this section, the definition of "newspaper" shall be as established in sections 60-106 and 60-107, Idaho Code; provided further, that the newspaper of largest circulation shall be established by the statement of average annual paid weekday circulation listed on the newspaper's sworn statement of ownership that was filed with the United States post office on a date most recently preceding the date on which the advertisement required in this section is to be published. The advertisement shall be run when the school district ascertains that it will adjust its market value for assessment purposes in accordance with the provisions of section 33-802 2., Idaho Code, relating to termination of a revenue allocation area, and shall be published once a week for two (2) weeks following action by the board of trustees.

(3) The form and content of the notice shall be substantially as follows:

NOTICE OF PROPERTY TAX ADJUSTMENT BY SCHOOL BOARD

The (insert name of the school district) hereinafter the "District," has increased its market value for assessment purposes as of December 31, ..., by the amount of the increment value of the (insert name of Redevelopment Agency Revenue Allocation Area) on such date, in accordance with the provisions of Section 33-802, Idaho Code, because the revenue allocation area gave notice of termination pursuant to Section 50-2903, Idaho Code, and as a result thereof property taxes on the incremental value of the revenue allocation area will not be collected and distributed to the District. Section 33-802, Idaho Code, permits the District to replace those funds by adjusting its market value as described herein. The total amount of dollars in property taxes to be directly collected by the District pursuant to this action is estimated to be $..... .

SECTION 3. That Section 33-1002D, Idaho Code, be, and the same is hereby amended to read as follows:

33-1002D. PROPERTY TAX REPLACEMENT. The purpose of this section is to replace a portion of the authorized school maintenance and operation property tax levy with state sales tax receipts. As used in this section, the term "property tax computation ratio" shall mean a ratio determined by dividing the district's certified property tax maintenance and operation budget by the actual or adjusted market value for assessment purposes as such values existed on December 31 of the previous calendar year, together with the increment value, as defined in section 50-2903, Idaho Code, if applicable under the circumstance described in section 33-802 2., Idaho Code, relating to termination of a revenue allocation area.

(1) (a) In the case of a school district that had a property tax computation ratio of not less than four-tenths of one percent (.4%) in tax year 1994, that school district shall receive from the appropriations made for that purpose, an amount equal to the greater of the district's actual or adjusted market value for assessment purposes as such valuation existed on December 31 of the previous calendar year, together with the increment value, as defined in section 50-2903, Idaho Code, if applicable under the circumstance described in section 33-802 2., Idaho Code, relating to termination of a revenue allocation area, multiplied by one-tenth of one percent (.1%).

(b) In the case of a school district that had a property tax computation ratio of less than four-tenths of one percent (.4%) in tax year 1994, the greater of the 1992, 1993 or 1994 property tax computation ratio less three-tenths of one percent (.3%) shall be designated the district's base multiplier. In no case shall the base multiplier be less than zero (0). Four-tenths of one percent (.4%) less the greater of the district's 1992, 1993 or 1994 property tax computation ratio shall be designated the district's adjustment factor. In no case shall the adjustment factor be greater than one-tenth of one percent (.1%) or less than zero (0). Each school district's actual multiplier shall be the base multiplier plus one-fifth (1/5) of the adjustment factor in tax year 1995, the base multiplier plus two-fifths (2/5) of the adjustment factor in tax year 1996, the base multiplier plus three-fifths (3/5) of the adjustment

factor in tax year 1997, the base multiplier plus four-fifths (4/5) of the adjustment factor in tax year 1998, and the base multiplier plus the adjustment factor in tax year 1999 and beyond. Each school district shall receive, from the appropriations made for that purpose, an amount equal to the district's actual or adjusted market value for assessment purposes as such valuation existed on December 31 of the previous calendar year, together with the increment value, as defined in section 50-2903, Idaho Code, if applicable under the circumstance described in section 33-802 2., Idaho Code, relating to termination of a revenue allocation area, multiplied by the district's actual multiplier.

(c) The preceding provisions of this subsection notwithstanding, appropriations from the state for the value of one-tenth of one percent (.1%) of the greater of the district's actual or adjusted market value for assessment purposes as such valuation existed on December 31 of the previous calendar year, together with the increment value, as defined in section 50-2903, Idaho Code, if applicable under the circumstance described in section 33-802 2., Idaho Code, relating to termination of a revenue allocation area, shall not exceed seventy-five million dollars ($75,000,000) in any fiscal year. If the amount school districts would otherwise be entitled to receive pursuant to the preceding provisions of this subsection exceeds seventy-five million dollars ($75,000,000), then each school district shall receive its share of seventy-five million dollars ($75,000,000) based on the formulas contained in this section.

(2) (a) Participation in this property tax reduction program is voluntary for a charter district. If a charter district participates, in addition to the provisions of subsection (1) of this section it shall not have a property tax computation ratio that is above three-tenths of one percent (.3%) or the district's property tax computation ratio in tax year 1994, less one-tenth of one percent (.1%), whichever is greater.

(b) If in any year the charter district's property tax computation ratio used to calculate its maintenance and operation budget is increased above the limit specified in this subsection the district shall not be eligible for the distribution pursuant to subsection (1) of this section for that year.

(3) Limitations imposed upon a school district's property tax computation ratio under the provisions of this section do not apply to any levy approved by electors of the school district as provided by law.

(4) Distributions calculated as provided in this section shall be made to school districts of this state in two (2) equal installments on the due dates as specified in section 63-903(1), Idaho Code, for the property taxes being replaced.

(5) For purposes of section 33-1002, Idaho Code, moneys distributed pursuant to this section shall not be included in determining total state funds.

Approved March 28, 2005.

CHAPTER 192
(H.B. No. 296)

AN ACT

APPROPRIATING MONEYS FROM THE IDAHO MILLENNIUM INCOME FUND AND DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS FOR THE PURPOSES AND PROGRAMS SPECIFIED FOR FISCAL YEAR 2006; AND PROVIDING THAT CERTAIN UNEXPENDED AND UNENCUMBERED MONEYS SHALL BE REVERTED.

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

SECTION 1. There is hereby appropriated and the State Controller is hereby directed to make cash transfers from the Idaho Millennium Income Fund to the following programs, at the request of the State Treasurer, not to exceed $700,000 for the period July 1, 2005, through June 30, 2006:

(a) $336,000 for the Public Health Districts to continue tobacco use cessation programs statewide through the Public Health Districts of Idaho and other nonprofit entities such as hospitals, primary care clinics and voluntary organizations. The tobacco use cessation programs should be available to any Idaho citizen, with primary emphasis on youth and pregnant women.

(b) $270,000 for the Idaho Supreme Court for its youth courts and status offender services programs as they relate to addressing tobacco and/or substance abuse issues.

(c) $94,000 for Law Enforcement Programs in the Idaho State Police to offset the cost of youth tobacco investigations.

SECTION 2. Notwithstanding any other provision of law to the contrary, on June 30, 2006, any remaining unexpended and unencumbered moneys appropriated in Section 1 of this act shall be reverted to the Idaho Millennium Income Fund. The State Controller shall then transfer said reverted moneys and all earnings credited to the Idaho Millennium Income Fund to the Idaho Millennium Fund.

Approved March 28, 2005.

CHAPTER 193
(H.B. No. 297)

AN ACT

APPROPRIATING MONEYS TO THE LIEUTENANT GOVERNOR FOR FISCAL YEAR 2006; 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 $118,600 to the Lieutenant Governor from the General Fund for the period July 1, 2005, through June 30, 2006.

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Office of the Lieutenant Governor is authorized no more than two (2) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 28, 2005.

CHAPTER 194
(H.B. No. 302)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE CATASTROPHIC HEALTH CARE COST FUND FOR FISCAL YEAR 2005; 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 34, Laws of 2004, there is hereby appropriated $3,675,000 from the General Fund to be deposited in the Catastrophic Health Care Cost Fund for the period July 1, 2004, through June 30, 2005.

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 28, 2005.

CHAPTER 195
(H.B. No. 303)

AN ACT
RELATING TO THE APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING SECTION 1, CHAPTER 368, LAWS OF 2004, TO REVISE THE APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF FAMILY AND COMMUNITY SERVICES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 368, Laws of 2004, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for the Division of Family and Community Services 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. CHILDREN'S SERVICES:				
FROM:				
General Fund	~~$10,473,900~~	~~$ 2,650,100~~	~~$ 9,043,900~~	~~$ 22,167,900~~
	9,592,300	2,848,900	10,683,500	23,124,700
Cooperative Welfare Fund (Federal)	~~14,851,900~~	~~7,520,800~~	~~10,882,700~~	~~33,255,400~~
	13,850,400	7,949,200	11,577,300	33,376,900
Cooperative Welfare Fund (Dedicated)			1,294,800	1,294,800
TOTAL	~~$25,325,800~~	~~$10,170,900~~	~~$21,221,400~~	~~$ 56,718,100~~
	23,442,700	10,798,100	23,555,600	57,796,400
II. DEVELOPMENTAL DISABILITIES SERVICES:				
FROM:				
General Fund	$ 5,444,100	$ 889,200	$ 267,900	$ 6,601,200
Cooperative Welfare Fund (Federal)	2,727,600	2,463,900	1,415,700	6,607,200
Cooperative Welfare Fund (Dedicated)	913,900	45,400	9,500	968,800
TOTAL	$ 9,085,600	$ 3,398,500	$ 1,693,100	$ 14,177,200
III. COMMUNITY MENTAL HEALTH SERVICES:				
FROM:				
General Fund	$ 7,349,100	$ 2,076,100	$ 2,360,500	$ 11,785,700
Cooperative Welfare Fund (Federal)	2,019,500	998,200	821,500	3,839,200
Cooperative Welfare Fund (Dedicated)	2,659,000			2,659,000
TOTAL	$12,027,600	$ 3,074,300	$ 3,182,000	$ 18,283,900
IV. IDAHO STATE SCHOOL AND HOSPITAL (ISSH):				
FROM:				
General Fund	$ 3,809,400	$ 816,100	$ 103,400	$ 4,728,900
Medical Assistance Fund		3,500		3,500
Cooperative Welfare Fund (Dedicated)	667,500	122,400	10,200	800,100
Cooperative Welfare Fund (Federal)	13,130,100	2,000,000	206,800	15,336,900
TOTAL	$17,607,000	$ 2,942,000	$ 320,400	$ 20,869,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
V. STATE HOSPITAL NORTH:				
FROM:				
General Fund	$ 3,929,600	$ 226,200	$ 6,900	$ 4,162,700
Alcohol Intoxication Treatment Fund	699,800	28,100		727,900
Cooperative Welfare Fund (Dedicated)	143,100			143,100
State Hospital North Endowment Income Fund	463,700	408,900	43,200	915,800
TOTAL	$ 5,236,200	$ 663,200	$ 50,100	$ 5,949,500
VI. STATE HOSPITAL SOUTH:				
FROM:				
General Fund	$ 8,101,800	$ 1,608,600	$ 233,500	$ 9,943,900
Cooperative Welfare Fund (Dedicated)	344,000	131,400	800	476,200
Mental Hospital Endowment Fund	1,623,300	66,000		1,689,300
Cooperative Welfare Fund (Federal)	3,151,000	1,275,400	12,400	4,438,800
TOTAL	$13,220,100	$ 3,081,400	$ 246,700	$ 16,548,200
VII. SUBSTANCE ABUSE SERVICES:				
FROM:				
General Fund	$ 57,500	$ 410,000	$ 2,676,600	$ 3,144,100
Prevention of Minors' Access to Tobacco Fund	24,700	46,800		71,500
Alcohol Intoxication Treatment Fund	228,200	520,400	829,800	1,578,400
Cooperative Welfare Fund (Dedicated)		355,900	526,000	881,900
Substance Abuse Treatment Fund			8,800	8,800
Cooperative Welfare Fund (Federal)	~~261,200~~	~~2,607,400~~	~~5,904,300~~	~~8,772,900~~
	426,800	4,310,800	11,627,300	16,364,900
TOTAL	~~$ 571,600~~	~~$ 3,940,500~~	~~$ 9,945,500~~	~~$ 14,457,600~~
	737,200	5,643,900	15,668,500	22,049,600
GRAND TOTAL	~~$83,073,900~~	~~$27,270,800~~	~~$36,659,200~~	~~$147,003,900~~
	81,356,400	29,601,400	44,716,400	155,674,200

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

Approved March 28, 2005.

CHAPTER 196
(H.B. No. 304)

AN ACT

APPROPRIATING MONEYS FOR SPECIAL PROGRAMS FOR FISCAL YEAR 2006; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND PROVIDING LEGISLATIVE INTENT REGARDING MONEYS APPROPRIATED FOR CATEGORY B OF THE IDAHO ROBERT R. LEE PROMISE SCHOLARSHIP PROGRAM.

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 and the State Board of Education for Special Programs 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. FOREST UTILIZATION RESEARCH:				
FROM:				
General Fund	$ 493,300	$ 93,400		$ 586,700
II. IDAHO GEOLOGICAL SURVEY:				
FROM:				
General Fund	$ 778,600	$ 25,700		$ 804,300
III. SCHOLARSHIPS AND GRANTS:				
FROM:				
General Fund			$7,351,700	$ 7,351,700
Federal Grant Fund			440,000	440,000
TOTAL			$7,791,700	$ 7,791,700
IV. IDAHO MUSEUM OF NATURAL HISTORY:				
FROM:				
General Fund	$ 498,100	$ 13,500		$ 511,600
V. IDAHO SMALL BUSINESS DEVELOPMENT CENTERS:				
FROM:				
General Fund			$ 286,700	$ 286,700
VI. IDAHO COUNCIL ON ECONOMIC EDUCATION:				
FROM:				
General Fund			$ 53,200	$ 53,200
VII. TECHHELP:				
FROM:				
General Fund			$ 164,800	$ 164,800
GRAND TOTAL	$1,770,000	$132,600	$8,296,400	$10,199,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, there is hereby authorized no more than twenty-four and eighty-hundredths (24.80) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, for the Forest Utilization Research Program, Idaho Geological Survey Program and the Idaho Museum of Natural History as specified in Section 1 of this act, unless specifically

authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is the intent of the Legislature that the moneys appropriated for Category B of the Idaho Robert R. Lee Promise Scholarship Program may only be used for qualifying Category B students who entered a postsecondary institution for the first time for the 2001-2002 academic year or subsequent academic years after completion of high school or its equivalent, pursuant to Sections 33-4303 through 33-4313, Idaho Code.

Approved March 28, 2005.

CHAPTER 197
(H.B. No. 305)

AN ACT
APPROPRIATING MONEYS FOR THE IDAHO WOMEN'S COMMISSION FOR FISCAL YEAR 2006; 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 Idaho Women's Commission the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$30,300	$ 9,000	$39,300
Miscellaneous Revenue Fund		6,700	6,700
TOTAL	$30,300	$15,700	$46,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho Women's Commission is authorized no more than fifty-two hundredths (0.52) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 28, 2005.

CHAPTER 198
(H.B. No. 309)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 2006; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN FUNDS FOR CAPITAL OUTLAY;

REAPPROPRIATING CERTAIN FUNDS FOR THE BRUNEAU DUNES SCIENCE CENTER CHALLENGE GRANT PROGRAM; APPROPRIATING MONEYS TO THE LAVA HOT SPRINGS FOUNDATION FOR FISCAL YEAR 2006; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Parks and Recreation 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT SERVICES DIVISION:					
FROM:					
General Fund	$ 1,641,800	$ 313,500			$ 1,955,300
Indirect Cost Recovery Fund	213,000	36,700			249,700
Parks and Recreation Fund	690,800	691,000	$ 23,500	$ 60,000	1,465,300
Recreational Fuels Fund	297,600	48,600	25,000	2,218,700	2,589,900
Parks and Recreation Registration Fund	109,700	137,300	13,500	7,675,900	7,936,400
Miscellaneous Revenue Fund	3,000	17,600			20,600
Petroleum Price Violation Fund				100,000	100,000
Federal Grant Fund	65,100	22,200		1,892,400	1,979,700
TOTAL	$ 3,021,000	$1,266,900	$ 62,000	$11,947,000	$16,296,900
II. PARK OPERATIONS:					
FROM:					
General Fund	$ 4,287,500	$ 720,800			$ 5,008,300
Indirect Cost Recovery Fund	37,200	2,400			39,600
Parks and Recreation Fund	1,533,200	1,398,500			2,931,700
Recreational Fuels Fund	247,300	125,100	$1,621,000		1,993,400
Parks and Recreation Registration Fund	362,200	305,200	107,500	$ 65,000	839,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund	6,700	77,500	60,000		144,200
Public Recreation Enterprise Fund	330,400	793,500	162,200		1,286,100
Parks and Recreation Expendable Trust Fund	271,800	243,700			515,500
Federal Grant Fund	936,800	306,000	66,900		1,309,700
TOTAL	$ 8,013,100	$3,972,700	$2,017,600	$ 65,000	$14,068,400
III. CAPITAL DEVELOPMENT:					
FROM:					
Parks and Recreation Fund			$ 110,000		$ 110,000
Recreational Fuels Fund			1,298,000		1,298,000
Public Recreation Enterprise Fund			460,000		460,000
Parks and Recreation Expendable Trust Fund			250,000		250,000
Federal Grant Fund			1,200,500		1,200,500
TOTAL			$3,318,500		$ 3,318,500
GRAND TOTAL	$11,034,100	$5,239,600	$5,398,100	$12,012,000	$33,683,800

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Parks and Recreation is authorized no more than one hundred fifty-nine and twenty-five one-hundredths (159.25) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 Section 67-3511(2), Idaho Code, the trustee and benefit payments in the Management Services Program may be transferred to the Capital Development Program to reflect project grants awarded to the Department of Parks and Recreation. Unexpended and unencumbered capital outlay balances in the Capital Development Program for fiscal year 2005 are hereby reappropriated for capital outlay in that program for the period July 1, 2005, through June 30, 2006.

SECTION 4. It is legislative intent that any unexpended, unencumbered balance of the $400,000 in General Fund moneys reappropriated in fiscal year 2005 for the Bruneau Dunes Science Center Challenge Grant

Program is hereby reappropriated for the period July 1, 2005, through December 31, 2005. Any General Funds that are not directly matched by December 31, 2005, shall be released for expenditure on other capital infrastructure needs as determined by the Idaho Park and Recreation Board.

SECTION 5. There is hereby appropriated to the Lava Hot Springs Foundation the following amounts to be expended according to the designated expense classes from the listed fund for the period July 1, 2005, through June 30, 2006:

LAVA HOT SPRINGS FOUNDATION:

FOR:	
Personnel Costs	$ 606,300
Operating Expenditures	514,200
Capital Outlay	496,300
TOTAL	$1,616,800
FROM:	
Public Recreation Enterprise - Lava Hot Springs Fund	$1,616,800

SECTION 6. In accordance with Section 67-3519, Idaho Code, the Lava Hot Springs Foundation is authorized no more than ten (10) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, for the program specified in Section 5 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 28, 2005.

CHAPTER 199
(H.B. No. 316)

AN ACT

APPROPRIATING MONEYS FOR THE STATE LIQUOR DISPENSARY FOR FISCAL YEAR 2006; TRANSFERRING MONEYS FROM THE LIQUOR CONTROL FUND TO THE COURT SERVICES FUND; 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 the designated expense classes from the listed fund for the period July 1, 2005, through June 30, 2006:

FOR:	
Personnel Costs	$ 8,043,600
Operating Expenses	3,372,700
Capital Outlay	406,300
TOTAL	$11,822,600
FROM:	
Liquor Control Fund	$11,822,600

SECTION 2. Notwithstanding the provisions of Section 23-404, Idaho Code, on July 1, 2005, the State Liquor Dispensary is hereby directed to transfer $11,300 from the Liquor Control Fund to the Drug Court and Family Court Services Fund for the operation of drug courts and family courts.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the State Liquor Dispensary is authorized no more than one hundred sixty-six (166) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 28, 2005.

CHAPTER 200
(H.B. No. 224)

AN ACT

RELATING TO TELECOMMUNICATION REGULATION; AMENDING SECTION 62-604, IDAHO CODE, TO AUTHORIZE A TELEPHONE CORPORATION TO ELECT TO HAVE ALL OR PART OF ITS TELECOMMUNICATION SERVICES EXCLUDED FROM REGULATION PURSUANT TO TITLE 61, IDAHO CODE, AND TO BE THEREAFTER SUBJECT TO REGULATION PURSUANT TO CHAPTER 6, TITLE 62, IDAHO CODE, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 62-605, IDAHO CODE, TO REVISE THE PROCEDURE FOR THE NOTICE OF ELECTION, TO AUTHORIZE THE PUBLIC UTILITIES COMMISSION TO REGULATE TELEPHONE CORPORATIONS FOR THE PURPOSE OF IMPLEMENTING THE FEDERAL COMMUNICATIONS ACT OF 1996, TO PROVIDE THE PUBLIC UTILITIES COMMISSION WITH CONTINUING AUTHORITY TO DETERMINE NONECONOMIC REGULATORY REQUIREMENTS FOR TELEPHONE CORPORATIONS PROVIDING BASIC LOCAL EXCHANGE SERVICE, PROHIBITING CERTAIN RATE INCREASES FOR BASIC LOCAL EXCHANGE SERVICE DURING THE PERIOD OF THREE YEARS FOLLOWING THE EFFECTIVE DATE OF THE ELECTION, TO AUTHORIZE THE PUBLIC UTILITIES COMMISSION TO EXTEND THE TRANSITION PERIOD FOR TWO ADDITIONAL YEARS AND TO ESTABLISH THE RATES FOR BASIC LOCAL EXCHANGE SERVICE TO BE USED TO DETERMINE ELIGIBILITY OF CERTAIN TELEPHONE CORPORATIONS TO DRAW FUNDS FROM THE STATE UNIVERSAL SERVICE FUND; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-607A, IDAHO CODE, TO PROHIBIT A TELEPHONE CORPORATION FROM REQUIRING A BASIC LOCAL EXCHANGE SERVICE CUSTOMER, AS A CONDITION OF RECEIVING BASIC LOCAL EXCHANGE SERVICE, TO PURCHASE OR SUBSCRIBE TO TELECOMMUNICATION SERVICES OTHER THAN BASIC LOCAL EXCHANGE SERVICES, TO PROHIBIT ANY INCREASE IN THE STAND-ALONE BASIC LOCAL EXCHANGE SERVICE RATE TO AN AMOUNT THAT IS HIGHER THAN THE RATE FOR SUCH SERVICE FOR BASIC LOCAL EXCHANGE CUSTOMERS IN THE LOCAL EXCHANGE CALLING AREA HAVING THE HIGHEST NUMBER OF BASIC LOCAL EXCHANGE CUSTOMERS SERVED BY THE TELEPHONE CORPORATION AND TO DEFINE "STAND-ALONE BASIC LOCAL EXCHANGE RATE"; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-616A, IDAHO CODE, TO PROVIDE FOR THE DUTY OF A TELEPHONE CORPORATION TO CUSTOMERS RELATING TO UNAUTHORIZED CHARGES BY A THIRD-PARTY SERVICE PRO-

VIDER; AMENDING SECTION 62-617, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE EXEMPTION FROM THE ANTITRUST LIABILITY OF A TELEPHONE CORPORATION; AND AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-622A, IDAHO CODE, TO PROVIDE PUBLIC UTILITY COMMISSION AUTHORITY TO ESTABLISH A MINIMUM PRICE FOR BASIC LOCAL EXCHANGE SERVICE UPON COMPLAINT BY ANOTHER TELEPHONE CORPORATION RELATING TO BELOW VARIABLE COST PRICING FOR SUCH SERVICES BY TELEPHONE CORPORATIONS NOT SUBJECT TO TITLE 61, IDAHO CODE.

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

SECTION 1. That Section 62-604, Idaho Code, be, and the same is hereby amended to read as follows:

62-604. APPLICABILITY OF CHAPTER.

(1) (a) Any telephone corporation, except any mutual nonprofit or cooperative telephone corporation, which did not, on January 1, 1988, hold a certificate of public convenience and necessity issued by the commission and, which does not provide basic local exchange service, shall, on and after the effective date of this act, be subject to the provisions of this chapter and shall be exempt from the provisions of title 61, Idaho Code.

(b) All telephone corporations, as set forth in ~~subparagraph~~ subsection (1)(a) of this section, shall file a notice with the commission, which notice shall set forth the following information:

(i) the name of the telephone corporation and the address of its principal place of business within the state;

(ii) a description of the telecommunication services offered by such telephone corporation and the area served by it or in which it offers telecommunication services~~;~~.

(c) Such notice shall be filed on or before the 1st day of January of each year following the effective date of this act.

(2) Any telephone corporation holding a certificate of public convenience and necessity on January 1, 1988, issued by the commission pursuant to title 61, Idaho Code, may, pursuant to section 62-605, Idaho Code:

(a) elect to exclude all, or part of its telecommunication services~~,-other-than-basic-local-exchange-service--including--recurring--and-nonrecurring-charges-therefor,~~ from regulation pursuant to title 61, Idaho Code, and such excluded telecommunication services shall thereafter be subject to the provisions of this chapter, except for the provisions of section 62-622(1) through (3), Idaho Code;

(b) notwithstanding any other provision of this chapter, a telephone corporation which, pursuant to section 61-538, Idaho Code, was, prior to the effective date of this chapter, subject to the provisions of such section, shall continue to be subject to the provisions of section 61-538, Idaho Code, notwithstanding such telephone corporation is subject to the provisions of this chapter.

SECTION 2. That Section 62-605, Idaho Code, be, and the same is hereby amended to read as follows:

62-605. PROCEDURE FOR NOTICE OF ELECTION -- COMMISSION CONTINUING AUTHORITY. (1) A telephone corporation which held a certificate of public convenience and necessity on January 1, 1988, may file with the commission a notice that such telephone corporation elects to be subject to the provisions of this chapter for all, or part of its telecommunication services, ~~other--than--basic-local-exchange-service,~~ which notice shall include the following:

(a) The name and address of the telephone corporation;

(b) A narrative description of the telecommunication services provided by the telephone corporation and the geographic area and market served by the telephone corporation and a description of the telecommunication services for which the election is made.

(2) Upon the expiration of thirty (30) days from the filing of such notice of election, said telephone corporation shall, as to telecommunication services ~~other-than-basic-local-exchange-service~~ set forth in the notice of election, be exempt from the provisions of title 61, Idaho Code, and such telecommunication services shall thereafter be subject to the provisions of this chapter with the exception of the provisions of section 62-622(1) through (3), Idaho Code.

(3) Nothing contained in the provisions of this chapter or title 61, Idaho Code, shall be construed to prevent any person or entity from providing telecommunication services in competition with a telephone corporation as to those services which have been excluded from regulation under title 61, Idaho Code, pursuant to the provisions of this chapter, or with a telephone corporation, other than a mutual, nonprofit or cooperative telephone corporation, which was not, on the effective date of this act, subject to regulation by the commission pursuant to title 61, Idaho Code.

(4) Nothing contained in the provisions of this chapter shall be construed to prevent any telephone corporation from maintaining on file with the commission a tariff or price list describing the details of its services.

(5) (a) For any telecommunication service which was subject, on ~~the effective-date-of-this-act~~ July 1, 1988, to title 61, Idaho Code, and which at the election of the telephone corporation became subject to this chapter, the commission shall have continuing authority ~~to review-the-quality-of-such-service,-its-general-availability,-and terms-and-conditions-under-which-it-is-offered.--Upon--complaint--to the-commission-and-after-notice-to-the-telephone-corporation-providing-such-service-and-hearing,-the-commission-finds-that-the-quality, general--availability--or--terms-and-conditions-for-such-service-are adverse-to-the-public-interest,-the-commission-shall-have--authority to--negotiate--or-require-changes-in-how-such-telecommunication-services-are-provided~~ regulate the telephone corporation to the extent necessary to implement the federal communications act of 1996, in accordance with section 62-615, Idaho Code.

(b) The commission shall have the continuing authority to determine the noneconomic regulatory requirements relating to basic local exchange service 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 telecommunication service, filing of price lists,

customer notice and customer relation rules, and billing practices and procedures, which requirements shall be technologically and competitively neutral.

(c) In addition, if ~~the--commission--finds--that--such--corrective action--is--inadequate,--it-shall-have-the-authority-to-require-that such-telecommunication-services-be-subject-to--the--requirements--of title--61,--Idaho-Code,-rather-than-the-provisions-of-this-chapter~~ a telephone corporation has made an election pursuant to section 62-604, Idaho Code, and this section with reference to basic local exchange service, the maximum price the telephone corporation may charge for stand-alone basic local exchange service, as defined in section 62-607A, Idaho Code, during the transition period, shall, in the first year of the transition period, be capped at a rate ten percent (10%) above the rate in effect at the time of the election. Thereafter, in each succeeding year of the transition period, the price cap shall be increased by an additional amount that is equal to the difference between the rate at the time of the election and the price cap established hereunder for the first year of the transition period. However, during the transition period, the price cap established herein shall in no event exceed the maximum basic local exchange rate that was in effect and authorized or approved by the commission for any telephone corporation regulated pursuant to title 61, Idaho Code, or section 62-622(1), Idaho Code, for residence and business basic local exchange service rates, respectively, on the date the telephone corporation made the election pursuant to section 62-604, Idaho Code, and this section with reference to basic local exchange service.

(d) The term "transition period." as used in this section. means a period of three (3) years from the effective date of the election by a telephone corporation to exclude basic local exchange services from regulation pursuant to title 61, Idaho Code, or section 62-622(1), Idaho Code. Provided however, the commission may, during the one hundred eighty (180) day period prior to the expiration of the initial three (3) year transition period. by order. extend the transition period for a period of two (2) additional years if the commission finds that such action is necessary to protect the public interest. The commission shall, if the transition period is extended, as herein provided, file a copy of the commission's order with the governor and the legislature.

(e) For the purpose of calculating the weighted statewide average rates for residence and business basic local exchange service rates to enable the commission to determine eligibility for distributions to eligible telecommunications carriers from the universal service fund established pursuant to chapter 6, title 62, Idaho Code, the residence and business basic local exchange rates in effect on July 1, 2005, shall constitute the basis for such calculation, unless the commission determines that changes in basic local exchange rates subsequent to July 1, 2005, should be used for such calculation for the purpose of determining the eligibility of telecommunications carriers for distributions from the universal service fund.

SECTION 3. 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 62-607A, Idaho Code, and to read as follows:

62-607A. PROHIBITED ACTIVITIES BY A TELEPHONE CORPORATION. (1) No incumbent telephone corporation, or eligible telecommunications carrier as defined in section 62-610B(1), Idaho Code, shall require a residential or small business customer, as a condition of receiving basic local exchange service, to purchase or subscribe to telecommunication services other than one (1) access line for the provision of basic local exchange service.

(2) A telephone corporation that has made the election provided in sections 62-604 and 62-605, Idaho Code, with reference to basic local exchange service, shall not increase its stand-alone basic local exchange rate to residential or small business customers in any local exchange calling area to an amount that is higher than that telephone corporation's stand-alone basic local exchange rate for residential or small business customers in the local exchange calling area having the highest number of basic local exchange service residential or business customers served by the telephone corporation within the state.

(3) "Stand-alone basic local exchange rate," as used herein, means the monthly charge made by a telephone corporation to a residential or small business basic local exchange service customer for a single line that is not included in a package of services or price discounted in a promotional offering. "Stand-alone basic local exchange rate" does not include any charges resulting from action by a federal agency or taxes or surcharge imposed by a governmental body that are separately itemized and billed by a telephone corporation to its customers.

SECTION 4. 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 62-616A, Idaho Code, and to read as follows:

62-616A. DUTY OF TELEPHONE COMPANY TO CUSTOMERS RELATING TO UNAUTHORIZED CHARGES BY A THIRD-PARTY SERVICE PROVIDER. If a customer of a telephone corporation, whether subject to the provisions of this chapter or title 61, Idaho Code, notifies the telephone corporation that an unauthorized charge from a third-party service provider has been included on the telephone customer's bill by the telephone corporation, the telephone corporation shall remove the disputed charge from the bill and shall credit to the customer any amounts for unauthorized charges, whether paid or unpaid, that were billed by the telephone corporation on behalf of the third-party service provider during the period of six (6) months prior to the customer's notification to the telephone corporation that unauthorized charges from a third-party service provider have been included on the telephone corporation customer's bill. Nothing contained herein shall restrict the right of the telephone corporation to recover credited charges from the third-party service provider.

SECTION 5. That Section 62-617, Idaho Code, be, and the same is hereby amended to read as follows:

62-617. TELEPHONE CORPORATION ANTITRUST LIABILITY. No action under the antitrust laws or any other provision or doctrine of law of the state of Idaho shall lie against a telephone corporation for providing service in compliance with any order of the commission. Provided however, this section shall not apply to the provision of any service for which the commission has approved or acknowledged an election pursuant

to section 62-605(1), Idaho Code, except to the extent such service thereafter is the subject of a specific commission order pursuant to title 62, Idaho Code.

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 62-622A, Idaho Code, and to read as follows:

62-622A. COMMISSION AUTHORITY TO ESTABLISH MINIMUM PRICING OF BASIC LOCAL EXCHANGE SERVICE. A telephone corporation may file a petition with the commission alleging that another telephone corporation, not subject to regulation pursuant to title 61, Idaho Code, is offering basic local exchange service to customers in a local exchange calling area at a price below its average variable cost of providing such service in the local exchange calling area. The commission shall, if after hearing it finds by a preponderance of the evidence that the allegations contained in the petition are true, establish a minimum price for basic local exchange service of the telephone corporation in the local exchange calling area, which minimum price shall reflect the telephone corporation's average variable cost of providing such service.

Approved March 29, 2005.

CHAPTER 201
(H.B. No. 229)

AN ACT

RELATING TO POWERS OF THE PARK AND RECREATION BOARD; AMENDING SECTION 67-4223, IDAHO CODE, TO AUTHORIZE THE BOARD TO PROVIDE FOR A REDUCTION OF NO MORE THAN FIFTY PERCENT OF THE FEE CHARGED FOR RECREATIONAL VEHICLE CAMPING, EFFECTIVE MONDAY NIGHT THROUGH THURSDAY NIGHT, FOR ANY SENIOR CITIZEN WHO POSSESSES A VALID FEDERAL "GOLDEN AGE PASSPORT" OR WHO POSSESSES A SPECIAL PARK PASS ISSUED BY ANY STATE WHICH SIMILARLY RECOGNIZES SENIOR CITIZENS AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. That Section 67-4223, Idaho Code, be, and the same is hereby amended to read as follows:

67-4223. POWERS OF BOARD. The park and recreation board shall:

(a) Adopt, amend or rescind rules as may be necessary for the proper administration of the provisions of sections 67-4218, et seq., Idaho Code, and the use and protection of park and recreational areas subject to its jurisdiction. A violation of any rule promulgated by the board pursuant to this provision which concerns the use and protection of park and recreation areas is an infraction.

(b) Make expenditures for the acquisition, leasing, care, control, supervision, improvement, development, extension and maintenance of all lands under the control of the department and to make arrangements, agreements, contracts or commitments, which may or may not involve

expenditures or transfer of funds, with the head of any state institution, department or agency for the improvement or development of lands or properties under the control of the board, or any other department or agency of the state of Idaho.

(c) Appoint advisory, local and regional park and recreational councils, to consider, study and advise in the work of the department for the extension, development, use and maintenance of any areas which are to be considered as future park or recreational sites or which are designated as park recreational areas.

(d) Appoint a six (6) member recreational vehicle advisory committee, who shall be compensated as provided in section 59-509(f), Idaho Code, and act in an advisory capacity to the board on matters relating to the development and improvement of recreational vehicle related facilities and services as provided in subsection (e) of this section. Each member of the advisory committee shall be representative of recreational vehicle users with one (1) from each of the districts described in section 67-4221, Idaho Code. The terms of appointment shall be concurrent with the incumbent park and recreation board member from the respective districts.

(e) Administer the funds derived from the recreational vehicle account established in section 49-448, Idaho Code, to provide financial assistance in the form of grants to public entities for the acquisition, lease, development, improvement, operations and maintenance of facilities and services designed to promote the health, safety and enjoyment of recreational vehicle users. Up to fifteen percent (15%) of the recreational vehicle account generated each year may be used by the department to defray recreational vehicle program administrative costs. Any moneys unused at the end of the fiscal year shall be returned to the state treasurer for deposit in the recreational vehicle account.

(f) Cooperate with the United States and its agencies and local governments of the state for the purpose of acquiring, leasing, supervising, improving, developing, extending or maintaining lands which are designated as state parks, state monuments or state recreational areas and to secure agreements or contracts with the United States and its agencies or local governments of the state for the accomplishment of the purposes of sections 67-4218, et seq., Idaho Code.

(g) Construct, lease or otherwise establish public park or recreational privileges, facilities and conveniences and to operate said recreational services and to make and collect reasonable charges for their use or to enter into contracts for their operation. The board may discount fees in order to offer use incentives to generate additional revenue for operation of the state park system. ~~The board may provide for waiver of fees to any resident of Idaho who is a disabled veteran and whose disability is rated at one hundred percent (100%) or higher, permanent and total.~~ The net proceeds derived shall be credited to the park and recreation account established in section 67-4225, Idaho Code, and are hereby specifically appropriated to defray the cost of the public park or recreational services. The department is specifically authorized to enter into contracts with the United States and its agencies which require that the state expend any excess of revenue above expenses for improvements of the recreational or park area from which the excess was derived.

(1) The board may provide for waiver of fees to any resident of Idaho who is a disabled veteran and whose disability is rated at one

hundred percent (100%) or higher, permanent and total.

(2) The board may provide for a reduction of no more than fifty percent (50%) of the fee charged for recreational vehicle camping, effective Monday night through Thursday night, for any senior citizen who possesses a valid federal "golden age passport" or other equivalent successor, as issued by a federally-operated facility where an entrance fee is charged.

(3) If any state recognizes senior citizens by offering a special park pass for use in that state, the board may provide for a reduction of no more than fifty percent (50%) of the fee charged for recreational vehicle camping, effective Monday night through Thursday night, for any person who possesses such a state park pass.

(h) Prepare, maintain and keep up-to-date a comprehensive plan for the provision of the outdoor recreational resources of the state; to develop, operate and maintain or enter into leases or agreements with local governments for the operation and maintenance of outdoor recreational areas and facilities of the state, and to acquire lands, waters and interests in lands and waters for such areas and facilities.

(i) Apply to any appropriate agency or officer of the United States for participation by the department or a political subdivision of the state or the receipt of aid from any federal program respecting outdoor recreation. It may enter into contracts and agreements with the United States or any appropriate agency thereof, keep financial and other records relating thereto and furnish to appropriate officials and agencies of the United States reports and information as may be reasonably necessary to enable officials and agencies to perform their duties under such programs. In connection with obtaining the benefits of any program, the park and recreation board shall coordinate its activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development and maintenance of outdoor recreational resources and facilities.

(j) Obligate the state regarding the responsible management of any federal funds transferred to it for the purpose of any federal enactment and, in accordance with the exercise of this responsibility, the state hereby consents to be sued in any United States district court for the recovery of any federal funds that the responsible federal official, department or agency finds have been misused or disposed of contrary to the agreement with the federal official, department or agency or contrary to the provisions of federal enactment or applicable federal regulations.

(k) Cooperate and contract with and receive and expend aid, donations and matching funds from the government of the United States, receive and expend funds from the STORE and to receive and expend donations from other sources to acquire, develop, operate and maintain outdoor recreational areas and facilities of the state and, when authorized or directed by any act of congress or any rule or regulation of any agency of the government of the United States, to expend funds donated or granted to the state of Idaho by the federal government for such purposes.

Provided, however, the park and recreation board shall make no commitment or enter into any agreement pursuant to an exercise of authority under sections 67-4218, et seq., Idaho Code, until it has determined that sufficient funds are available to it for meeting the state's share, if any, of project costs. It is legislative intent that, to the extent

as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of sections 67-4218, et seq., Idaho Code, such areas and facilities shall be publicly maintained for outdoor recreational purposes. The park and recreation board may enter into and administer agreements with the United States or any appropriate agency thereof for planning, acquisition and development projects involving participating federal-aid funds or state funds on behalf of any subdivision or subdivisions of this state. Provided, that the subdivision or subdivisions give necessary assurances to the park and recreation board that they have available sufficient funds to meet their shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of the subdivision or subdivisions for public outdoor recreational use.

(l) Establish, develop, supervise and maintain through cooperative agreement, lease, purchase or other arrangement the Idaho recreation trail system, with the advice of the coordinator created in section 67-4233, Idaho Code, and consistent with the goals of recreation, transportation and public access to outdoor areas.

(m) Enter into agreements with cities, counties, recreation districts or other political subdivisions of the state to cost-effectively provide recreational facilities, opportunities and services to the citizens of the state.

Approved March 29, 2005.

CHAPTER 202
(S.B. No. 1011)

AN ACT

RELATING TO PEDESTRIANS AND BICYCLES; AMENDING SECTION 49-714, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE RELATING TO RIGHTS AND DUTIES OF PERSONS OPERATING HUMAN-POWERED VEHICLES OR RIDING BICYCLES.

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

SECTION 1. That Section 49-714, Idaho Code, be, and the same is hereby amended to read as follows:

49-714. TRAFFIC LAWS APPLY TO PERSONS ON BICYCLES AND OTHER HUMAN-POWERED VEHICLES -- DUE CARE. (1) Every person operating a vehicle propelled by human power or riding a bicycle shall have all of the rights and all of the duties applicable to the driver of any other vehicle under the provisions of chapters 6 and ~~7~~8 of this title, except as otherwise provided in this chapter and except as to those provisions which by their nature can have no application.

(2) Every operator or rider of a bicycle or human-powered vehicle shall exercise due care.

Approved March 29, 2005.

CHAPTER 203
(S.B. No. 1127)

AN ACT

RELATING TO AIRPORT FACILITIES; AMENDING SECTION 21-401, IDAHO CODE, TO DELETE THE ACREAGE LIMITATION FOR ACQUIRING LANDS FOR AIRPORT PURPOSES BY COUNTIES, HIGHWAY DISTRICTS AND CITIES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 21-401, Idaho Code, be, and the same is hereby amended to read as follows:

21-401. AUTHORITY TO PROVIDE FACILITIES -- EXPENSE -- ISSUANCE OF BONDS -- DUTIES OF COMMISSIONERS AND COUNCILMEN -- RESTRICTION ON LEASE OF FACILITIES. Counties, highway districts and cities are hereby authorized to acquire by purchase, lease, condemnation, or otherwise, take over and hold lands ~~not--exceeding--in-area-one-thousand-two-hundred eighty-(1280)-acres~~ either wholly or partly within or without the boundaries or corporate limits of such counties, highway districts or cities, or wholly or partly within or without the state of Idaho, for the purpose of constructing and maintaining aviation fields, airports, hangars and other air navigation facilities; to provide equipment necessary or incidental to the maintenance and operation of such aviation fields or airports; to maintain, operate and manage such aviation fields, airports and grounds and prescribe rules and regulations for the maintenance, operation and management thereof, and fix fees and rentals to be charged for the use of the same or any part thereof; to survey, plat, map, grade, ornament and otherwise improve such lands and all appurtenances thereto, whether owned and operated or owned or leased by such counties, highway districts or cities, and all approaches and avenues leading to or adjacent thereto; to lease for aviation purposes or for any purposes connected therewith and incidental thereto and for such commercial purposes as the governing bodies of such counties, highway districts and cities may determine upon all or any part of the land or lands so required, under such regulations and upon such terms and conditions as shall be established by such governing bodies, and not subject to the limitation as to length of term prescribed in section 31-836, Idaho Code; to construct, operate and maintain hangars, buildings and equipment necessary or convenient to the maintenance and operation of aviation fields or airports.

Counties, highway districts and cities are hereby empowered to provide for all costs and expenses necessary or incident to the exercise of the foregoing powers or the attainment of the foregoing objects or any of them, out of the general funds or out of any of the funds made available for such purposes, of such counties, highway districts and cities, or to issue bonds pursuant to law for the payment of any or all of such costs and expenses except for the maintenance and operation of such aviation fields or airports; provided, that no bonds shall be issued for the purposes aforesaid unless and until authorized by a vote of two-thirds (2/3) of the qualified electors of the county, highway district or municipality, voting at such election held subject to the provisions

of section 34-106, Idaho Code. Nothing contained in this ~~act~~ chapter shall be construed to increase the maximum of any tax levies for counties, highway districts or cities.

The boards of county commissioners of their respective counties, the highway commissioners of their respective highway districts and the councilmen of their respective cities, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to carry into full force and effect all of the provisions of this law.

Such aviation fields or airports shall in no case be leased to any person, association or corporation under such terms or conditions as to give such person, association or corporation, the exclusive right to the use of such aviation fields or airports.

Approved March 29, 2005.

CHAPTER 204
(S.B. No. 1130, As Amended)

AN ACT

RELATING TO MOTORCYCLE SAFETY HELMETS; AMENDING SECTION 49-666, IDAHO CODE, TO REQUIRE THAT ALL PERSONS UNDER EIGHTEEN YEARS OF AGE WHO RIDE UPON OR WHO ARE PERMITTED TO OPERATE A MOTORCYCLE OR AN ALL-TERRAIN VEHICLE ON OR OFF ANY HIGHWAY SHALL WEAR A SAFETY HELMET AND TO PROVIDE EXCEPTIONS.

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

SECTION 1. That Section 49-666, Idaho Code, be, and the same is hereby amended to read as follows:

49-666. MOTORCYCLE AND ATV SAFETY HELMETS -- REQUIREMENTS AND STANDARDS. No person under eighteen (18) years of age shall ride upon or be permitted to operate a motorcycle ~~as operator or passenger, upon any highway,~~ or an all-terrain vehicle unless at all times when so operating or riding upon the vehicle he is wearing, as part of his motorcycle or ATV equipment, a protective safety helmet of a type and quality equal to or better than the standards established for helmets by the director, except the provisions of this section shall not apply when such vehicles are operated or ridden on private property, or when used as an implement of husbandry.

Approved March 29, 2005.

CHAPTER 205
(S.B. No. 1131)

AN ACT

RELATING TO PEDESTRIANS AND BICYCLES; AMENDING SECTION 49-720, IDAHO CODE, TO PROVIDE STOPPING REQUIREMENTS AT A STEADY RED TRAFFIC CONTROL LIGHT FOR PERSONS OPERATING A BICYCLE OR A HUMAN-POWERED VEHICLE.

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

SECTION 1. That Section 49-720, Idaho Code, be, and the same is hereby amended to read as follows:

49-720. STOPPING -- TURN AND STOP SIGNALS. (1) A person operating a bicycle or human-powered vehicle approaching a stop sign shall slow down and, if required for safety, stop before entering the intersection. After slowing to a reasonable speed or stopping, the person shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the person is moving across or within the intersection or junction of highways, except that a person after slowing to a reasonable speed and yielding the right-of-way if required, may cautiously make a turn or proceed through the intersection without stopping.

(2) A person operating a bicycle or human-powered vehicle approaching a steady red traffic control ~~signal~~ light shall stop before entering the intersection~~, except~~ and shall yield to all other traffic. Once the person has yielded, he may proceed through the steady red light with caution. Provided however, that a person after slowing to a reasonable speed and yielding the right-of-way if required, may cautiously make a right-hand turn. ~~without stopping or may cautiously make a~~ A left-hand turn onto a one-way highway ~~without~~ may be made on a red light after stopping and yielding to other traffic.

(3) A person riding a bicycle shall comply with the provisions of section 49-643, Idaho Code.

(4) A signal of intention to turn right or left shall be given during not less than the last one hundred (100) feet traveled by the bicycle before turning, provided that a signal by hand and arm need not be given if the hand is needed in the control or operation of the bicycle.

Approved March 29, 2005.

CHAPTER 206
(S.B. No. 1142, As Amended in the House)

AN ACT

RELATING TO THE TREASURE VALLEY AIR QUALITY COUNCIL AND OTHER REGIONAL AIR QUALITY COUNCILS; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 67, TITLE 39, IDAHO CODE, TO PROVIDE A STATEMENT OF LEGISLATIVE FINDINGS AND INTENT, TO ESTABLISH A TREASURE VALLEY AIR QUALITY COUNCIL, TO AUTHORIZE THE ESTABLISHMENT OF REGIONAL AIR QUALITY COUNCILS, TO REQUIRE ESTABLISHMENT OF A CITIZENS COMMITTEE, TO PROVIDE DEFINITIONS, TO PROVIDE A DECLARATION OF POLICIES AND PURPOSES, TO SPECIFY MEMBERSHIP OF THE TREASURE VALLEY AIR QUALITY COUNCIL, TO PROVIDE FOR MEMBERSHIP OF REGIONAL AIR QUALITY COUNCILS, TO SPECIFY DUTIES AND POWERS OF THE TREASURE VALLEY AIR QUALITY COUNCIL AND REGIONAL AIR QUALITY COUNCILS, TO PROVIDE FOR A QUORUM AND PROCEDURES, TO PROVIDE FOR DEVELOPMENT OF A TREASURE VALLEY AIR QUALITY PLAN, TO PROVIDE FOR IMPLEMENTATION OF THE TREASURE VALLEY AIR QUALITY PLAN, TO CREATE A TREASURE VALLEY AIR QUALITY TRUST

FUND, TO PROVIDE FOR DEVELOPMENT OF AN AIR QUALITY PLAN OF A REGIONAL COUNCIL, TO PROVIDE FOR IMPLEMENTATION OF A REGIONAL AIR QUALITY PLAN, TO CREATE A REGIONAL AIR QUALITY TRUST FUND AND TO PROVIDE A SAVINGS CLAUSE.

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

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 67, Title 39, Idaho Code, and to read as follows:

CHAPTER 67
TREASURE VALLEY AND REGIONAL AIR QUALITY COUNCIL ACT

39-6701. LEGISLATIVE STATEMENT OF FINDINGS AND INTENT. (1) The legislature finds that the air quality in certain regions of the state is threatened with deterioration. This deterioration may endanger the breathability, economic potential, public health, natural beauty, recreational use and livability in various regions of the state. It is the intent of the legislature in establishing this chapter to preserve and protect the air quality of the entire state.

(2) The legislature declares that it is necessary to embark upon a program of air quality protection for future generations of Idahoans. This chapter establishes a treasure valley air quality council and also allows for the creation of regional air quality councils as necessary to protect, preserve and, where necessary, improve the quality of air in a specified geographical area while accommodating private, public and commercial activities. The plan developed by an air quality council as set forth in this chapter shall require a working partnership of state and local agencies of government as well as the private sector.

39-6702. ESTABLISHMENT OF THE TREASURE VALLEY AIR QUALITY COUNCIL. There is hereby established a Treasure Valley air quality council within the Idaho department of environmental quality. It shall be the responsibility of the council to develop a plan and carry out the duties established by this chapter. The council shall be assisted in its work by the department of environmental quality and other appropriate state and local agencies as needed.

39-6703. ESTABLISHMENT OF A REGIONAL AIR QUALITY COUNCIL -- PETITION. (1) There is hereby authorized the establishment of regional air quality councils within the Idaho department of environmental quality.

(2) Any ten (10) persons living within the boundaries of a geographical area proposed for the establishment of a regional air quality council may file a petition with the board of environmental quality within the department of environmental quality requesting a regional air quality council be established. The petition shall set forth:

(a) The proposed name of the regional air quality council;

(b) The needs, in the interest of the public health, safety and welfare, for such a council;

(c) The geographical boundaries of the territory proposed for development of a plan by a council; and

(d) A request that the board duly define the geographic boundaries for a council.

(3) Within thirty (30) days after such petition has been filed with the board, it shall cause due notice to be given of a proposed hearing upon the petition. After such hearing, if the board determines upon the facts presented at the hearing and upon such other relevant facts and information as may be available, that there is need in the interest of the public health, safety and welfare, for the establishment of a regional air quality council, it shall approve the petition and shall make and record such approval. The board shall immediately as practicable notify the governor by forwarding a copy of the board's approval to the governor. Within a reasonable time, but not to exceed ninety (90) days, the governor shall appoint members to that regional air quality council in accordance with the provisions of section 39-6708, Idaho Code.

(4) It shall be the responsibility of any council established under this chapter to develop a plan and carry out the duties established by this chapter. The council shall be assisted in its work by the department of environmental quality and other appropriate state and local agencies as needed.

39-6704. ESTABLISHMENT OF A CITIZENS COMMITTEE. Each council established under the provisions of this chapter shall create a citizens committee comprised of citizens who express an interest in the council's purpose and work. Citizens performing volunteer services in support of the work of a council shall automatically be members of the citizens committee. Members of the citizens committee may meet with the council with full right to attend all proceedings and discussions and submit comments, except that citizen committee members shall not be voting members.

39-6705. DEFINITIONS. Whenever used in this chapter:

(1) "Air pollution" means air pollution as defined in section 39-103, Idaho Code.

(2) "Air quality plan" means the comprehensive, air quality management plan for a specified regional area as developed and modified by a regional air quality council.

(3) "Citizens committee" means the committee consisting of members of the public created pursuant to section 39-6704, Idaho Code, by an air quality council established under the provisions of this chapter.

(4) "Council" means a regional air quality council established pursuant to this chapter.

(5) "Local governing agency" means a county or city government agency.

(6) "Specified regional area" means a county or counties, or a defined geographical area where air quality is threatened.

(7) "Study" means the comprehensive, scientifically-based study of air quality in a specified regional area including the study of air quality in the Treasure Valley.

(8) "Treasure Valley" means the geographic boundaries encompassed by Ada and Canyon counties.

(9) "Treasure Valley air quality council" means the regional air quality council established in section 39-6702, Idaho Code.

(10) "Treasure Valley air quality plan" means the comprehensive, air quality management plan for Ada and Canyon counties as developed and modified by the Treasure Valley air quality council.

39-6706. DECLARATION OF POLICIES AND PURPOSES. The Treasure Valley air quality council, and any regional air quality council established pursuant to this chapter, shall develop and implement an air quality plan in accordance with the environmental protection and health act, sections 39-101 through 39-130, Idaho Code, that includes:

(1) The compilation of all historical data on air quality studies in the Treasure Valley, or in a specified regional area;

(2) An assessment of present and projected emissions related to the Treasure Valley, or related to a specified regional area;

(3) The completion of a comprehensive, scientifically-based study of air quality in the Treasure Valley, or in a specified regional area;

(4) A description of actions to be taken by governmental agencies and nongovernmental entities to protect, preserve and, when necessary, improve the air quality in the Treasure Valley, or in a specified regional area; and

(5) The submittal of an air quality management plan to the legislature which may reject the plan in whole or in part pursuant to a concurrent resolution. The Treasure Valley air quality council, and any regional air quality council established pursuant to this chapter, shall assist and coordinate the implementation of the accepted plan with federal, state and local authorities for seven (7) years after acceptance, after which the Treasure Valley air quality council, or any regional air quality council, and its committees shall disband.

39-6707. MEMBERSHIP OF THE TREASURE VALLEY AIR QUALITY COUNCIL. (1) The Treasure Valley air quality council shall consist of fourteen (14) members appointed by the governor. The governor shall appoint one (1) member who shall be an Ada county commissioner; one (1) member who shall be a Canyon county commissioner; one (1) member who is an elected member of a city government in Ada county; one (1) member who is an elected member of a city government in Canyon county; two (2) members who represent agricultural interests in the Treasure Valley; two (2) members who represent commercial interests in the Treasure Valley; two (2) members from manufacturing or food processing industries located in the Treasure Valley; two (2) members from recognized Idaho environmental organizations; and two (2) members at large who are full-time residents of Ada or Canyon county.

(2) The terms of the members shall be three (3) years with the initial term to be staggered in terms of one (1), two (2), and three (3) years by the governor when he makes the original appointment.

(3) The governor shall designate one (1) member to serve as chair of the Treasure Valley air quality council.

(4) Vacancies shall be filled by appointment of the governor.

(5) All members of the Treasure Valley council shall maintain their primary residence in either Ada or Canyon county during the term of the member's appointment.

39-6708. MEMBERSHIP OF A REGIONAL AIR QUALITY COUNCIL. (1) A council shall consist of fourteen (14) members appointed by the governor. The governor shall appoint two (2) members from each of the following categories: two (2) members who are county commissioners within the specified regional area; two (2) members who are at the time of appointment, elected members of a city government in the specified regional area; two (2) members who represent agricultural interests in the speci-

fied regional area; two (2) members who represent commercial interests in the specified regional area; two (2) members from industries located in the specified regional area; two (2) members from recognized Idaho environmental organizations; and two (2) members at large who are full-time residents of the specified regional area.

(2) The terms of the members shall be three (3) years with the initial term to be staggered in terms of one (1), two (2), and three (3) years by the governor when he makes the original appointments.

(3) The governor shall designate one (1) member to serve as chair of the council.

(4) Vacancies shall be filled by appointment of the governor.

(5) All members of a council shall maintain their primary residence in the specified regional area during the term of the member's appointment.

39-6709. DUTIES OF THE TREASURE VALLEY AIR QUALITY COUNCIL AND ANY REGIONAL AIR QUALITY COUNCIL -- POWERS. (1) The Treasure Valley air quality council, and any regional council established pursuant to this chapter, shall have the following duties:

(a) To coordinate activities related to the study of air quality, the development of an air quality plan for the area, and oversee the implementation of that plan.

(b) To conduct a public awareness program to educate the general public on methods and responsibilities to protect the air shed.

(c) To examine, as the Treasure Valley or regional council deems necessary, air quality conditions in, upon and around the Treasure Valley, or in, upon and around a specified regional area. The objective shall be to obtain a scientifically-sound baseline study for planning future action by appropriate federal, state and local government, and the private sectors.

(d) To promote, until dissolution, the implementation of the Treasure Valley air quality plan, or the air quality plan of a regional council, by serving in an advisory capacity to those local, state and federal government agencies with responsibilities affecting air quality. Any council may recommend, as appropriate, the adoption of any statutes, ordinances, policies and rules needed by such governmental agencies to implement the plan.

(e) To consult with the public and keep the public informed of activities of the council through public forums and written reports.

(f) To establish a citizens committee pursuant to section 39-6704, Idaho Code.

(g) To perform its duties continuously until its dissolution.

(h) Prior to the automatic dissolution of the council and all its committees seven (7) years after the council's plan is adopted by the legislature, to assist local, state and federal agencies in the establishment of a multiagency oversight capability to succeed the council.

(2) A council shall not have any regulatory or enforcement powers.

39-6710. QUORUM -- PROCEDURES. (1) A majority of the members of the Treasure Valley air quality council, or a regional council, shall constitute a quorum for the transaction of business. A majority vote of the members present shall be required to take action with respect to any matter.

(2) The Treasure Valley air quality council, or a regional council, may adopt its own operating rules and procedures which shall be made available to the public.

39-6711. TREASURE VALLEY AIR QUALITY PLAN. (1) The Treasure Valley air quality council shall complete a draft plan by July 1, 2006. It shall make the study available to all appropriate and interested local, state and federal agencies and to any interested persons. For a period of ninety (90) days after dissemination, any interested agency or person may submit written suggestions, comments or proposals for the plan, or recommendations to the council.

(2) The council shall thereafter prepare a final Treasure Valley air quality plan which shall be completed within one hundred eighty (180) days after dissemination of the study.

(3) The council shall identify in the plan all known present and future air issues in Ada and Canyon counties.

(4) Once completed, the council shall provide copies of its plan to all agencies and persons who have indicated an interest in the study. The council shall thereupon provide for one (1) or more public hearings upon its plan and recommendations with notice given as provided in chapter 52, title 67, Idaho Code.

(5) After receiving the information obtained at the public hearing, the council shall make such changes and revisions as it deems necessary and within thirty (30) days after such public hearing, but in no event later than the next regular session of the Idaho legislature, the council shall submit the plan to the legislature.

(6) The legislature may, within the next regular session during or after which it receives the plan, reject the plan in whole or in part by concurrent resolution.

(7) Thereafter, the council shall assist in the implementation of the provisions of the plan. Before its dissolution, the council shall also assist these local, state and federal agencies to establish an ongoing, joint-agency oversight responsibility for the plan.

39-6712. IMPLEMENTATION OF THE TREASURE VALLEY AIR QUALITY PLAN. To the greatest extent practicable, all Idaho state and local government agencies shall implement the plan and its recommendations. In circumstances where any state or local government agency chooses not to so incorporate and implement any element of the plan, any such agency shall provide to the council in writing the reasons why such incorporation and implementation have not been adopted.

39-6713. TREASURE VALLEY AIR QUALITY TRUST FUND. There is hereby created in the state treasury a dedicated fund known as the "Treasure Valley Air Quality Trust Fund" which shall be referred to as the Treasure Valley fund. Moneys in the Treasure Valley fund may come from grants, gifts, donations, use fees or such other sources as may be authorized by the legislature. Moneys in the fund shall be used exclusively for the purpose of fulfillment of the statutorily-required duties of the Treasure Valley air quality council. Moneys in the fund may only be expended as authorized by a resolution duly adopted by a majority of the council.

39-6714. AIR QUALITY PLAN OF A REGIONAL AIR QUALITY COUNCIL. (1) A regional air quality council shall develop and accept the study within one (1) year after establishment of the council. It shall make the study available to all appropriate and interested local, state and federal agencies and to any interested persons. For a period of ninety (90) days after dissemination, any interested agency or person may submit written suggestions, comments or proposals for the plan, or recommendations to the council.

(2) The council shall thereafter prepare a final regional air quality plan which shall be completed within one hundred eighty (180) days after dissemination of the study.

(3) The council shall identify present and future air issues in the specified regional area.

(4) Once completed, the council shall provide copies of its plan to all agencies and persons who have indicated an interest in the study. The council shall thereupon provide for one (1) or more public hearings upon its plan and recommendations with notice given as provided in chapter 52, title 67, Idaho Code.

(5) After receiving the information obtained at the public hearing, the council shall make such changes and revisions as it deems necessary and within thirty (30) days after such public hearing, but in no event later than the next regular session of the Idaho legislature, the council shall submit the plan to the legislature.

(6) The legislature shall, within the next regular session during or after which it receives the plan, accept, reject or modify the plan by concurrent resolution.

(7) Thereafter, the council shall assist in the adoption and enforcement of the provisions of the plan. Before its dissolution, the council shall also assist these local, state and federal agencies to establish an ongoing, joint-agency oversight responsibility for the plan.

39-6715. IMPLEMENTATION OF A REGIONAL AIR QUALITY PLAN. To the greatest extent practicable, all Idaho state and local government agencies shall incorporate and implement the plan and its recommendations. In circumstances where any state or local government agency chooses not to implement any element of the plan, any such agency shall provide to the council a written explanation of its failure to implement that portion of the plan.

39-6716. REGIONAL FUND. There is hereby created in the state treasury a dedicated fund known as the "Regional Air Quality Trust Fund" which shall be referred to as the regional fund. Moneys in the regional fund may come from grants, gifts, donations, use fees or such other sources as may be authorized by the legislature. Moneys in the fund shall be used exclusively for the purpose of fulfillment of the statutorily-required duties of a regional air quality council. Moneys in the fund may only be expended as authorized by a resolution duly adopted by a majority of a council.

39-6717. SAVINGS CLAUSE. Nothing in this chapter shall alter or affect the provisions of chapter 48, title 22, Idaho Code, on smoke management and crop residue disposal.

Approved March 29, 2005.

CHAPTER 207
(S.B. No. 1187)

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 2006; ESTABLISHING AMOUNTS TO BE EXPENDED FOR SYSTEMWIDE PROGRAMS; DIRECTING THE STATE BOARD OF EDUCATION TO COMPLETE THE PROCESS OF ACHIEVING FUNDING EQUITY AMONG IDAHO'S FOUR FOUR-YEAR INSTITUTIONS OF HIGHER EDUCATION; DIRECTING THE STATE BOARD OF EDUCATION TO DEVELOP A STANDARDIZED SYSTEM OF REPORTING TO PROFILE FACULTY WORKLOAD AND PRODUCTIVITY; DIRECTING THE STATE BOARD OF EDUCATION TO PROVIDE A SYSTEM OF REPORTING FACULTY AND STAFF TURNOVER; AND REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES.

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, 2005, through June 30, 2006:

FOR:	
General Education Programs	$350,113,500
FROM:	
General Fund	$228,934,100
Normal School Endowment Income Fund	3,205,600
Scientific School Endowment Income Fund	2,848,500
University Endowment Income Fund	3,465,500
Unrestricted Current Fund	35,130,800
Restricted Current Fund	76,529,000
TOTAL	$350,113,500

SECTION 2. SYSTEMWIDE PROGRAMS. 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 systemwide needs; an amount not to exceed $1,600,000 may be used for the mission and goals of the Higher Education Research Council; an amount not to exceed $1,750,000 may be used for the competitive Idaho Technology Incentive Grant Program to foster innovative learning approaches using technology, promote the Idaho Electronic Campus and support Idaho's participation in the Western Governors' Association Virtual University; an amount not to exceed $500,000 may be used for teacher prepa-

ration activities associated with Idaho's Comprehensive Literacy Act; and an amount not to exceed $1,300,000 may be used for the Governor's College and University Excellence Initiative.

SECTION 3. FUNDING EQUITY. The Legislature agrees with the State Board of Education that achieving funding equity among Idaho's four year institutions of higher education is an important goal. The Legislature therefore directs the State Board of Education to complete that process within existing and future appropriations to achieve the base instructional equity and the science and technology adjustment that form the basis of funding equity.

SECTION 4. FACULTY WORKLOAD AND PRODUCTIVITY. It is legislative intent to develop a profile of our four four-year institutions to identify how many credit hours per faculty member are spent in teaching, service and research. The State Board of Education, in cooperation with the Division of Financial Management and the Legislative Services Office, shall develop a standardized system for reporting meaningful data about faculty member workload and productivity at the state's four four-year institutions of higher education. Such reports shall include the number of faculty by classification, whether tenured, tenure track or adjunct; the number of credit hours taught by faculty member by department, the number of service hours and the number of research hours by faculty member by department.

SECTION 5. PERSONNEL TURNOVER. The State Board of Education shall continue to provide a standardized system for tracking and reporting meaningful data about faculty, nonfaculty exempt, and classified staff turnover at the state's institutions of higher education. These statistics shall be available to the Division of Financial Management and the Legislative Services Office no later than November 1 of each year.

SECTION 6. CARRYOVER AUTHORITY. There is hereby reappropriated to the State Board of Education and the Board of Regents for the University of Idaho for Boise State University, Idaho State University, the University of Idaho, Lewis-Clark State College, and the Office of the State Board of Education, any non-General Fund unexpended and unencumbered balances from fiscal year 2005, to be used for nonrecurring expenditures for the period July 1, 2005, through June 30, 2006.

Approved March 29, 2005.

CHAPTER 208
(H.B. No. 165)

AN ACT

RELATING TO CAPITAL GAINS AND THE STATE INCOME TAX; AMENDING SECTION 63-3022H, IDAHO CODE, TO REDUCE THE LENGTH OF TIME REAL PROPERTY MUST BE HELD TO QUALIFY FOR CAPITAL GAINS TREATMENT FOR STATE INCOME TAX PURPOSES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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 capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. 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 ~~eighteen~~ twelve (18~~2~~) months;

(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 the holding period shall not include the holding period of property given up in an exchange, when such property would not have constituted qualified property under this section without regard to meeting the holding period.

(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 or a capital gain from property acquired as a beneficiary of 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 or a capital gain from property acquired as a beneficiary of 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, 2005.

Approved March 30, 2005.

CHAPTER 209
(H.B. No. 178)

AN ACT

RELATING TO PASSENGER SAFETY FOR CHILDREN; AMENDING SECTION 49-672, IDAHO CODE, TO PROVIDE PASSENGER SAFETY FOR CHILDREN SIX YEARS OF AGE OR YOUNGER WHEN TRANSPORTED IN A NONCOMMERCIAL VEHICLE, TO PROVIDE PROPER TERMINOLOGY AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. That Section 49-672, Idaho Code, be, and the same is hereby amended to read as follows:

49-672. PASSENGER SAFETY FOR CHILDREN. (1) No noncommercial motor vehicle operator shall transport a child who is ~~under the age of four~~ six (~~4~~6) years ~~and weighs less than forty (40) pounds~~ of age or younger in a motor vehicle manufactured with seat belts after January 1, 1966, unless the child is properly ~~restrained~~ secured in a ~~car~~ child safety ~~seat~~ restraint that meets the requirements of federal motor vehicle safety standard no. 213.

(2) The provisions of this section shall not apply:

(a) If all of the motor vehicle's seat belts are in use, but in such an event any unrestrained child to which this section applies shall be placed in the rear seat of the motor vehicle, if it is so equipped; or

(b) When the child is removed from the car safety ~~seat~~ restraint and held by the attendant for the purpose of nursing the child or attending the child's other immediate physiological needs.

(~~2~~3) The failure to use a child safety ~~seat~~ restraint shall not be considered under any circumstances as evidence of contributory negligence, nor shall such failure be admissible as evidence in any civil action with regard to negligence.

Approved March 30, 2005.

CHAPTER 210
(H.B. No. 231)

AN ACT

RELATING TO TUITION AT INSTITUTIONS OF HIGHER EDUCATION; REPEALING SECTION 33-3717, IDAHO CODE; AMENDING CHAPTER 37, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-3717, IDAHO CODE, TO AUTHORIZE FEES FOR ATTENDANCE AT THE UNIVERSITY OF IDAHO; AMENDING CHAPTER 37, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-3717A, IDAHO CODE, TO AUTHORIZE FEES, INCLUDING TUITION FEES, FOR ATTENDANCE AT STATE COLLEGES AND UNIVERSITIES OTHER THAN THE UNIVERSITY OF IDAHO; AMENDING CHAPTER 37, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-3717B, IDAHO CODE, TO ESTABLISH RESIDENCY REQUIREMENTS FOR ATTENDANCE AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION; AMENDING SECTION 33-3717A, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO INCLUDE REFERENCE TO FEES; AND AMENDING SECTIONS 33-3720, 33-4306 AND 33-4403, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 33-3717, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 37, 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 33-3717, Idaho Code, and to read as follows:

33-3717. FEES AT THE UNIVERSITY OF IDAHO. (1) The state board of education and the board of regents of the university of Idaho may prescribe fees, but not tuition, for all full-time, resident students enrolled in the university of Idaho.

(2) The state board of education and the board of regents of the university of Idaho may prescribe tuition for:

(a) Nonresident students enrolled in the university of Idaho; or

(b) Resident students enrolled in the university of Idaho who are:

(i) In a professional program, college, school or department approved by the state board of education and the board of regents of the university of Idaho;

(ii) Taking extra studies; or

(iii) Part-time students at the institution.

(3) For purposes of this section, tuition shall be defined as payment for the cost of instruction.

(4) Fees which may be prescribed under this section include matriculation fees, defined as the fees charged to students for all educational costs other than the cost of instruction including, but not limited to, costs associated with the construction, maintenance and operation of buildings and facilities, student services, and institutional support, which are complementary to, but not a part of, the instructional program. The state board of education and the board of regents of the university of Idaho also may prescribe fees for all students for any additional charges, other than payment for the cost of instruction, that are necessary for the proper operation of the institution.

(5) A resident student is a student who meets the residency requirements imposed by section 33-3717B, Idaho Code.

(6) Nothing contained in this section shall prevent the state board of education and the board of regents of the university of Idaho from waiving fees or tuition to be paid by nonresident students, as defined in section 33-3717C, Idaho Code, who are enrolled in the university of Idaho.

SECTION 3. That Chapter 37, 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 33-3717A, Idaho Code, and to read as follows:

33-3717A. FEES AT STATE COLLEGES AND UNIVERSITIES OTHER THAN THE UNIVERSITY OF IDAHO. (1) The state board of education may prescribe fees, including tuition fees, for resident and nonresident students enrolled in all state colleges and universities other than the university of Idaho. For purposes of this section, said fees, including tuition fees, may be used for any and all educational costs at the state colleges and universities including, but not limited to, costs associated with:

(a) Academic services;

(b) Instruction;

(c) The construction, maintenance and operation of buildings and facilities;

(d) Student services; or

(e) Institutional support.

The state board of education also may prescribe fees for all students for any additional charges that are necessary for the proper operation of each institution.

(2) A resident student is a student who meets the residency requirements imposed by section 33-3717B, Idaho Code.

(3) Nothing contained in this section shall prevent the state board of education from waiving fees, including tuition fees, to be paid by nonresident students, as defined in section 33-3717C, Idaho Code, who are enrolled in the state colleges and universities.

(4) Nothing contained in this section shall apply to community colleges now or hereafter established pursuant to chapter 21, title 33, Idaho Code, or to postsecondary professional-technical schools now or hereafter established and not connected to or a part of a state college or university.

SECTION 4. That Chapter 37, 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 33-3717B, Idaho Code, and to read as follows:

33-3717B. RESIDENCY REQUIREMENTS. (1) For any public institution of higher education in Idaho, a "resident student" is:

(a) Any student who has one (1) or more parent or parents or court-appointed guardians who are domiciled in the state of Idaho. Domicile, in the case of a parent or guardian, means that individual's true, fixed and permanent home and place of habitation. It is the place where that individual intends to remain, and to which that individual expects to return when that individual leaves without intending to establish a new domicile elsewhere. To qualify under

this section, the parent, parents or guardians must have maintained a bona fide domicile in the state of Idaho for at least one (1) year prior to the opening day of the term for which the student matriculates.

(b) Any student, who receives less than fifty percent (50%) of the student's support from a parent, parents or legal guardians who are not residents of this state for voting purposes, but which student has continuously resided in the state of Idaho for twelve (12) months next preceding the opening day of the term during which the student proposes to attend the college or university and who has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(c) Subject to subsection (2) of this section, any student who is a graduate of an accredited secondary school in the state of Idaho, and who matriculates at a college or university in the state of Idaho during the term immediately following such graduation regardless of the residence of the student's parent or guardian.

(d) The spouse of a person who is classified, or is eligible for classification, as a resident of the state of Idaho for the purposes of attending a college or university.

(e) A member of the armed forces of the United States, stationed in the state of Idaho on military orders.

(f) A student whose parent or guardian is a member of the armed forces and stationed in the state of Idaho on military orders and who receives fifty percent (50%) or more of support from parents or legal guardians. The student, while in continuous attendance, shall not lose that residence when the student's parent or guardian is transferred on military orders.

(g) A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state of Idaho within one (1) year of the date of separation.

(h) Any individual who has been domiciled in the state of Idaho, has qualified and would otherwise be qualified under the provisions of this statute and who is away from the state for a period of less than one (1) calendar year and has not established legal residence elsewhere provided a twelve (12) month period of continuous residence has been established immediately prior to departure.

(i) A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: members of the following Idaho Native American Indian tribes, whose traditional and customary tribal boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho: (i) Coeur d'Alene tribe; (ii) Shoshone-Paiute tribes; (iii) Nez Perce tribe; (iv) Shoshone-Bannock tribes; (v) Kootenai tribe.

(2) A "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of subsection (1) of this section, and shall include:

(a) A student attending an institution in this state with the aid of financial assistance provided by another state or governmental

unit or agency thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided.

(b) A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or does not hold "refugee-parolee" or "conditional entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of the law and who does not also meet and comply with all applicable requirements of this section.

(3) The establishment of a new domicile in Idaho by a person formerly domiciled in another state has occurred if such person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to such other state or to acquire a domicile at some other place outside of Idaho. Institutions determining whether a student is domiciled in the state of Idaho primarily for purposes other than educational shall consider, but shall not be limited to, the following factors:

(a) Registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property for which state registration and the payment of a state tax or fee is required;

(b) Filing of Idaho state income tax returns;

(c) Permanent full-time employment or the hourly equivalent thereof in the state of Idaho;

(d) Registration to vote for state elected officials in Idaho at a general election.

(4) The state board of education and the board of regents of the university of Idaho shall adopt uniform and standard rules applicable to all state colleges and universities now or hereafter established to determine resident status of any student and to establish procedures for review of that status.

(5) Appeal from a final determination denying resident status may be initiated by the filing of an action in the district court of the county in which the affected college or university is located; an appeal from the district court shall lie as in all civil actions.

(6) Nothing contained herein shall prevent the state board of education and the board of regents of the university of Idaho from establishing quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not residents for purposes of higher education.

(7) For students who apply for special graduate and professional programs including, but not limited to, the WAMI (Washington, Alaska, Montana, Idaho) regional medical program, the WICHE student exchange programs, Creighton university school of dental science, the university of Utah college of medicine, and the Washington, Oregon, Idaho (WOI) regional program in veterinary medical education, no applicant shall be certified or otherwise designated as a beneficiary of such special program who has not been a resident of the state of Idaho for at least one (1) calendar year previous to the application date.

SECTION 5. That Section 33-3717A, Idaho Code, be, and the same is hereby amended to read as follows:

33-3717~~A~~C. WAIVING FEES OR TUITION FOR CERTAIN NONRESIDENT STUDENTS. (1) Notwithstanding any other provision of law the state board of education and the board of regents of the university of Idaho may determine when to grant a full or partial waiver of fees or tuition charged to nonresident students pursuant to reciprocal agreements with other states. In making this determination, the state board of education and the board of regents of the university of Idaho shall consider the potential of the waiver to:

(a) Enhance educational opportunities for Idaho residents;

(b) Promote mutually beneficial cooperation and development of Idaho communities and nearby communities in neighboring states;

(c) Contribute to the quality of educational programs; and

(d) Assist in maintaining the cost effectiveness of auxiliary operations in Idaho institutions of higher education.

(2) Consistent with the determinations made pursuant to subsection (1) hereof, the state board of education and the board of regents of the university of Idaho may enter into agreements with other states to provide for a full or partial reciprocal waiver of fees or tuition charged to students. Each agreement shall provide for the numbers and identifying criteria of students, and shall specify the institutions of higher education that will be affected by the agreement.

(3) The state board of education and the board of regents of the university of Idaho shall establish policy guidelines for the administration by the affected Idaho institutions of any tuition waivers authorized under this section, for evaluating applicants for such waivers, and for reporting the results of the reciprocal waiver programs authorized in this section.

(4) A report and financial analysis of any waivers ~~of--tuition~~ authorized under this section shall be submitted annually to the legislature as part of the budget recommendations of the state board of education and the board of regents of the university of Idaho for the system of higher education in this state.

SECTION 6. That Section 33-3720, Idaho Code, be, and the same is hereby amended to read as follows:

33-3720. PROFESSIONAL STUDIES PROGRAM. (1) It is hereby declared that it is in the public interest to assist Idaho citizens who wish to pursue professional studies in the fields of medicine, dentistry, veterinary medicine, and other health-related areas of study which are not available within the state by (a) entering into compacts or contractual agreements which make such courses of study available to Idaho citizens, and (b) providing a mechanism to provide funds for such Idaho citizens.

(2) The state board of education is hereby authorized to enter into loan agreements with qualified recipients to participate in qualified programs, which agreements shall include provisions for repayment of the loan on terms agreed to by the board and the qualified recipient; such repayment agreements may include provisions for decreasing or delaying or forgiving the repayment obligation in relationship to the recipient's course of study or agreement to return to Idaho to practice professionally.

(a) A qualified recipient shall be any Idaho student accepted into a qualified program who meets the residency requirements imposed by section 33-3717B, Idaho Code, and the rules of the state board of education.

(b) A qualified program shall be a program enumerated in section 33-3717B(~~8~~7), Idaho Code, and any other medical, dental, veterinary medicine, or other health-related program in which participation by Idaho residents has been authorized by the legislature and for which funds have been obligated by the board pursuant to subsection (3) of this section.

(3) The state board of education is hereby authorized to transfer, distribute or pay such moneys as are available in the professional studies account to the school, program, or compact providing the course of study pursuant to contracts, agreements, or compacts entered into by the legislature or the state board of education.

(4) The state board of education is hereby authorized to adopt all necessary rules, subject to the provisions of chapter 52, title 67, Idaho Code, for the administration of the professional studies program.

SECTION 7. That Section 33-4306, Idaho Code, be, and the same is hereby amended to read as follows:

33-4306. DEFINITIONS. As used in this act, unless the context otherwise requires:

(1) "Eligible postsecondary institution" means a public postsecondary organization governed or supervised by the state board of education, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of section 33-2106, Idaho Code, or the state board for professional-technical education or any educational organization which is operated privately and not for profit under the control of an independent board and not directly controlled or administered by a public or political subdivision. A public or private educational organization becomes eligible to participate in category B grant awards if the organization agrees to match awards granted to each eligible category B student. If an institution declines to match awards, an eligible student will receive the state portion of the award to that institution.

(2) "Educational costs" means student costs for tuition, fees, room and board, or expenses related to reasonable commuting, books and such other expenses reasonably related to attendance at a postsecondary educational institution.

(3) "Student" means an individual resident student as defined in section 33-3717B or 33-2110B, Idaho Code, enrolled ~~full-time~~ full time and carrying a sufficient number of credit hours, or their equivalent, to secure an individual's first degree, certificate, diploma or less, toward which the individual is working, in no more than the number of semesters, or equivalent, normally required by the eligible postsecondary institution in the program in which the individual is enrolled and provided that the baccalaureate degree, certificate, diploma or lesser program requires at least six (6) months or equivalent of consecutive attendance. A student engaged in a four (4) year baccalaureate program shall not be terminated from this scholarship program by having earned an intermediate degree, certificate or diploma.

(4) "Enrollment" means the establishment and maintenance of an individual's status as a student in an eligible postsecondary institution, regardless of the term used at the institution to describe such status.

(5) "Eligible category A student" means any individual who declares his intention to matriculate in an eligible postsecondary institution in the state of Idaho during the educational year immediately following:

(a) The individual's graduation from an accredited secondary school in the state of Idaho; or

(b) The individual's graduation from an accredited secondary school outside of the United States, provided that the individual graduated from such school, and the individual and a parent of the individual were residents of the state of Idaho, within one (1) year of leaving the state due to the military status or job relocation of a parent.

(6) "Eligible category B student" means any student, having completed secondary school or its equivalent in the state of Idaho, or outside of the United States if within one (1) year of leaving the state due to the military status or job relocation of a parent (a) the student completed such secondary school or its equivalent, and (b) the student and a parent of the student were residents of the state of Idaho, and who enrolls as a student in an eligible postsecondary institution in the state of Idaho prior to reaching twenty-two (22) years of age. To maintain eligibility a student must achieve and maintain a 2.5 cumulative grade point average while enrolled in an eligible postsecondary institution. Students meeting the requirements of this subsection who were not eligible for a grant in the first term of postsecondary education and who achieve and maintain a 2.5 cumulative grade point average based on a 4.0 system in an eligible postsecondary institution will become eligible for grant payments in subsequent school terms.

(7) "Grant" means an award to an eligible student for matriculation in an eligible postsecondary institution in the state of Idaho.

(8) "Educational year" means the period from July 1 of a year through June 30 of the succeeding year.

(9) "Competitive examination" means standardized examination(s) measuring achievement administered annually on a voluntary basis on a specified date and at specified locations announced publicly.

(10) "High school record," for category A students, will be defined by the state board of education and the board of regents of the university of Idaho and may include, but need not be limited to, an individual's rank in his secondary school class, grade point average, and difficulty of course load taken as certified by an official of such secondary school, and the individual's secondary school deportment as evaluated by at least two (2) officials of such secondary school.

(11) "High school record," for category B students, shall be defined by the state board of education and the board of regents of the university of Idaho and may include, but need not be limited to, an individual's secondary school cumulative grade point average or a composite score on the American college test (ACT).

(12) "Cumulative grade point average" is defined as a student's cumulative grade point average for all courses taken in grades nine (9) through twelve (12) and calculated on a grade of A equals 4.0 points, a grade of B equals 3.0 points, a grade of C equals 2.0 points, a grade of D equals 1.0 point and a grade of F equals 0.0 points.

SECTION 8. That Section 33-4403, Idaho Code, be, and the same is hereby amended to read as follows:

33-4403. DEFINITIONS. As used in this chapter:

(1) "Accredited institution of higher education" means any public or private university, college, or community college in Idaho accredited by the northwest association of schools and colleges, or any public professional-technical school operated by the state of Idaho or any political subdivision thereof; provided, that no institution of higher education shall be eligible to participate in the program unless it agrees to and complies with program rules ~~and regulations~~ adopted by the board pursuant to chapter 52, title 67, Idaho Code; provided, further, that private accredited institutions of higher education which are controlled by sectarian organizations, and students attending such institutions, may participate only in the educational need, off-campus work experience portion of this program and such off-campus employment may not be located at, or be performed on behalf of, a sectarian or religious establishment.

(2) "Board" means the state board of education.

(3) "Program" means the Idaho work study program established pursuant to this chapter.

(4) "Resident student" means an individual as defined in section 33-3717B, Idaho Code.

(5) "Student" means an individual currently at an Idaho school enrolled in a postsecondary degree program, or a state supported professional-technical program.

(6) "Student with educational need" means a post-high school student in good standing at an accredited institution of higher learning who is desirous of obtaining work experience related to the student's course of academic study, in either on-campus or approved off-campus employment, and who meets the institutional requirements for determining educational need; provided, however, a student whose academic course of study is sectarian in nature or who is pursuing an educational program leading to a baccalaureate degree in theology or divinity may not participate in this program.

(7) "Student with financial need" means a post-high school student in good standing at an accredited institution of higher learning who demonstrates to the institution the financial inability, either through the student's parents, family and/or personally, to meet the institutionally defined cost of education, and further demonstrates the ability and willingness to work in a student work study program, according to the stated needs of the institution.

Approved March 30, 2005.

CHAPTER 211
(S.B. No. 1138)

AN ACT

RELATING TO FISH AND GAME; AMENDING CHAPTER 4, TITLE 36, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 36-417, IDAHO CODE, TO PROVIDE THAT CERTAIN STATUTORY LICENSE APPLICANTS MAY MAKE VOLUNTARY DONATIONS TO

IDAHO HUNTERS FEEDING THE HUNGRY, INC., IN CONJUNCTION WITH THEIR LICENSE APPLICATIONS AND TO PROVIDE CERTAIN REQUIREMENTS FOR THE DEPARTMENT OF FISH AND GAME IN RELATION TO VOLUNTARY DONATIONS; AND TO PROVIDE AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 4, Title 36, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 36-417, Idaho Code, and to read as follows:

36-417. VOLUNTARY DONATION -- IDAHO HUNTERS FEEDING THE HUNGRY, INC. An applicant for a resident or nonresident license as provided for in section 36-416, Idaho Code, may make a voluntary donation of one dollar ($1.00) or more to support the activities of Idaho hunters feeding the hungry, inc., an Idaho nonprofit corporation, in conjunction with his license application. The department shall include a checkoff form to allow an applicant to designate a donation and shall transfer all such funds, less administrative costs associated with the collection of donations, received to Idaho hunters feeding the hungry, inc. on or before July 1 of each year.

SECTION 2. This act shall be in full force and effect on and after January 1, 2006.

Approved March 30, 2005.

CHAPTER 212
(S.B. No. 1188)

AN ACT

APPROPRIATING MONEYS FOR THE MILITARY DIVISION FOR FISCAL YEAR 2006; GRANTING A CONTINUOUS APPROPRIATION FOR THE BUREAU OF HOMELAND SECURITY'S MISCELLANEOUS REVENUE FUND FOR FISCAL YEAR 2006; 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 Military Division the following amounts to be expended for the following programs according to the designated expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MILITARY MANAGEMENT:				
FROM:				
General Fund	$ 1,635,300	$ 450,900	$ 125,000	$ 2,211,200
Indirect Cost Recovery Fund	112,100	44,800		156,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Federal Grant Fund		164,100		164,100
Miscellaneous Revenue Fund		38,800		38,800
Armory Revenue Fund		75,000		75,000
TOTAL	$ 1,747,400	$ 773,600	$ 125,000	$ 2,646,000
II. FEDERAL AND STATE CONTRACTS:				
FROM:				
General Fund	$ 720,300	$ 866,600		$ 1,586,900
Federal Grant Fund	8,694,300	7,480,700		16,175,000
TOTAL	$ 9,414,600	$ 8,347,300		$17,761,900
III. BUREAU OF HOMELAND SECURITY:				
FROM:				
General Fund	$ 1,183,700	$ 185,300		$ 1,369,000
Federal Grant Fund	1,459,600	6,020,700	$14,659,400	22,139,700
TOTAL	$ 2,643,300	$ 6,206,000	$14,659,400	$23,508,700
GRAND TOTAL	$13,805,300	$15,326,900	$14,784,400	$43,916,600

SECTION 2. The Military Division is hereby granted continuous appropriation authority for the Bureau of Homeland Security's Miscellaneous Revenue Fund for the period July 1, 2005, through June 30, 2006.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Military Division is authorized no more than two hundred five and eighty-hundredths (205.80) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 30, 2005.

CHAPTER 213
(H.B. No. 263)

AN ACT

RELATING TO PUBLIC WORKS CONTRACTING; AMENDING SECTION 31-1001, IDAHO CODE, TO REVISE A CODE REFERENCE AND TO CORRECT A CODIFIER ERROR; AMENDING SECTION 31-3615, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO THE CONTRACTING AND PROCUREMENT POWERS OF THE COUNTY HOSPITAL

BOARD; REPEALING CHAPTER 40, TITLE 31, IDAHO CODE, RELATING TO COUNTY EXPENDITURES AND BIDS; AMENDING SECTION 33-402, IDAHO CODE, TO REVISE NOTICE REQUIREMENTS; AMENDING SECTION 33-601, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO CONTRACTS EXECUTED BY SCHOOL DISTRICT BOARDS OF TRUSTEES FOR PROPERTY; AMENDING SECTION 33-601A, IDAHO CODE, TO PROVIDE A CODE REFERENCE; AMENDING SECTION 40-901, IDAHO CODE, TO PROVIDE FOR APPLICABILITY OF CERTAIN REQUIREMENTS FOR CONTRACTS AND BIDS TO COUNTY HIGHWAY SYSTEMS AND HIGHWAY DISTRICTS; REPEALING SECTIONS 40-906, 40-907, 40-908, 40-909, 40-910, 40-911, 40-912 AND 40-916, IDAHO CODE, RELATING TO CONTRACTS AND BIDS FOR HIGHWAYS; AMENDING SECTION 42-3115, IDAHO CODE, TO PROVIDE FOR APPLICABILITY OF CERTAIN REQUIREMENTS FOR THE PURCHASE OF GOODS AND SERVICES BY THE BOARDS OF COMMISSIONERS OF FLOOD CONTROL DISTRICTS AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 42-3116, IDAHO CODE, RELATING TO BIDDING REQUIREMENTS FOR FLOOD CONTROL DISTRICTS; AMENDING SECTION 42-3212, IDAHO CODE, TO PROVIDE FOR APPLICABILITY OF CERTAIN REQUIREMENTS FOR THE PURCHASE OF GOODS AND SERVICES BY BOARDS OF DIRECTORS OF WATER AND SEWER DISTRICTS; AMENDING SECTION 42-4416, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF BOARDS OF COMMISSIONERS OF LEVEE DISTRICTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 43-318A, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION 43-901, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO CONTRACTORS FOR CONSTRUCTION WORK AND PURCHASING BY IRRIGATION DISTRICTS; AMENDING SECTION 43-903, IDAHO CODE, TO REVISE A CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 43-2508, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO BIDDING BY LOCAL IMPROVEMENT DISTRICTS WITHIN THE BOUNDARIES OF IRRIGATION DISTRICTS; REPEALING SECTION 50-341, IDAHO CODE, RELATING TO BIDDING PROVISIONS OF MUNICIPALITIES; AMENDING SECTION 50-342, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION 50-344, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION 50-1710, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO BIDDING BY IMPROVEMENT DISTRICTS; AMENDING SECTION 50-2006, IDAHO CODE, TO REVISE A CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 50-2620, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO BIDDING BY BUSINESS IMPROVEMENT DISTRICTS; AMENDING SECTION 50-2621, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION 54-1901, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 54-1903, IDAHO CODE, TO REVISE EXEMPTIONS AND TO REVISE TERMINOLOGY; AMENDING SECTION 54-1904A, IDAHO CODE, TO REVISE TERMINOLOGY AND TO REQUIRE THAT A COPY OF CERTAIN FORMS FILED BY PRIME CONTRACTORS BE SENT TO THE ADMINISTRATOR OF THE DIVISION OF BUILDING SAFETY; AMENDING SECTION 54-1913, IDAHO CODE, TO REFERENCE DATA COLLECTED PURSUANT TO LAW; AMENDING SECTION 54-1914, IDAHO CODE, TO REVISE DESCRIPTIVE LANGUAGE AND TO SET FORTH PROVISIONS APPLICABLE TO ADMINISTRATIVE ENFORCEMENT PROCEEDINGS; AMENDING SECTION 54-1915, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO THE PROCEDURE FOR THE IMPOSITION OF DISCIPLINE; AMENDING SECTION 54-1916, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO JUDICIAL REVIEW AND APPEALS PROCEDURES; AMENDING SECTIONS 54-1926 AND 54-1926A, IDAHO CODE, TO REVISE CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-4503, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION 54-4508, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO DISCIPLINARY PROCEEDINGS; REPEALING SECTION 59-1026, IDAHO CODE, RELATING TO PEN-

ALTIES FOR EVADING COMPETITIVE BIDDING STATUTES; AMENDING CHAPTER 10, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1026, IDAHO CODE, TO PROHIBIT THE WILLFUL AND KNOWING AVOIDANCE OF COMPETITIVE BIDDING AND PROCUREMENT STATUTES AND TO PROVIDE FOR CIVIL PENALTIES; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 28, TITLE 67, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE FOR APPLICABILITY, TO SET FORTH EXCLUSIONS, TO PROVIDE FOR A WAIVER, TO SET FORTH PROVISIONS APPLICABLE TO PROCUREMENT OF PUBLIC WORKS CONSTRUCTION, TO SET FORTH PROVISIONS APPLICABLE TO PROCURING SERVICES OR PERSONAL PROPERTY, TO PROVIDE FOR JOINT PURCHASING AGREEMENTS, TO PROVIDE FOR NOT-FOR-PROFIT ASSOCIATIONS AND TO PROVIDE FOR EMERGENCY EXPENDITURES AND SOLE SOURCE EXPENDITURES; AMENDING SECTION 67-4912, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO PURCHASING BY AUDITORIUM DISTRICTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5711, IDAHO CODE, TO INCREASE THE DOLLAR AMOUNT FOR CERTAIN CONTRACTS FOR CONSTRUCTION, ALTERATION, EQUIPPING, FURNISHING AND REPAIR OF PUBLIC BUILDINGS AND WORKS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5711C, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO THE CONSTRUCTION OF PUBLIC PROJECTS AND COMPETITIVE SEALED BIDDING; AMENDING SECTION 70-1612, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO PURCHASING PROCEDURES OF PORT DISTRICTS; AND AMENDING SECTION 70-1613, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO NOTICE AND CONTRACT AWARDS BY PORT DISTRICTS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 31-1001, Idaho Code, be, and the same is hereby amended to read as follows:

31-1001. ERECTION OF BUILDINGS -- FURNISHING OF OFFICES -- CONTRACTS -- LEASE OF PREMISES FOR COURTHOUSE OR JAIL -- BOOKS AND STATIONERY. The board must cause to be erected or furnished, a courthouse, jail and such other public buildings as may be necessary, and must, when necessary, provide offices with necessary furniture for the sheriff, clerk of the district court and ex officio auditor and recorder, county treasurer, prosecuting attorney, county assessor and county surveyor, and must draw warrants in payment of the same: provided, that the contract for the erection of any such buildings must be ~~left~~ let, after thirty (30) days' notice for proposals, to the lowest bidder who will give security for the completion of any contract he may make respecting the same; and, provided further, no contracts for the purchase of furniture must be let under the provisions of this section when the expenses thereunder will exceed one thousand dollars ($1,000). And, provided further, that no part of the provisions of this section shall be construed to prevent the board of county commissioners, from entering into a lease for courthouse premises, rooms and jail for any period in their discretion, not to exceed thirty (30) years, and provided that the county commissioners may contract with responsible parties for the leasing of a courthouse, jail and hospital, or a combination of courthouse, jail and hospital, or fairground buildings and facilities, to be constructed upon premises owned by the county or otherwise, provided that said contract shall be let subject to the provisions of chapter ~~40~~28, ~~of--this~~ title 67, Idaho Code; the contract also may provide that at the expiration of

the term of the lease, upon full performance of such lease by the county, the said courthouse premises, rooms and jail, fairground buildings and facilities, or so much thereof as is leased, may become the property of the county. The board must also provide all necessary books of record for the county auditor and recorder, county treasurer, county assessor, and tax collector, clerk of the district court, county surveyor, and the books and stationery for the use of the board, and so much as is necessary for the use of said county officers in the transaction of official business. Nothing herein shall be construed as limiting or otherwise affecting a lease or other transaction between the Idaho health facilities authority and the board of county commissioners as provided in section 31-836, Idaho Code.

SECTION 2. That Section 31-3615, Idaho Code, be, and the same is hereby amended to read as follows:

31-3615. CONTRACTING AND PROCUREMENT POWERS OF BOARD. The county hospital board shall have power to contract for, purchase and pay for all material, equipment, services and supplies necessary or convenient for the efficient, economical and successful operation and maintenance of the county hospital properties. ~~Notwithstanding--the--provisions--of section--31-4003,-Idaho-Code,-t~~The county hospital board may make expenditures ~~which-are-not-in-excess-of-ten-thousand-dollars-($10,000)--without--submitting--the--expenditure--to--bidding--procedures--if-the-board believes-that-only-one-(1)-supplier-is-available-for-the-product-or-service-to-be-purchased~~ in accordance with the provisions of chapter 28, title 67, Idaho Code. Moreover, the county hospital board which participates with other hospitals as a member of a group purchasing association that engages in a formal competitive bidding process on behalf of member institutions for the purchase of hospital supplies and equipment may utilize that bidding process ~~in-lieu--of--the--bidding--requirements--in~~ established by chapter ~~40~~28, title ~~31~~67, Idaho Code. ~~Verification--of participation-in-such-a-group-purchasing-association-shall--be--provided by--the--county--hospital-board-upon-request-of-appropriate-governmental officials.~~ For purposes of this subsection, payment for services may include reasonable expenses incident to the hiring or maintaining of hospital staff, chief executive officers, board members or operating employee personnel, to be incurred and paid under rules and regulations adopted and approved as described in section 31-3610, Idaho Code.

SECTION 3. That Chapter 40, Title 31, Idaho Code, be, and the same is hereby repealed.

SECTION 4. 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;~~ as required by chapter 28, title 67, Idaho Code, 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 5. That Section 33-601, Idaho Code, be, and the same is hereby amended to read as follows:

33-601. REAL AND PERSONAL PROPERTY -- ACQUISITION, USE OR DISPOSAL OF SAME. The board of trustees of each school district shall have the following powers and duties:

1. To rent to or from others, school buildings or other property used, or to be used, for school purposes.

2. To contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment, or other personal property necessary for the operation of the school district.

Except for the purchase of curricular materials as defined in section 33-118A, Idaho Code, no such contract shall be executed ~~which entails the expenditure of twenty-five thousand dollars ($25,000) or more without notice first being given by publishing twice in the manner required by subsections g. and h. of section 33-402, Idaho Code, unless in cooperation with a cooperative agency established pursuant to chapter 23, title 67, and/or sections 33-315 through 33-318, Idaho Code, or through a contract that has been competitively bid by the state of Idaho, one (1) of its subdivisions, or an agency of the federal government. The board of trustees may let the contract to the lowest responsible bidder, or reject any bid, or reject all bids and publish notice for bids, as before. If, thereafter, no satisfactory bid is received, the board may proceed under its own direction~~ in accordance with the provisions of chapter 28, title 67, Idaho Code.

3. To designate and purchase any real property necessary for school purposes or in the operation of the district, or remove any building, or dispose of any real property. Prior to, but not more than one (1) year

prior to, any purchase or disposal of real property, the board shall have such property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real property. The board of trustees shall determine the size of the site necessary for school purposes. The site shall be located within the incorporated limits of any city within the district; provided, however, that if the board finds that it is not in the best interests of the electors and the students of the district to locate the site within the incorporated limits of a city, the board, by duly adopted resolution setting forth the reasons for its finding, may designate a site located elsewhere within the district. In elementary school districts, except upon removal for highway purposes, a site may be designated or changed only after approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

4. (a) To convey, except as provided by paragraph (b) of this subsection, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district in any property, real or personal. In elementary school districts, except such conveyance as is authorized by subsection 6. of this section, any of the transactions authorized in this subsection shall be subject to the approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

Prior to such sale or conveyance, the board shall have the property appraised pursuant to this section, which appraisal shall be entered in the records of the board of trustees. The property may be sold at public auction or by sealed bids, as the board of trustees shall determine, to the highest bidder. Such property may be sold for cash or for such terms and conditions as the board of trustees shall determine for a period not exceeding ten (10) years, with the annual rate of interest on all deferred payments not less than seven percent (7%) per annum. The title to all property sold on contract shall be retained in the name of the school district until full payment has been made by the purchaser, and title to all property sold under a note and mortgage or deed of trust shall be transferred to the purchaser at the point of sale under the terms and conditions of the mortgage or deed of trust as the board of trustees shall determine. Notice of the time and the conditions of such sale shall be published twice, and proof thereof made, in accordance with subsections g. and h. of section 33-402, Idaho Code, except that when the appraised value of the property is less than one thousand dollars ($1,000), one (1) single notice by publication shall be sufficient and the property shall be sold by sealed bids or at public auction.

The board of trustees may accept the highest bid, may reject any bid, or reject all bids. If the real property was donated to the school district the board may, within a period of one (1) year from the time of the appraisal, sell the property without additional advertising or bidding. Otherwise, the board of trustees must have new appraisals made and again publish notice for bids, as before. If, thereafter, no satisfactory bid is made and received, the board may proceed under its own direction to sell and convey the property. In no case shall any real property of the school district be sold for less than its appraisal.

The board of trustees may sell personal property, with an estimated value of less than one thousand dollars ($1,000), without appraisal, by sealed bid or at public auction, provided that there has been not less than one (1) published advertisement prior to the sale of said property. If the board, by a unanimous vote of those members present, finds that the property has an estimated value of less than five hundred dollars ($500) and is of insufficient value to defray the costs of arranging a sale, the property may be disposed of in the most cost-effective and expedient manner by an employee of the district empowered for that purpose by the board.

(b) Real and personal property may be exchanged hereunder for other property. Provided, however, that aside from the provisions of this paragraph, any school district may by a vote of one-half (1/2) plus one (1) of the members of the full board of trustees, by resolution duly adopted, authorize the transfer or conveyance of any real or personal property owned by such school district to the government of the United States, any city, county, the state of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any other school district, any library district, any community college district, or any recreation district, with or without any consideration accruing to the school district, when in the judgment of the board of trustees it is for the interest of such school district that said transfer or conveyance be made. Prior to any transfer or conveyance of any real or personal property pursuant to this paragraph 4.(b), the board shall have the property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real or personal property.

5. To enter into contracts with any city located within the boundaries of the school district for the joint purchase, construction, development, maintenance and equipping of playgrounds, ball parks, swimming pools, and other recreational facilities upon property owned either by the school district or the city.

6. To convey rights-of-way and easements for highway, public utility, and other purposes over, upon or across any school property and, when necessary to the use of such property for any such purpose, to authorize the removal of school buildings to such new location, or locations, as shall be determined by the board of trustees, and such removal shall be made at no cost or expense to the school district.

7. To authorize the use of any school building of the district as a community center, or for any public purpose, and to establish a policy of charges, if any, to be made for such use.

8. To exercise the right of eminent domain under the provisions of chapter 7, title 7, Idaho Code, for any of the uses and purposes provided in section 7-701, Idaho Code.

9. If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or it is necessary to do emergency work to safeguard life, health or property, the board of trustees may pass a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the board may expend any sum required in the emergency without compliance with this section.

SECTION 6. That Section 33-601A, Idaho Code, be, and the same is hereby amended to read as follows:

33-601A. LEASING OF GOODS, EQUIPMENT, BUSES AND PORTABLE CLASSROOMS. No provision of chapter 6, title 33, or chapter 28, title 67, Idaho Code, shall be construed to prevent a board of trustees from entering into lease-purchase agreements for goods, equipment, buses or portable classrooms, provided the agreement is in writing and meets all of the following requirements:

(1) The annual lease payments shall reflect reasonable compensation for use;

(2) No penalty shall be imposed on the school district for proper cancellation of the lease;

(3) The right to exercise the option to purchase shall be at the sole discretion of the school district; and

(4) The cost of purchase shall not exceed the reasonable value of the goods, equipment, buses or portable classrooms as of the time the option to purchase is exercised.

For the purposes of this section, "portable classroom" means a facility which is not so related to particular real estate that an interest in it arises under real estate law.

SECTION 7. That Section 40-901, Idaho Code, be, and the same is hereby amended to read as follows:

40-901. APPLICATION. The requirements for contracts and bids ~~shall~~ that apply to all county highway systems and highway districts of the state~~, but~~ shall be subject to the provisions of chapter 28, title 67, Idaho Code, in concert with the provisions of any specific statute pertaining to the letting of any contract or the purchase or acquisition of any commodity or thing by any system or highway district by soliciting and receiving competitive bids, and shall not be construed as modifying or amending the provisions of any statute, nor preventing the district from doing any work by its own employees.

SECTION 8. That Sections 40-906, 40-907, 40-908, 40-909, 40-910, 40-911, 40-912 and 40-916, Idaho Code, be, and the same are hereby repealed.

SECTION 9. That Section 42-3115, Idaho Code, be, and the same is hereby amended to read as follows:

42-3115. COMMISSIONERS -- POWERS AND DUTIES. The board of commissioners of flood control districts shall have the following powers and duties:

1. To annually fix and determine, the amount of money required to be raised by taxation to supply funds for costs of construction, costs of operation and maintenance of the work and equipment of the district, and to levy and cause to be collected assessments on real property within the district in an amount not to exceed six hundredths of one percent (.06%) of the market value for assessment purposes on all taxable property within the district, provided however that a higher levy may be approved and ratified by the qualified voters at an election to be held, subject to the provisions of section 34-106, Idaho Code, for

that purpose in the same manner as provided for the approval and ratification of contracts, in section 42-3117, Idaho Code, and said levy shall be certified by the board to the board of county commissioners of the county, or counties, in which said district is located, with directions that at the time and in the manner required by law for levying taxes for county purposes, such board, or boards, of county commissioners shall levy such tax upon the market value for assessment purposes of the real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the flood control district to the board, or boards, of county commissioners on or before September 1 of each year.

Such levies shall be levied and collected in the manner provided by law, and the moneys collected shall be turned over to the treasurer or treasurers, of the county, or counties, in which said district is located.

Said moneys shall be public funds and subject to the provisions of the public depository laws of the state.

2. To employ such personnel as may be necessary to carry out the purposes and objects of this ~~act~~ chapter, with the full power to bind said district for the compensation of such personnel.

3. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its power and to promulgate, amend and repeal rules not consistent with the provisions of this chapter.

4. To manage and conduct the business and affairs of the district, both within and without the district.

5. To construct, operate and maintain structural works of improvement for the prevention of floodwater and sediment damages, and the conservation, development, utilization, and disposal of water, whether within or without the boundaries of the district, and to enter into contract for the purposes set forth above, provided however, that the board shall ~~not enter into contracts that necessitate an expenditure in excess of fifteen thousand dollars ($15,000), without first advertising for sealed competitive bids as herein provided~~ purchase goods and services in accordance with the provisions of chapter 28, title 67, Idaho Code. However, where it is determined by order of the board that there is an existing emergency, or where it is determined that the district is in a flood fight resulting from unanticipated conditions, the requirement for sealed competitive bids shall not apply.

6. To prescribe the duties of officers, agents and employees as may be required.

7. To establish the fiscal year of the district and to keep records of all business transactions of the district.

8. To prepare a statement of the financial condition of the district at the end of each fiscal year, in a form to be prescribed by the director or by the legislative services office, and publish in at least one (1) issue of some newspaper published, or in general circulation in, the county, or counties, in which such district is located and to file a certified copy of such financial report with the director and the legislative services office on or before February 2 of each year.

9. To have an audit of the financial affairs of the district as required in section 67-450B, Idaho Code. A certified copy of said audit

shall be filed with the director on or before February 2 following the audit.

10. To obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; to lease any of its property or interest therein in furtherance of the purposes and provisions of this chapter, provided that no contract or agreement for the acquisition, purchase or repair of personal property involving expenditure in excess of one thousand dollars ($1,000), shall be entered into without first advertising for sealed competitive bids as herein provided.

11. To have the power of eminent domain for the use of the district in the construction, operation, maintenance and upkeep of its structures, waterways, dikes, dams, basins, or any other use necessary in the carrying out of the provisions of this chapter.

12. To convey rights-of-way and easements for highways, public roads, public utilities, and for other purposes, over district property, as shall be determined by the board to be in the best interests of the district.

13. To convey, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district, in any real or personal property. Prior to such sale or conveyance, the board shall have the property appraised by three (3) disinterested residents of the district, which appraisal shall be entered in the minutes of the board. The property may be sold at public auction or at a private sale by sealed competitive bids, as the board shall determine, to the highest cash bidder, provided that in no case shall any property of a district be sold for less than its appraised value. All sales by sealed competitive bids shall be advertised as herein provided.

14. To use natural streams and to improve the same for use as a flood control structure. However, in the event that the use of the natural stream involves alteration of the stream channel, no such alteration shall be made by the district until such alteration is approved by the director.

15. To enter into contracts or agreements with the United States or any of its officers, agents, or subdivisions, or with the state or any of its officers, agents or political subdivisions, and to cooperate with such governments, persons or agencies in effectuating, promoting and accomplishing the purposes of this chapter, provided that the district has sufficient moneys on hand, or in their budget for the year in which said contract is entered into, to defray the expenditure of funds called for in such contract without the creation of any indebtedness.

Whenever any such contract shall, by its terms, require the expenditure of funds by the district in excess of the moneys on hand or the funds to be realized from their budget for the year in which said contract is entered into, then such contract may not be entered into by the district until ratified by two-thirds (2/3) of the qualified voters voting at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, according to the provisions of this chapter.

16. To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided herein.

17. To take over, administer and maintain pursuant to any agreement

or contract entered into in accordance with the provisions of this ~~act~~ chapter, any flood control project within or without the boundaries of the district undertaken in cooperation with the United States or any of its agencies, or with the state of Idaho or any of its agencies, or any combinations thereof.

18. To accept donations, gifts and contributions in money, services, or materials, or otherwise, from the United States or any of its agencies, or the state of Idaho or any of its agencies or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations.

19. To exercise all other powers necessary, convenient or incidental to carrying out the purposes and provisions of the chapter.

SECTION 10. That Section 42-3116, Idaho Code, be, and the same is hereby repealed.

SECTION 11. That Section 42-3212, Idaho Code, be, and the same is hereby amended to read as follows:

42-3212. GENERAL POWERS OF BOARD. For and on behalf of the district the board shall have the following powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued, and be a party to suits, actions and proceedings;

(d) Except as otherwise provided in this chapter, to enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, and contracts with corporations, public or private, municipalities, or governmental subdivisions, and to cooperate with any one (1) or more of them in building, erecting or constructing works, canals, pipelines, sewage treatment plants, and other facilities within or without the district. Except in cases in which a district will receive aid from a governmental agency, ~~a notice shall be published for bids on all construction contracts involving an expense of fifteen thousand dollars ($15,000) or more for labor, materials and equipment, which sum shall exclude design costs, bid advertising and related bidding expenses. The district may reject any and all bids, and if it shall appear that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do~~ procurement of goods or services shall be in accordance with the provisions of chapter 28, title 67, Idaho Code;

(e) To borrow money and incur indebtedness and evidence the same by certificate, notes or debentures, and to issue bonds, in accordance with the provisions of this chapter;

(f) To acquire, dispose of and encumber real and personal property, water, water rights, water and sewage systems and plants, and any interest therein, including leases and easements within or without said district;

(g) To refund any bonded indebtedness of the district without an election; provided, however, that the obligations of the district shall not be increased by any refund of bonded indebtedness. Otherwise, the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds;

(h) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district improvements therein or therefor;

(i) To hire and retain agents, employees, engineers and attorneys;

(j) To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for public use to take any property necessary to the exercise of the powers herein granted, both within and without the district;

(k) To construct and maintain works and establish and maintain facilities across or along any public street or highway, and in, upon, or over any vacant public lands, which public lands are now, or may become, the property of the state of Idaho, and to construct works and establish and maintain facilities across any stream of water or watercourse, and to maintain access to facilities and works by the removal of snow from roads and lands; provided, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof;

(l) To fix and from time to time to increase or decrease water and sewer rates, tolls or charges for services or facilities furnished by the district, and to pledge such revenue for the payment of any indebtedness of the district. The board shall fix rates, tolls and charges and the time or times for the payment thereof. All such rates, tolls and charges not paid within thirty (30) days after the date fixed for the payment thereof shall become delinquent; the board shall certify all such delinquent rates, tolls and charges to the tax collector of the county by the district, not later than the first day of August and shall be, by said tax collector, placed upon the tax roll and collected in the same manner and subject to the same penalties as other district taxes; provided, however, that special assessments certified to the tax collector which are placed on property qualifying for a hardship exemption may be returned to the taxing district from which they originated if the special assessments are not paid within three (3) years. The date of priority of such lien shall be the date upon which such charge becomes delinquent. The board shall shut off or discontinue service for delinquencies in the payment of such rates, tolls or charges, or in the payment of taxes levied pursuant to this chapter, and prescribe and enforce rules and regulations for the connection with and the disconnection from properties of the facilities of the district. For health and sanitary purposes the board shall have the power to compel the owners of inhabited property within a sewer district to connect their property with the sewer system of such district, and upon a failure so to connect within sixty (60) days after written notice by the board so to do the board may cause such connection to be made and a lien to be filed against the property for the expense incurred in making such connection, provided, however, that no owner shall be compelled to connect his property with such system unless a service line is brought, by the district, to a point within two hundred (200) feet of his dwelling place;

(m) To adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district;

(n) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such spe-

cific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

SECTION 12. That Section 42-4416, Idaho Code, be, and the same is hereby amended to read as follows:

42-4416. COMMISSIONERS -- POWERS AND DUTIES. The board of commissioners of levee districts shall have the following powers and duties:

(1) To annually fix and determine the amount of money required to be raised by taxation to supply funds for costs of maintenance, operation, and/or construction of the levees and equipment of the district, and to levy and cause to be collected assessments on real property within the district in an amount not to exceed eight hundredths percent (.08%) of each dollar of market value for assessment purposes; provided, however, that a higher levy may be approved and ratified by the qualified voters at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, and said levy shall be certified by the board to the board of county commissioners of the county, or counties, in which said district is located, with directions that at the time and in the manner required by law for levying taxes for county purposes, such board, or boards, of county commissioners shall levy such tax upon the real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the levee district to the board, or boards, of county commissioners on or before September 1, of each year.

Such levies shall be levied and collected in the manner provided by law, and the moneys collected shall be turned over to the treasurer or treasurers, of the county, or counties, in which said district is located.

Said moneys shall be public funds and subject to the provisions of the public depository laws of the state.

(2) To employ such personnel as may be necessary to carry out the purposes and objects of this chapter, with the full power to bind said district for the compensation of such personnel.

(3) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its power and to promulgate, amend and repeal rules and regulations not consistent with the provisions of this chapter.

(4) To manage and conduct the business and affairs of the district, both within and without the district.

(5) To maintain, operate and/or construct levees for containment of irrigation water and for the prevention of floodwater whether within or without the boundaries of the district, and to enter into contract for the purposes set forth above; provided, however, that the board shall not enter into contracts ~~that necessitate an expenditure in excess of five thousand dollars ($5,000), without first advertising for sealed competitive bids as herein provided~~ except in accordance with the provisions of chapter 28, title 67, Idaho Code. However, where it is determined by order of the board that there is an existing emergency, the requirement for sealed competitive bids shall not apply.

(6) To prescribe the duties of officers, agents and employees as may be required.

(7) To establish the fiscal year of the district and to keep records of all business transactions of the district.

(8) To prepare a statement of the financial condition of the district at the end of each fiscal year according to generally accepted accounting principles, and publish in at least one (1) issue of some newspaper published, or in general circulation in, the county, or counties, in which such district is located and to file a certified copy of such financial report with the director of the department of water resources.

(9) To have an audit of the financial affairs of the district as required in section 67-450B, Idaho Code.

(10) To obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; to lease any of its property or interest therein in furtherance of the purposes and provisions of this chapter, provided that ~~no~~ any contract or agreement for the acquisition, purchase or repair of personal property ~~involving expenditure in excess of one thousand dollars ($1,000),~~ shall be entered into ~~without first advertising for sealed competitive bids as herein provided~~ in accordance with the provisions of chapter 28, title 67, Idaho Code.

(11) To have the power of eminent domain for the use of the district in the maintenance, operation, and construction of its levees or any other use necessary in the carrying out of the provisions of this chapter.

(12) To convey rights-of-way and easements for highways, public roads, public utilities, and for other purposes, over district property, as shall be determined by the board to be in the best interests of the district.

(13) To convey, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district, in any real or personal property. Prior to such sale or conveyance, the board shall have the property appraised by three (3) disinterested residents of the district, which appraisal shall be entered in the minutes of the board. The property may be sold at public auction or at a private sale by sealed competitive bids, as the board shall determine, to the highest cash bidder, provided that in no case shall any property of a district be sold for less than its appraised value. All sales by sealed competitive bids shall be advertised as herein provided.

(14) To enter into contracts or agreements with the United States or any of its officers, agents or subdivisions, or with the state or any of its officers, persons or agencies in effectuating, promoting and accomplishing the purposes of this chapter, provided that the district has sufficient moneys on hand, or in their budget for the year in which said contract is entered into, to defray the expenditure of funds called for in such contract without the creation of any indebtedness.

Whenever any such contract shall, by its terms, require the expenditure of funds by the district in excess of the moneys on hand or the funds to be realized from their budget for the year in which said contract is entered into, then such contract may not be entered into by the district until ratified by two-thirds (2/3) of the qualified voters vot-

ing at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, according to the provisions of this chapter.

(15) To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided herein.

(16) To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of this chapter, any levee project within or without the boundaries of the district undertaken in cooperation with the United States or any of its agencies, or with the state of Idaho or any of its agencies, or any combinations thereof.

(17) To accept donations, gifts and contributions in money, services, or materials or otherwise, from the United States or any of its agencies, or the state of Idaho or any of its agencies or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations.

(18) To exercise all other powers necessary, convenient or incidental to carrying out the purposes and provisions of this chapter.

SECTION 13. That Section 43-318A, Idaho Code, be, and the same is hereby amended to read as follows:

43-318A. TRADE-IN OR EXCHANGE OF DISTRICT PROPERTY. Whenever the board of directors of an irrigation district finds and by resolution declares that the district no longer has use for any personal property of the district, or finds and declares that such property is no longer economical to use, the district may, in lieu of the sale of said property as provided in section 43-318, Idaho Code, dispose of the property by exchanging the same in part payment for new or replacement property.

If the acquisition of the new or replacement property is required to be let to bid under the provisions of ~~section 43-901~~ chapter 28, title 67, Idaho Code, the district shall include in its request for bids, a full description of the property to be exchanged as part payment, and shall permit any interested bidder to examine the same, and any contract let as a result of said bid shall be awarded on the basis of net cost to the district after allowance for the property to be exchanged in part payment.

Exchange of property will be permitted only when, in the opinion of the board of directors of the district, the sale of the property under the provisions of section 43-318, Idaho Code, will yield a lesser monetary return to the district than the exchange thereof as herein provided.

SECTION 14. That Section 43-901, Idaho Code, be, and the same is hereby amended to read as follows:

43-901. CONTRACTS FOR CONSTRUCTION WORK AND PURCHASING. ~~A.~~ The ~~following~~ provisions relative to competitive bidding set forth in chapter 28, title 67, Idaho Code, apply to all irrigation districts of the state of Idaho, but shall be subject to the provisions of any specific statute pertaining to the letting of any contract, purchase or acquisition of any commodity or thing by soliciting and receiving competitive bids therefor, and shall not be construed as modifying or amending the provi-

sions of any such statute, nor preventing the irrigation district from doing any work by its own employees.

~~B.--The--word-"expenditure"-shall-mean-the-granting-of-a-contract-to another-by-the-irrigation-district,-the-construction-of--any--works,--or any--portion--thereof,-and-every-manner-and-means-whereby-the-irrigation district-disburses-funds-or-obligates-itself--to--disburse--funds;--provided,--however,--that--"expenditure"--does--not-include-disbursement-of funds-to-any-irrigation-district-employee,-official,-agent,-or--for--the performance--of-personal-services-to-the-irrigation-district,-or-for-the acquisition-of-personal-property-through-a-contract-that-has--been--competitively--bid--by--the--state--of-Idaho,-one-of-its-subdivisions-or-an agency-of-the-federal-government,-and-does-not-include-the--purchase--of used-personal-property.~~

~~C.--When--the--expenditure-contemplated-exceeds-twenty-five-thousand dollars-($25,000),-the-expenditure-shall-be-contracted-for--and--let--to the-lowest-responsible-bidder.~~

~~D.--The--notice--inviting--bids--shall--set-a-date-and-place-for-the opening-of-bids.-The-first-publication-of-the-notice-shall-be--at--least two--(2)-weeks-before-the-date-of-opening-the-bids.-Notice-shall-be-published-at-least-twice,-not-less-than-one-(1)-week-apart,-in-the-official newspaper-of-such-irrigation-district.-The-notice-shall--succinctly--set forth-the-project-or-construction-to-be-done.-Any-of-the-following-documents--shall--be--made-available,-upon-reasonable-deposit,-to-any-interested-bidder:-bid-form,-bidder's-instructions,-contract-documents,--general-and-special-instructions,-drawings-and-specifications.~~

~~E.--All--bids-shall-be-presented-or-otherwise-delivered-under-sealed cover-to-the-secretary-with-a-concise-statement-marked--on--the--outside thereof--generally--identifying--the--expenditure-to-which-said-bid-pertains.-All-bids-shall-contain-one-(1)-of-the-following-forms-of-bidder's security:~~

~~a.--Cash;~~

~~b.--Cashier's-check-made-payable-to-the-irrigation-district;~~

~~c.--A-certified-check-made-payable-to-the-irrigation-district;~~

~~d.--A-bidder's-bond-executed-by-a--qualified--surety--company,--made payable-to-the-irrigation-district.~~

~~F.--The--security--shall--be-an-amount-equal-to-at-least-ten-percent (10%)-of-the-amount-bid.-A-bid-shall-not-be-considered-unless-one-(1)-of the-forms-of-bidder's-security-is-enclosed-with-it,-and-unless--the--bid is--submitted--in-a-form-which-substantially-complies-with-the-form-provided-by-the-irrigation-district.~~

~~G.--Any-bid-received-by-the-irrigation-district-may-not-be-withdrawn after-the-time-set-in-the-notice-for-opening-of-bids.-All-bids--received must--be--opened--at-the-time-and-place-set-in-the-notice-inviting-bids, and-no-person-shall-be-denied-the-right-to-be-present-at-the-opening--of bids.~~

~~H.--If--the--successful--bidder--fails--to-execute-the-contract,-the amount-of-his-bidder's-security-shall-be--forfeited--to--the--irrigation district--and--the--proceeds-shall-be-deposited-in-the-fund-out-of-which the-expenses-of-preparation-and-printing-of--the--plans--and--specifications,-estimates-of-costs-and-publication-of-notice-are-paid.~~

~~I.--The--irrigation--district-may,-on-refusal-or-failure-of-the-successful-bidder-to-execute-the-contract,-award--it--to--the--next--lowest responsible--bidder.-If-the-board-awards-the-contract-to-the-next-lowest responsible-bidder,-the-amount-of-the-said-lowest--responsible--bidder's~~

~~security--shall--be-applied-by-the-irrigation-district-to-the-difference between-the-said-lowest-responsible-bid-and-the-said-next-lowest-responsible-bid,-and-the-surplus,-if-any,-shall-be-returned-to-the-said-lowest bidder-if-cash-or-check-is-used,-or-to-the-surety-on-the--bidder's--bond if-a-bond-is-used.~~

~~J.--In--its--discretion,-the-board-may-reject-any-bids-presented-and readvertise.-If-two-(2)-or-more-bids-are-the-same-and-the-lowest-responsible-bids,-the-board-may-accept-the-one-it--chooses.--If--no--bids--are received,--the-board-may-make-the-expenditure-without-further-compliance with-this-section.~~

~~K.--After-rejecting-bids,-the-board-may,-after-finding-it--to--be--a fact,--pass--a--resolution--declaring-that-the-thing-sought-to-be-accomplished-by-the-expenditure-can-be-performed--more--economically--by--day labor,--or--the--materials-or-supplies-furnished-at-a-lower-price-in-the open-market.-Upon-adoption-of-the-resolution,--it--may--have--the--thing sought-to-be-accomplished-done-in-the-manner-stated-without-further-compliance-with-this-section.~~

~~L.--If--there--is-a-great-public-calamity,-as-an-extraordinary-fire, flood,-storm,-epidemic-or-other-disaster,-or-if-it-is--necessary--to--do emergency-work-to-prepare-for-national-or-local-defense,-or-if-the-irrigation--system--of--the-district-has-been-seriously-damaged-or-impaired, the-board-may-pass-a-resolution-declaring-that-the-public--interest--and necessity--demand-the-immediate-expenditure-of-public-money-to-safeguard life,-health-or-property-or-to-replace-or-repair-any-damaged-portion--of the--irrigation-system-or-to-remove-any-impediment-therefrom.-Upon-adoption-of-the-resolution,-it-may-expend-any-sum-required-in-the--emergency without-compliance-with-this-section.~~

SECTION 15. That Section 43-903, Idaho Code, be, and the same is hereby amended to read as follows:

43-903. NOTICE FOR BIDS DISPENSED WITH. On the petition of fifty (50) or a majority of the owners of land in said district, to be determined as provided by section 43-101, Idaho Code, the board of directors may do any work mentioned in the preceding section on behalf of the district, and it may use the construction fund therefor; in such case they need not publish notice for bids as provided in ~~the last preceding~~ section 43-901, Idaho Code.

SECTION 16. That Section 43-2508, Idaho Code, be, and the same is hereby amended to read as follows:

43-2508. RESOLUTION CREATING LOCAL IMPROVEMENT DISTRICT AND PROCEDURE FOR CONSTRUCTION BIDS. If, after the hearing on the creation of the district, the board finds that the local improvement district will be for the best interest of the property affected and the district; that there is reasonable probability that the obligations of such local improvement district will be paid; and the value of the property within the proposed local improvement district is sufficient; it shall then adopt a resolution providing for such improvements and creating a local improvement district to be called "Local Improvement District No. ... for ..... Irrigation District, Idaho," which shall include all of the property within said local improvement district in accordance with the findings of the board, and said resolution shall set forth the

boundaries of the local improvement district, provide the improvements which shall be made, and state that the total cost and expenses thereof shall be assessed according to the percentage or calculation hereinbefore mentioned on all benefited property in the local improvement district by using the gross acreage method of assessment contemplated in the notice of intention subject to any variation therefrom as a result of the board's determining that the benefits to be derived by certain lots or parcels of property warrant such variations. The board shall appoint an engineer and shall have prepared the necessary plans and specifications for the construction work ordered. Except as hereinafter otherwise provided, the board shall authorize the advertisement for bids therefor by giving notice calling for sealed bids for the construction of the work in accordance with the provisions of chapter 28, title 67, Idaho Code.

~~Notice--of-advertisement-for-bids-shall-be-published-in-the-official newspaper-of-the-district-in-three-(3)-consecutive-weekly-issues,--which notice--shall--contain--a--general-description-of-the-kind-and-amount-of work-to-be-done,-state-that-the-plans-and-specifications-for--said--work are--on--file--in-the-office-of-the-engineer-or-secretary-for-inspection and-state-the-date,-hour-and-place-of-the-bid-opening.~~

~~Each-bidder-shall-accompany-his-bid-with-bidder's-security--as--provided--in-section-43-901,-Idaho-Code,-in-the-amount-of-ten-percent-(10%) of-his-bid.-In-case-the-contract-for-any-such-work-is--offered--to--such bidder--and--he--fails--or-refuses-to-enter-into-the-contract,-then-such security-shall-be-forfeited-to-the-district--and--placed--in--the--local improvement-fund-of-such-district.-These-provisions-also-shall-appear-in said-notice.~~

~~Award--shall-be-made-to-the-lowest-responsible-bidder-fulfilling-the requirements.~~

Any contract made by a district for any improvements authorized by this code shall be made by the board in the name of the district upon such terms of payment as shall be fixed by the board. The contract shall be authorized by resolution empowering the authorized officer of the district to execute the contract. The resolution need not set out the contract in full but it shall be sufficient if the resolution refers to a copy of the contract on file in the office of the secretary where it is available for public inspection.

Any provision in this local improvement district for irrigation districts code notwithstanding, if any district shall elect to exercise the powers herein granted jointly with another irrigation district or districts, or with any other public agency or agencies as authorized by the provisions of section 67-2328, Idaho Code, the improvements as contemplated within the local improvement district may be constructed jointly and as part of a larger project with such other agency or agencies upon the letting of a single contract after compliance with the required bidding procedure for any Idaho public agency jointly participating in the work.

SECTION 17. That Section 50-341, Idaho Code, be, and the same is hereby repealed.

SECTION 18. That Section 50-342, Idaho Code, be, and the same is hereby amended to read as follows:

50-342. ELECTRIC POWER -- PURCHASE OR DISPOSAL. In addition to the powers otherwise conferred on cities of this state, a city owning and operating an electric distribution system shall have the authority to:

(a) Purchase, or generate, or both, electric power and energy for the purpose of disposing of such power and energy to the United States of America, department of energy, acting by and through the Bonneville power administration, or its successor, through exchange, net billing or any arrangement which is used for supplying the needs of the city for electric power or energy;

(b) Enter into power sales or power purchase contracts with entities engaged in generating, transmitting, or distributing electric power and energy to provide for the purchase, sale or exchange of electric power or energy upon such terms and conditions as shall be specified in the power sales or purchase contract; and

(c) Establish, operate and fund energy conservation or other public purpose programs for the purpose of promoting efficient use of energy and energy conservation by city consumers including, but not limited to, programs to install energy efficient and energy conservation devices or measures in consumer buildings and structures served by the city and to grant low-interest loans to city consumers for the installation of such measures, provided such measures are provided on a nondiscriminatory basis to all classes of customers similarly situated;

and such authority shall not be subject to the requirements, limitations, or procedures contained in sections 50-325, 50-327 and ~~50-341~~ chapter 28, title 67, Idaho Code.

SECTION 19. That Section 50-344, Idaho Code, be, and the same is hereby amended to read as follows:

50-344. SOLID WASTE DISPOSAL. (1) Cities shall have the power to maintain and operate solid waste collection systems. Such maintenance and operation may, by exclusive or nonexclusive means, be performed by:

(a) Employees, facilities, equipment and supplies engaged or acquired by cities;

(b) Contracts, franchises or otherwise providing maintenance and operation performed by private persons;

(c) Contracts providing for maintenance and operation performed by another unit of government;

(d) Contracts, franchises or otherwise for maintenance and operation that may provide solid waste collection for all or geographic parts of a city;

(e) Any combination of paragraphs (a), (b), (c), and (d) of this section.

(2) Upon a finding by the mayor or city manager for public safety or necessary protection of public health and welfare and property, the provisions of ~~section 50-341~~ chapter 28, title 67, Idaho Code, shall not apply to solid waste collection, as provided herein.

(3) Before entering into such contracts, franchises or otherwise, a city may require such security for the performance thereof as it deems appropriate or may waive such undertaking.

SECTION 20. That Section 50-1710, Idaho Code, be, and the same is hereby amended to read as follows:

50-1710. ORDINANCE CREATING IMPROVEMENT DISTRICT AND PROCEDURE FOR CONSTRUCTION BIDS. If, after the hearing on the creation of the district, the council finds (a) that the district will be for the best interest of the property affected and the municipality, (b) that there is reasonable probability that the obligations of such district will be paid, and (c) the value of the property within the proposed district, including the proposed improvements, is sufficient, it shall then enact an ordinance providing for such improvements and creating a local improvement district to be called "Local Improvement District No. ..... for ....., Idaho," which shall include all of the property within said district in accordance with the findings of the council, and said ordinance shall set forth the boundaries of the district, provide the improvements which shall be made, and state that the total cost and expenses thereof shall be assessed according to the percentage or calculation hereinbefore mentioned on all benefited property in the district by using the method of assessment contemplated in the notice of intention subject to any variation therefrom as a result of the council's determining that the benefits to be derived by certain lots or parcels of property warrant such variations. The council may either purchase, acquire or construct the improvements. The council shall appoint an engineer. If the council elects to construct the improvements, the engineer shall have prepared the necessary plans and specifications for the construction work ordered.

Except as hereinafter otherwise provided, the council shall authorize the advertisement for bids therefor by giving notice calling for sealed bids ~~for--the-construction-of-the-work.-Notice-of-advertisement for-bids-shall-be-published-in-the-official-newspaper-of-the--municipality--in-three-(3)-consecutive-weekly-issues,-which-notice-shall-(a)-contain-a-general-description-of-the-kind-and-amount-of-work--to--be--done,-(b)-state-that-the-plans-and-specifications-for-said-work-are-on-file-in the--office--of--the--engineer-or-clerk-for-inspection-and-(c)-state-the date,-hour-and-place-of-the-bid-opening~~ in accordance with the provisions of chapter 28, title 67, Idaho Code.

~~Each--bidder--shall-accompany-his-bid-with-bidder's-security-as-provided-in-section-50-341,-Idaho-Code,-in-the-amount-of-five-percent--(5%) of--his--bid.--In-case-the-contract-for-any-such-work-is-offered-to-such bidder-and-he-fails-or-refuses-to-enter-into--the--contract,--then--such security--shall-be-forfeited-to-the-municipality-and-placed-in-the-local improvement-fund-of-such-district.-These-provisions-also-shall-appear-in said-notice.~~

~~Award-shall-be-made-to-the-lowest-responsible-bidder-fulfilling--the requirements.~~

Any acquisition, purchase or construction contract made by a municipality for any improvements authorized by this code shall be made by the council in the name of the municipality upon such terms of payment as shall be fixed by the council. The contract shall be authorized by resolution empowering the authorized officer of the municipality to execute the contract. The resolution need not set out the contract in full but it shall be sufficient if the resolution refers to a copy of the contract on file in the office of the clerk where it is available for public inspection.

Any provision in this local improvement district code notwithstanding, if any municipality shall elect to exercise the powers herein granted jointly with any other public agency or agencies as authorized

by the provisions of section 67-2328, Idaho Code, the improvements as contemplated within the local improvement district may be constructed jointly and as part of a larger project with such other agency or agencies upon the letting of a single contract after compliance with the required bidding procedure for any Idaho public agency jointly participating in the work.

SECTION 21. That Section 50-2006, Idaho Code, be, and the same is hereby amended to read as follows:

50-2006. URBAN RENEWAL AGENCY. (a) There is hereby created in each municipality an independent public body corporate and politic to be known as the "urban renewal agency" for the municipality; provided, that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the findings prescribed in section 50-2005, Idaho Code.

(b) Upon the local governing body making such findings, the urban renewal agency is authorized to transact the business and exercise the powers hereunder by a board of commissioners to be appointed or designated as follows:

(1) The mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of not less than three (3) commissioners nor more than nine (9) commissioners. In the order of appointment, the mayor shall designate the number of commissioners to be appointed, and the term of each, provided that the original term of office of no more than two (2) commissioners shall expire in the same year. The commissioners shall serve for terms not to exceed five (5) years, from the date of appointment, except that all vacancies shall be filled for the unexpired term. For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearings and have had an opportunity to be heard in person or by counsel.

(2) By enactment of an ordinance, the local governing body may appoint and designate itself to be the board of commissioners of the urban renewal agency, in which case all the rights, powers, duties, privileges and immunities vested by the urban renewal law of 1965, and as amended, in an appointed board of commissioners, shall be vested in the local governing body, who shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, entirely separate and distinct from the municipality, to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended.

(3) By enactment of an ordinance, the local governing body may terminate the appointed board of commissioners and thereby appoint and designate itself as the board of commissioners of the urban renewal agency.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such cer-

tificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number.

The mayor may appoint a chairman, a cochairman, or a vice chairman for a term of office of one (1) year from among the commissioners, thereafter the commissioners shall elect the chairman, cochairman or vice chairman for a term of one (1) year from among their members. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this ~~act~~ chapter shall file, with the local governing body, on or before March 31 of each year a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk or county recorder and in the office of the agency.

(d) An urban renewal agency shall have the same fiscal year as a municipality and shall be subject to the same audit requirements as a municipality. An urban renewal agency shall be required to prepare and file with its local governing body an annual financial report and shall prepare, approve and adopt an annual budget for filing with the local governing body, for informational purposes. A budget means an annual estimate of revenues and expenses for the following fiscal year of the agency.

(e) An urban renewal agency shall comply with the public records law pursuant to chapter 3, title 9, Idaho Code, open meetings law pursuant to chapter 23, title 67, Idaho Code, the ethics in government law pursuant to chapter 7, title 59, Idaho Code, and the competitive bidding provisions of ~~section 50-341~~ chapter 28, title 67, Idaho Code.

SECTION 22. That Section 50-2620, Idaho Code, be, and the same is hereby amended to read as follows:

50-2620. BIDS REQUIRED -- MONETARY AMOUNT. Any city authorized by this chapter to establish a business improvement district shall ~~call for competitive bids by appropriate public notice and award contracts, whenever the estimated cost of such work or improvement, including cost of materials, supplies and equipment, exceeds the sum of five thousand dollars ($5,000)~~ conduct its purchasing activities in accordance with the provisions of chapter 28, title 67, Idaho Code.

SECTION 23. That Section 50-2621, Idaho Code, be, and the same is hereby amended to read as follows:

50-2621. COMPUTING COST OF IMPROVEMENT FOR BID REQUIREMENT. The cost of the improvement for the purposes of this chapter shall be aggregate of all amounts to be paid for the labor, materials and equipment on one (1) continuous or interrelated project where work is to be performed simultaneously or in near sequence. Breaking an improvement into small units for the purposes of avoiding the minimum dollar amount prescribed in ~~section 50-2620~~ chapter 28, title 67, Idaho Code, is contrary to public policy and is prohibited.

SECTION 24. That Section 54-1901, Idaho Code, be, and the same is hereby amended to read as follows:

54-1901. LEGISLATIVE INTENT -- DEFINITIONS. (1) The legislature finds that it is in the best interests of the people of the state of Idaho to establish a process for licensure of public works contractors to be administered through the public works contractors license board. To assure that experienced and qualified contractors provide services to public entities in Idaho, the board is charged with licensing as provided in this chapter. Effective licensing procedures should assure that contractors of integrity provide work for which they have specific experience and expertise and that public facilities are constructed and rebuilt by efficient and cost-effective means. Licensing should also protect the public health and safety through judicious exercise of investigative, disciplinary and enforcement activities.

(2) For the interpretation of this chapter, unless the context indicates a different meaning:

(a) "Person" includes any individual, firm, copartnership, corporation, limited liability company, limited liability partnership, association or other organization, or any combination thereof acting as a unit.

(b) "Public works contractor," which term is synonymous with the term "builder," "subcontractor" and "specialty contractor," and in this chapter referred to as "contractor" or "licensee," includes any person who, in any capacity, undertakes, or offers to undertake, or purports to have the capacity to undertake any construction, repair or reconstruction of any public work, or submits a proposal to, or enters into a contract with, the state of Idaho, or any county, city, school district, sewer district, fire district, or any other taxing subdivision or district of any public or quasi-public corporation of the state, or with any agency, or with any other public board, body, commission, department or agency, or officer or representative thereof, authorized to let or award contracts for the construction, repair or reconstruction of any public work.

(c) "Public works construction" includes any or all of the following branches:

(~~1~~i) Heavy construction, which is defined as constructing substantially in its entirety any fixed works and structures (not including "building construction"), without limitation, for any or all of the following divisions of subjects: irrigation, drainage, sanitation, sewage, water power, water supply, reservoirs, flood control, reclamation, inland waterways, railroads, grade separations, track elevation, elevated highways, hydroelectric developments, aqueducts, transmission lines, duct lines, pipelines, locks, dams, ~~dykes~~ dikes, levees, revetments,

channels, channel cutoffs, intakes, drainage, excavation and disposal of earth and rocks, foundations, piers, abutments, retaining walls, viaducts, shafts, tunnels, airports, air bases and airways, and other facilities incidental to the same;

(~~2~~ii) Highway construction, which is defined as all work included in highway construction contracts, including, without limitation, highways, roads, streets, bridges, tunnels, sewer and street grading, street paving, curb setting, surfacing and other facilities incidental to any of the same;

(~~3~~iii) Building construction, which is defined as all work in connection with any structure now built, being built, or hereafter built, for the support, shelter and ~~inclosure~~ enclosure of persons, chattels, personal and movable property of any kind, requiring in its construction the use of more than two (2) unrelated building trades or crafts.

(~~4~~iv) Specialty construction, which is defined as any work in connection with any public works construction, requiring special skill and the use of specially skilled trades or crafts.

(d) "Board" means the board created by this chapter under the name of "public works contractors license board."

(e) "Administrator" means the administrator of the division of building safety.

(f) "Year" means the fiscal year ending June 30, each year.

(g) "Federal aid funds" means a direct grant in aid, matching funds, or loan from an agency of the federal government and designated for a specific public works project. Revenue sharing funds, federal impact funds, timber stumpage fees, and similar indirect allowances and subsidies not designated for a specific public works project shall not be regarded as "federal aid funds" within the meaning of this section.

(h) "Government obligation" means a public debt obligation of the United States government or the state of Idaho and an obligation whose principal and interest is unconditionally guaranteed by the United States government or the state of Idaho.

(i) "Public entity" means the state of Idaho, or any county, city, school district, sewer district, fire district, or any other taxing subdivision or district of any public or quasi-public corporation of the state, or any agency thereof, or with any other public board, body, commission, department or agency, or officer or representative thereof.

(j) "Bid" or "bidder" means any proposal submitted by a public works contractor to a public entity in competitive bidding for the construction, alteration, repair or improvement of any public works construction.

SECTION 25. That Section 54-1903, Idaho Code, be, and the same is hereby amended to read as follows:

54-1903. EXEMPTIONS. This ~~act~~ chapter 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, drainage districts or reclamation districts, except when performed by a person required to be licensed under this ~~act~~ chapter.

(h) Duly licensed architects, ~~civil~~ licensed engineers, and land surveyors when acting solely in their professional capacity.

(i) Any construction, alteration, improvement or repair involving any single project involving any number of trades or crafts with an estimated cost of less than ten thousand dollars ($10,000), or a project estimated to cost less than fifty thousand dollars ($50,000) for which no responsive statement of interest was received from a licensed public works contractor when statements of interest were solicited as provided in section 67-2805, Idaho Code.

(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 26. That Section 54-1904A, Idaho Code, be, and the same is hereby amended to read as follows:

54-1904A. FILING OF NOTICES AND INCOME TAX RETURNS -- PAYMENT OF INCOME TAXES BY CONTRACTORS. Within thirty (30) days after any public works contractor who is required to be licensed pursuant to this chapter has been awarded a contract for construction to be performed within the state of Idaho involving the expenditure of any public moneys, the ~~contract awarding agency~~ prime contractor shall file with the tax commission a signed statement showing the date on which such contract was made or awarded, the names and addresses of the home offices of the contracting parties, including all subcontractors, the state of incorporation if the party is a corporation, the project number and a general description of the type and location of the work to be performed, the amount of the prime contract and all subcontracts, and all other relevant information which may be required on forms which may be prescribed by the tax commission with a copy to be sent to the administrator. Every contractor or

subcontractor whose name appears on any such notice shall be required to file income tax returns with the state tax commission and to pay all income taxes which may be due thereon pursuant to law for all years in which any public moneys were received by him in connection with any construction work which was performed within the state of Idaho.

SECTION 27. That Section 54-1913, Idaho Code, be, and the same is hereby amended to read as follows:

54-1913. RECORDS, LISTS AND INFORMATION. The administrator shall maintain, open to public inspection during office hours, a complete record of all retained applications, licenses issued, licenses renewed, data collected through the provisions of section 54-1904A, Idaho Code, and all revocations, cancellations and suspensions of licenses, and shall furnish a certified copy of any license issued, upon receipt of the sum of fifty cents (50¢), which certified copy shall be received in all courts and elsewhere as evidence of the facts stated therein.

Whenever funds are available for the purpose, the administrator shall publish a list of the names and addresses of contractors licensed under this chapter and such further information with respect to this chapter and its administration as the administrator deems proper. The administrator may furnish the lists to such public works and building departments, public officials or public bodies, and other persons interested in or allied with the building and construction industry in this or any other state as deemed advisable, and at such intervals as deemed necessary, whenever funds therefor are available. Copies of the lists may also be furnished by the administrator upon request to any firm or individual upon payment of a reasonable fee fixed by the board.

Whenever funds are available for the purpose, the administrator may publish and disseminate to licensees and to public officials or other persons interested in or allied with the building and construction industry, such information with relation to the administration and enforcement of this chapter as deemed necessary to carry out its purposes.

SECTION 28. That Section 54-1914, Idaho Code, be, and the same is hereby amended to read as follows:

54-1914. ~~DISCIPLINARY~~ ADMINISTRATIVE ENFORCEMENT PROCEEDINGS. (1) The administrator may upon his own motion or at the direction of the board, and shall upon the verified complaint in writing of any person, investigate the actions of any public works contractor within the state and may undertake to reclassify, retype, place on probation, defer or precondition licensure, impose an administrative fine not to exceed ~~five~~ twenty thousand dollars ($~~5~~20,000) per violation, impose the administrative costs of bringing the action including, but not limited to, hearing officer fees, expert witness fees, attorney's fees, costs of hearing transcripts and copies, temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one (1) or more of the following acts or omissions:

(a) Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor.

(b) Diversion of funds or property received under express agreement

for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purpose, with intent to defraud or deceive creditors or the owner.

(c) Willful departure from or disregard of, plans or specifications in any material respect, and prejudicial to another, without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications.

(d) Willful or deliberate disregard and violation of valid building laws of the state, or of any political subdivision thereof, or of the safety laws or labor laws or compensation insurance laws of the state.

(e) Misrepresentation of a material fact by an applicant in obtaining a license.

(f) Aiding or abetting an unlicensed person to evade the provisions of this chapter or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter.

(g) Failure in any material respect to comply with the provisions of this chapter.

(h) Acting in the capacity of a contractor under any license issued hereunder except: (1) in the name of the licensee as set forth upon the license, or (2) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter.

(i) Knowingly accepting a bid from, or entering into a contract with another contractor for a portion of a public works project if at that time such contractor does not possess the appropriate license to do that work as provided in this chapter.

(j) Willful failure or refusal without legal excuse on the part of a licensee as a contractor to finish a construction project or operation with reasonable diligence, causing material injury to another.

(k) Willful or deliberate failure by any licensee, or agent or officer thereof, to pay any moneys when due, for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased; or denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay or defraud the person to whom such indebtedness is due.

(l) Suffers a change in financial circumstances which may impair the licensee's financial responsibility.

(m) Holding oneself or one's firm out as a public works contractor by engaging in any act meeting the definition or character of a public works contractor as defined herein without a legally required license.

(2) The administrator may upon his own motion or at the direction of the board, and shall upon the verified complaint in writing of any licensed public works contractor eligible to perform public works contracting duties, investigate the actions of any public entity within the state and may impose an administrative fine not to exceed five thousand dollars ($5,000) per violation or impose the administrative costs of bringing the action including, but not limited to, hearing officer fees, expert witness fees, attorney's fees, costs of hearing transcripts and copies, if the public agency contracts for public works construction with an unlicensed or improperly licensed contractor.

SECTION 29. That Section 54-1915, Idaho Code, be, and the same is hereby amended to read as follows:

54-1915. PROCEDURE FOR IMPOSITION OF DISCIPLINE. (1) Upon the filing of a verified complaint with the administrator charging a licensee or public entity with the commission of any act constituting a cause for disciplinary action within two (2) years prior to the date of filing, or upon such a finding made by the administrator following an investigation, the administrator shall forthwith issue a notice, accompanied by a copy of the complaint, directing the licensee or public entity, within ten (10) days after service of the notice, to appear by filing with the administrator a verified answer to the complaint.

(2) The administrator shall have the power to appoint, by an order in writing, a hearing officer to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses.

(3) Service of the notice and complaint upon the licensee or public entity shall be fully effected by mailing a true copy of the notice and complaint by certified mail addressed to the licensee at his last address of record with the administrator or to the public entity at its principal place of business. Service of the notice and complaint shall be complete at the time of deposit in accordance with the provisions of the Idaho rules of civil procedure relating to service by mail.

(4) The hearing shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Idaho rules of administrative procedure.

(5) Following the hearing, the hearing officer shall issue recommended findings of fact, conclusions of law, and order. The recommended order may:

(a) Provide for the immediate complete suspension by the licensee of all operations as a contractor during the period fixed by the decision.

(b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.

(c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a contractor disclosed at the hearing and may further provide that until such conditions are complied with no application for restoration of the suspended or revoked license shall be accepted by the administrator.

(d) Provide for the imposition of any of the sanctions provided by section 54-1914, Idaho Code.

(6) Following a review of the entire hearing record, the administrator shall issue a final decision.

SECTION 30. That Section 54-1916, Idaho Code, be, and the same is hereby amended to read as follows:

54-1916. JUDICIAL REVIEW -- APPEALS PROCEDURE. (1) The applicant, public entity, or licensee, as the case may be, shall have the right to judicial review of an action of the administrator refusing issuance of a license, or actions taken by the board pursuant to section 54-1914, Idaho Code, in accordance with the provisions of chapter 52, title 67, Idaho Code.

(2) Appeals may be taken from the judgment of said district court to the supreme court of Idaho by either party in the same manner that appeals are taken and records prepared on appeal in civil actions.

(3) On any appeal to the district court by a licensee, the court may, in its discretion, upon the filing of a proper bond by the licensee in an amount to be fixed by the court, but not less than one thousand dollars ($1,000), guaranteeing the compliance by the licensee with specific conditions imposed upon him by the board's decision, if any, permit the licensee to continue to do business as a contractor pending entry of judgment by the district court.

(4) On any appeal to the district court by a public entity, the court may, in its discretion, suspend the action taken by the board pursuant to section 54-1914, Idaho Code, pending entry of judgment by the district court.

SECTION 31. That Section 54-1926, Idaho Code, be, and the same is hereby amended to read as follows:

54-1926. PERFORMANCE AND PAYMENT BONDS REQUIRED OF CONTRACTORS FOR PUBLIC BUILDINGS AND PUBLIC WORKS OF THE STATE, POLITICAL SUBDIVISIONS AND OTHER PUBLIC INSTRUMENTALITIES -- REQUIREMENTS FOR BONDS -- GOVERNMENTAL OBLIGATIONS. Before any contract for the construction, alteration, or repair of any public building or public work or improvement of the state of Idaho, or of any county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or of any officer, board, commission, institution, or agency of the foregoing, is awarded to any person, he shall furnish to the state of Idaho, or to such county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or to such officer, board, commission, institution, or agency thereof, bonds which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond in any amount to be fixed by the contracting body, but in no event less than eighty-five percent (85%) of the contract amount conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Said bond shall be solely for the protection of the public body awarding the contract.

(2) A payment bond in an amount to be fixed by the contracting body

but in no event less than eighty-five percent (85%) of the contract amount, solely for the protection of persons supplying labor or materials, or renting, leasing, or otherwise supplying equipment to the contractor or his subcontractors in the prosecution of the work provided for in such contract.

(3) Public bodies requiring a performance bond or payment bond in excess of fifty percent (50%) of the total contract amount shall not be authorized to withhold from the contractor or subcontractor any amount exceeding five percent (5%) of the total amount payable as retainage. Further, the public body shall release to the contractor any retainage for those portions of the project accepted by the contracting public body and the contractors as complete within thirty (30) days after such acceptance. Contractors, contracting with subcontractors pursuant to contract work with a public body, shall not be authorized to withhold from the subcontractor any amount exceeding five percent (5%) of the total amount payable to the subcontractor as retainage. The contractor shall remit the retainage to the subcontractor within thirty (30) days after completion of the subcontract.

Each bond shall be executed by a surety company or companies duly authorized to do business in this state, or the contractor may deposit any of the type of government obligations listed in subsection (2)(h) of section 54-1901, Idaho Code, in lieu of furnishing a surety company performance or payment bond or bonds. In the case of contracts of the state or a department, board, commission, institution, or agency thereof the aforesaid bonds shall be payable to the state, or particular state agency where authorized. In case of all other contracts subject to this ~~act~~ chapter, the bonds shall be payable to the public body concerned.

Said bonds shall be filed in the office of the department, board, commission, institution, agency or other contracting body awarding the contract.

Nothing in this section shall be construed to limit the authority of the state of Idaho or other public body hereinabove mentioned to require a performance bond or other security in addition to these, or in cases other than the cases specified in this ~~act~~ chapter.

It shall be illegal for the invitation for bids, or any person acting or purporting to act, on behalf of the contracting body to require that such bonds be furnished by a particular surety company, or through a particular agent or broker.

SECTION 32. That Section 54-1926A, Idaho Code, be, and the same is hereby amended to read as follows:

54-1926A. USE OF GOVERNMENT OBLIGATIONS INSTEAD OF SURETY BONDS. (a) If a person is required under a law of the state of Idaho to give a surety bond, the person may give a government obligation, as defined in subsection (2)(h) of section 54-1901, Idaho Code. The government obligation shall:

(1) Be given to the official having authority to approve the surety bond, or its authorized custodian;

(2) Be in an amount equal at fair market value to the penal sum of the required surety bond; and

(3) Authorize the official receiving the obligation to collect or sell the obligation if the person defaults on a required condition.

(b) (1) An official receiving a government obligation under subsec-

tion (a) of this section may deposit it with:

1. The state treasurer;
2. A national or state chartered bank; or
3. A depository designated by the state treasurer.

(2) The state treasurer, bank, or depository shall issue a safekeeping receipt that describes the obligation deposited.

(c) Using a government obligation instead of a surety bond for security is the same as using:

(1) A corporate surety bond;
(2) A certified check;
(3) A bank draft;
(4) A post office money order; or
(5) Cash.

(d) When security is no longer required, a government obligation given instead of a surety bond shall be returned to the person giving the obligation. If a person supplying labor or material to a contractor defaulting under the public contracts bond act, sections 54-1925 through 54-1930, Idaho Code, files with the contracting body the application and affidavit provided under section 54-1927, Idaho Code, the contracting body:

(1) May return to the contractor the government obligation given as security or proceeds of the government obligation given under the public contracts bond act, sections 54-1925 through 54-1930, Idaho Code, only after the ninety (90) day period for bringing a civil action under section 54-1927, Idaho Code;
(2) Shall hold the government obligation or the proceeds subject to the order of the court having jurisdiction of the action if a civil action is brought in the ninety (90) day period.

(e) The provisions of this section do not affect the:

(1) Priority of a claim of the contracting body against a government obligation given under this section;
(2) Right or remedy of the contracting body for default on an obligation provided under this section;
(3) Authority of a court over a government obligation given as security in a civil action; and
(4) Authority of an official of the state of Idaho authorized by another law to receive a government obligation as security.

(f) To avoid frequent substitution of government obligations, the state treasurer may promulgate rules ~~and regulations~~ limiting the effect of the provisions of this section, to a government obligation maturing more than one (1) year after the date the obligation is given as security.

SECTION 33. That Section 54-4503, Idaho Code, be, and the same is hereby amended to read as follows:

54-4503. DEFINITIONS. As used in this chapter:

(1) "Applicant" means an individual who applies for a license or interim license pursuant to the provisions of this chapter.
(2) "Board" means the public works contractors state license board established in section 54-1905, Idaho Code.
(3) "Construction manager" means an individual who performs construction management services.
(4) "Construction management services" means representation of an

owner in public works construction, as defined in section 54-1901(2)(c), Idaho Code, by a person with substantial discretion and authority to plan including scheduling, estimating and approval, coordinate, manage or direct phases of a project for the construction, demolition, alteration, repair or reconstruction of any public work. This definition shall not include general contracting services provided by public works contractors who actually perform the work of construction, alteration, repair or reconstruction. This definition shall not include services for which the laws of this state require a person to be licensed as an architect or registered as a professional engineer, nor shall it include services traditionally and customarily provided by licensed architects or registered professional engineers.

(5) "Firm" means any business organization, including individuals, partnerships, corporations, associations or any combination thereof acting as a unit.

(6) "Licensure" means the issuance of a license to an applicant under the provisions of this chapter authorizing such individual to offer and perform construction management services.

(7) "Person" includes an individual, partnership, corporation, association or other organization.

SECTION 34. That Section 54-4508, Idaho Code, be, and the same is hereby amended to read as follows:

54-4508. DISCIPLINARY PROCEEDINGS. (1) The board shall have the authority to deny or refuse to renew a license or certificate of authority, defer or precondition licensure, suspend or revoke a license, impose an administrative fine not to exceed ~~five~~ twenty thousand dollars ($~~5~~20,000) per violation, impose the administrative costs of bringing the action before the board including, but not limited to, hearing officer fees, expert witness fees, attorney's fees, costs of hearing transcripts and copies, or impose probationary conditions on the holder of a license or certificate of authority, upon the following grounds:

(a) Fraud or deception in the procurement of a license or certificate of authority or in the taking of an examination required under the provisions of this chapter;

(b) Incompetence in the performance of a construction manager's duties;

(c) Holding oneself or one's firm out as a construction manager by engaging in any act meeting the definition or character of a construction manager as defined herein without a legally required license;

(d) Fraud or deceit in the performance of a construction manager's duties; or

(~~d~~e) Willful violation of the provisions of this chapter or the rules promulgated by the board.

(2) Proceedings which may result in the suspension or revocation of a license or certificate of authority, or the imposition of probationary or other disciplinary conditions on the holder of a license or certificate of authority, shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code; provided however, that the suspension of a certificate of authority, upon the notification by its holder that the construction manager it has designated to the board no longer

is a principal or employee of the firm, shall not be required to be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code.

(3) The board may, by rule, provide for the reinstatement of suspended or revoked licenses upon such terms as it may impose.

SECTION 35. That Section 59-1026, Idaho Code, be, and the same is hereby repealed.

SECTION 36. 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 59-1026, Idaho Code, and to read as follows:

59-1026. WILLFUL AND KNOWING AVOIDANCE OF COMPETITIVE BIDDING AND PROCUREMENT STATUTES -- CIVIL PENALTIES. It is a violation of this section for an official of any political subdivision or the state itself to willfully or knowingly avoid compliance with procurement or competitive bidding statutes or to willfully or knowingly split or separate purchases or work projects with the intent of avoiding compliance with such statutes. If any officer or employee of any public entity willfully or knowingly violates this section, the public entity which the officer or employee serves shall be liable for civil penalties not to exceed five thousand dollars ($5,000) for each offense, such civil penalty to be payable to the office of the public agency bringing an enforcement action, upon court order, to reimburse the reasonable expense of enforcing compliance with competitive bidding and procurement statutes.

SECTION 37. That Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 28, Title 67, Idaho Code, and to read as follows:

CHAPTER 28
PURCHASING BY POLITICAL SUBDIVISIONS

67-2801. LEGISLATIVE INTENT. Efficient and cost-effective procurement of goods, services and public works construction is an important aspect of local government operations. Local public agencies should endeavor to buy goods, services and public works construction by way of a publicly accountable process that respects the shared goals of economy and quality. Political subdivisions of the state shall endeavor to purchase goods and services from vendors with a significant Idaho economic presence.

67-2802. APPLICABILITY. The provisions of this chapter establish procurement requirements for all political subdivisions of the state of Idaho. The public works construction procurement process set forth in this chapter shall function in a complementary manner with the public works contractors license board and the procedures which that board administers. Any general procurement procedures set forth in this chapter shall be supplemented by the provisions of any specific statute pertaining to the awarding of any contract for the purchase or acquisition of any service, commodity or thing made expressly applicable to any particular political subdivision or by means of any additional administrative process that otherwise establishes additional express requirements.

No provisions of this chapter shall be deemed to preclude the use of procurement procedures otherwise authorized by law.

67-2803. EXCLUSIONS. The procurement requirements established in this chapter shall not be applicable to:

(1) The acquisition of personal property when the procurement duplicates the price and substance of a contract for like goods or services that has been competitively bid by the state of Idaho, one (1) of its political subdivisions, or an agency of the federal government;

(2) Contracts or purchases wherein expenditures are less than twenty-five thousand dollars ($25,000), provided such contracts or purchases shall be guided by the best interests of the political subdivision procuring the goods and services as determined by the governing board;

(3) Disbursement of wages or compensation to any employee, official or agent of a political subdivision for the performance of personal services for the political subdivision;

(4) Procurement of personal or professional services to be performed by an independent contractor for the political subdivision;

(5) Procurement of an interest in real property;

(6) Procurement of insurance; or

(7) Costs of participation in a joint powers agreement with other units of government.

67-2804. WAIVER. (1) Whenever the provisions of this chapter require a public works contractor's license to bid upon a public construction project, such requirement shall be deemed waived whenever federal law prohibits requiring licensure as a precondition for submitting a bid.

(2) Nothing in this section shall be deemed to prohibit a political subdivision from performing construction or repair work on the political subdivision's own facilities.

(3) Whenever this chapter provides time limits for objection or appeal, any objection or appeal not perfected within such time limitations shall be deemed to constitute a waiver of any rights to raise such objection or appeal thereafter.

67-2805. PROCUREMENT OF PUBLIC WORKS CONSTRUCTION. (1) For any contemplated public works construction project with an estimated total cost of less than fifty thousand dollars ($50,000), where the political subdivision determines that there may be a lack of available licensed contractors, a political subdivision may publish a notice of intent to procure in its official newspaper, concurrently sending such notice to the public works contractors license board, in order to solicit statements of interest from licensed public works contractors to determine whether one (1) or more licensed contractors is interested in submitting bids. Such notice of intent to procure shall be provided by the same means required for published solicitation of competitive bids and shall contain essentially the same information as such published notice. If no licensed public works contractor submits a statement of interest, the political subdivision may purchase public works construction from other than a licensed public works contractor by using the same procurement procedures otherwise specified herein.

(2) When a political subdivision contemplates an expenditure to

procure public works construction valued in excess of twenty-five thousand dollars ($25,000) but not to exceed one hundred thousand dollars ($100,000), the procurement procedures of this subsection (2) shall apply:

(a) The solicitation for bids for the public works construction to be performed shall be supplied to no fewer than three (3) owner-designated licensed public works contractors by written means, either by electronic or physical delivery. The solicitation shall describe the construction work to be completed in sufficient detail to allow an experienced public works contractor to understand the construction project the political subdivision seeks to build.

(b) The solicitation for bids shall describe the electronic or physical delivery method or methods authorized to submit a bid, the date and time by which a bid proposal must be received by the clerk, secretary or other authorized official of the political subdivision, and shall provide a reasonable time to respond to the solicitation, provided that except in the event of an emergency, such time shall not be less than three (3) business days.

(c) Written objections to specifications or bid procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least one (1) business day before the date and time upon which bids are scheduled to be received.

(d) When written bids have been received, by either physical or electronic delivery, they shall be submitted to the governing board or governing board-authorized official which shall approve the responsive bid proposing the lowest procurement price or reject all bids and publish notice for bids, as before.

(e) If the political subdivision finds that it is impractical or impossible to obtain three (3) bids for the proposed public works procurement, the political subdivision may acquire the work in any manner the political subdivision deems best from a qualified public works contractor quoting the lowest price. When fewer than three (3) bids are considered, a description of the efforts undertaken to procure at least three (3) bids shall be documented by the political subdivision and such documentation shall be maintained for at least six (6) months after the procurement decision is made. If two (2) or more price quotations offered by different licensed public works contractors are the same and the lowest responsive bids, the governing board or governing-board authorized official may accept the one (1) it chooses.

(3) When a political subdivision contemplates an expenditure to purchase public works construction valued in excess of one hundred thousand dollars ($100,000), the procurement procedures of this subsection (3) shall apply. The purchase of construction services shall be made pursuant to a competitive sealed bid process with the purchase to be made from the qualified public works contractor submitting the lowest bid price complying with bidding procedures and meeting the prequalifications, if any are provided, established by the bid documents. Competitive bidding for public works may proceed through either of two (2) alternative procedures as set forth below:

(a) Category A. Competitive bidding procedures shall be open to receipt of bids from any licensed public works contractor desiring to bid upon a public works project. For a category A bid, the political subdivision may only consider the amount bid, bidder compliance

with administrative requirements of the bidding process, and whether the bidder holds the requisite license.

(i) The request for bids for a category A procurement shall set a date and place for the public opening of bids. Two (2) notices soliciting bids shall be published in the official newspaper of the political subdivision. The first notice shall be published at least two (2) weeks before the date for opening bids, with the second notice to be published in the succeeding week at least seven (7) days before the date that bids are scheduled to be opened. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions shall be made available upon request and payment of a reasonable plan copy fee by any interested bidder.

(ii) Written objections to specifications or bidding procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least three (3) business days before the date and time upon which bids are scheduled to be opened. The administrative officer or governing board supervising the bidding process shall respond to any such objection in writing and communicate such response to the objector and all other plan holders, adjusting bidding timeframes if necessary.

(iii) All bids shall be presented or otherwise delivered under sealed cover to the clerk of the political subdivision or other authorized agent of the political subdivision designated by the information provided to bidders by the political subdivision with a concise statement marked on the outside generally identifying the expenditure to which the bid pertains.

(iv) If the political subdivision deems it is in the political subdivision's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid shall not be considered unless one (1) of the forms of bidder's security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

(A) Cash;

(B) A cashier's check made payable to the political subdivision;

(C) A certified check made payable to the political subdivision; or

(D) A bidder's bond executed by a qualified surety company, made payable to the political subdivision.

(v) Any bid received by the political subdivision may not be withdrawn after the date and time set in the notice for opening of bids. When sealed bids have been received, they shall be opened in public at a designated place and time, thereafter to be compiled and submitted to the governing board for award.

(vi) If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the political subdivision at the sole discretion of the political

subdivision and the proceeds shall be deposited in a designated fund out of which the expenses of procuring substitute performance are paid.

(vii) The political subdivision may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the qualified bidder submitting the next lowest responsive bid. If the governing board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified bidder's security may be applied by the political subdivision to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security to the owner.

(viii) In its discretion, the governing board may reject all bids presented and re-bid, or the governing board may, after finding it to be a fact, pass a resolution declaring that the project sought to be accomplished by the expenditure can be performed more economically by purchasing goods and services on the open market. If identical bids are received, the governing board may choose the bidder it prefers. If no bids are received, the governing board may procure the goods or services without further competitive bidding procedures.

(ix) If the governing board of any political subdivision chooses to award a competitively bid contract involving the procurement of public works construction to a bidder other than the apparent low bidder, the political subdivision shall declare its reason or reasons on the record and shall communicate such reason or reasons in writing to all persons who have submitted a competing bid.

(x) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, the governing board shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor. After completion of the review process, the political subdivision may proceed as it deems to be in the public interest.

(b) Category B. Competitive bidding procedures shall be open to licensed public works contractors only after meeting preliminary supplemental qualifications established by the political subdivision. The solicitation for bids in a category B procurement shall consist of two (2) stages, an initial stage determining supplemental prequalifications for licensed contractors, either prime or specialty contractors, followed by a stage during which bid prices will be accepted only from prequalified contractors.

(i) Notice of the prequalification stage of the category B

competitive bidding process shall be given in the same manner that notice of competitive bidding is provided for a category A competitive bid request, providing a specific date and time by which qualifications statements must be received. Political subdivisions may establish prequalification standards premised upon demonstrated technical competence, experience constructing similar facilities, prior experience with the political subdivision, available nonfinancial resources, equipment and personnel as they relate to the subject project, and overall performance history based upon a contractor's entire body of work. Such request must include the standards for evaluating the qualifications of prospective bidders.

(ii) During the initial stage of the category B bidding process, licensed contractors desiring to be prequalified to bid on a project must submit a written response to a political subdivision's request for qualifications.

(iii) Written objections to prequalification procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least three (3) business days before the date and time upon which prequalification statements are due. The administrative officer or governing board supervising the bidding process shall respond to any such objection in writing and communicate such response to the objector and all other contractors seeking to prequalify, adjusting bidding timeframes if necessary. After a review of qualification submittals, the political subdivision may select licensed contractors that meet the prequalification standards. If any licensed contractor submits a statement of qualifications but is not selected as a qualified bidder, the political subdivision shall supply a written statement of the reason or reasons why the contractor failed to meet prequalification standards.

(iv) Any licensed contractor that fails the prequalification stage can appeal any such determination to the governing board within seven (7) days after transmittal of the prequalification results to contest the determination. If the governing board sustains the decision that a contractor fails to meet prequalification standards, it shall state its reason or reasons for the record. A governing board decision concerning prequalification may be appealed to the public works contractors license board no more than fourteen (14) days following any decision on appeal made by the governing board. The public works contractors license board shall decide any such appeal within thirty-five (35) days of the filing of a timely appeal. The public works contractors license board shall allow participation, written or oral, by the appealing contractor and the political subdivision, either by employing a hearing officer or otherwise. The public works contractors license board shall not substitute its judgment for that of the political subdivision, limiting its review to determining whether the decision of the governing board is consistent with the announced prequalification standards, whether the prequalification standards comport with the law and whether the governing board's decision is supported by the entirety of the record. The deci-

sion of the public works contractors license board shall be written and shall state the reason or reasons for the decision. Category B prequalification procedures that are appealed shall be stayed during the pendency of the prequalification appeal until the public works contractors license board completes its review, but in no instance more than forty-nine (49) days after the appellate decision of the governing board regarding prequalification. Any licensed public works contractor affected by a decision on appeal by the public works contractors license board may, within twenty-eight (28) days of the final decision, seek judicial review as provided by chapter 52, title 67, Idaho Code.

(v) Following the conclusion of the prequalification administrative procedures, the bidding stage shall proceed by the setting of a time, date and place for the public opening of bids. A notice soliciting bids shall be transmitted to prequalified bidders at least fourteen (14) days before the date of opening the bids. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions shall be made available upon request and payment of a reasonable plan copy fee by any prequalified bidder.

(vi) Written objections to specifications or bidding procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least three (3) business days before the date and time upon which bids are scheduled to be opened.

(vii) All category B bids shall be presented or otherwise delivered under sealed cover to the clerk or other authorized agent of the political subdivision designated by the instructions to bidders with a concise statement marked on the outside generally identifying the expenditure to which the bid pertains.

(viii) If the political subdivision deems it is in the political subdivision's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid shall not be considered unless one (1) of the forms of bidder's security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

(A) Cash;

(B) A cashier's check made payable to the political subdivision;

(C) A certified check made payable to the political subdivision; or

(D) A bidder's bond executed by a qualified surety company, made payable to the political subdivision.

(ix) Any category B bid received by a political subdivision may not be withdrawn after the date and time set in the notice for opening of bids. When sealed bids have been received, they shall be opened in public at a designated place and time, thereafter to be compiled and submitted to the governing board

for award. If identical bids are received, the governing board may choose the bidder it prefers. If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the political subdivision, in the sole discretion of the political subdivision, and the proceeds shall be deposited in a designated fund out of which the expenses for procuring substitute performance are paid.

(x) The political subdivision may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the qualified bidder submitting the next lowest responsive bid. If the governing board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified bidder's security, if forfeited, shall be applied by the political subdivision to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security.

(xi) In its discretion, the governing board may reject all bids presented and re-bid, or the governing board may, after finding it to be a fact, pass a resolution declaring that the project sought to be accomplished by the expenditure can be performed more economically by purchasing goods and services on the open market. If no bids are received, the governing board may make the expenditure without further competitive bidding procedures.

(xii) If the governing board of any political subdivision chooses to award a competitively bid contract involving the procurement of public works construction to a bidder other than the apparent low bidder, the political subdivision shall declare its reason or reasons on the record and shall communicate such reason or reasons in writing to all persons who have submitted a competing bid.

(xiii) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, the governing board shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor. After completion of the review process, the political subdivision may proceed as it deems to be in the public interest.

67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a political subdivision contemplates an expenditure to purchase or lease personal property or to procure services, other than those services excluded pursuant to section 67-2803, Idaho Code, valued in excess of twenty-five thousand dollars ($25,000) but not to exceed fifty thousand

dollars ($50,000), the procurement procedures of this subsection (1) shall apply.

(a) The solicitation for bids shall be supplied to no fewer than three (3) vendors by written means, either by electronic or physical delivery. The solicitation shall describe the personal property or services to be purchased or leased in sufficient detail to allow a vendor dealing in such goods or services to understand what the political subdivision seeks to procure.

(b) The solicitation for bids shall describe the electronic or physical delivery method or methods authorized to submit a bid, the date and time by which a bid proposal must be received by the clerk, secretary or other authorized official of the political subdivision, and shall provide a reasonable time to respond to the solicitation, provided that except in the event of an emergency, such time shall not be less than three (3) business days.

(c) Written objections to specifications or bid procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least one (1) business day before the date and time upon which bids are scheduled to be received.

(d) When written bids have been received, by either physical or electronic delivery, they shall be compiled and submitted to the governing board or governing board-authorized official which shall approve the responsive bid proposing the lowest procurement price or reject all bids and publish notice for bids, as before.

(e) If the political subdivision finds that it is impractical or impossible to obtain three (3) bids for the proposed procurement, the political subdivision may acquire the property in any manner the political subdivision deems best from a qualified vendor quoting the lowest price. When fewer than three (3) bids are considered, a description of the efforts undertaken to procure at least three (3) bids shall be documented by the political subdivision and such documentation shall be maintained for at least six (6) months after any such procurement is made. If two (2) or more price quotations are the same and the lowest responsive bids, the authorized decision maker may accept the one (1) it chooses.

(2) When a political subdivision contemplates an expenditure to purchase or lease personal property or to procure services, other than those services excluded pursuant to section 67-2803, Idaho Code, valued in excess of fifty thousand dollars ($50,000), the procurement procedures of this subsection (2) shall apply.

(a) The purchase or lease shall be made pursuant to an open competitive sealed bid process with the procurement to be made from the qualified bidder submitting the lowest bid price complying with bidding procedures and meeting the specifications for the goods and/or services sought to be procured.

(b) The request for bids shall set a date, time and place for the opening of bids. Two (2) notices soliciting bids shall be published in the official newspaper of the political subdivision. The first notice shall be published at least two (2) weeks before the date for opening bids, with the second notice to be published in the succeeding week at least seven (7) days before the date that bids are scheduled to be opened. The notice shall succinctly describe the personal property and/or service to be procured. Copies of specifications, bid forms, bidder's instructions, contract documents, and

general and special instructions shall be made available upon request by any interested bidder.

(c) Written objections to specifications or bidding procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least three (3) business days before the date and time upon which bids are scheduled to be opened.

(d) If the political subdivision deems it is in the political subdivision's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid shall not be considered unless one (1) of the forms of bidder's security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

(i) Cash;

(ii) A cashier's check made payable to the political subdivision;

(iii) A certified check made payable to the political subdivision; or

(iv) A bidder's bond executed by a qualified surety company, made payable to the political subdivision.

(e) Any bid received by the political subdivision may not be withdrawn after the time set in the notice for opening of bids. When sealed bids have been received, they shall be opened in public at a designated place and time, thereafter to be compiled and submitted to the governing board.

(f) If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the political subdivision at the sole discretion of the governing board and thereafter the proceeds may be deposited in a designated fund out of which the reasonable expenses for procuring substitute performance are paid.

(g) The political subdivision may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the next lowest qualified bidder. If the governing board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified bidder's security may be applied by the political subdivision to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security.

(h) In its discretion, the governing board may reject all bids presented and re-bid, or the governing board may, after finding it to be a fact, pass a resolution declaring that the subject goods or services can be procured more economically on the open market. If two (2) or more bids are the same and the lowest responsive bids, the governing board may accept the one (1) it chooses. In its discretion, the governing board of a political subdivision may preauthorize the purchase of equipment at a public auction.

(i) If the governing board of any political subdivision chooses to award a competitively bid contract involving the procurement of per-

sonal property or services to a bidder other than the apparent low bidder, the political subdivision shall declare its reason or reasons on the record and shall communicate such reason or reasons in writing to all who have submitted a competing bid.

(j) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, the governing board shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor. After completion of the review process, the political subdivision may proceed as it deems to be in the public interest.

67-2807. JOINT PURCHASING AGREEMENTS -- NOT-FOR-PROFIT ASSOCIATIONS.

(1) Political subdivisions may enter into joint purchasing agreements with the state of Idaho or other political subdivisions and may participate in joint purchasing agreements through a joint purchase program established by any not-for-profit association of political subdivisions. Personal property procured pursuant to such joint purchase agreements shall be acquired in accordance with the provisions of this chapter, provided such authority does not preclude or limit political subdivisions from entering into purchase agreements as otherwise provided by statute.

(2) Political subdivisions may participate in a program established by any not-for-profit association of which they become a member to assist such political subdivisions in bidding and negotiating joint purchase contracts and discount purchase agreements. Participation in any such program does not obligate a political subdivision to purchase goods or services through the program or through an agreement negotiated by the program administrator or its board. Political subdivisions shall only be obligated to pay for goods or services where the governing board has approved the purchase. Any not-for-profit association operating such a procurement program shall cause an independent, certified audit of the program to be performed annually. The audit shall be made available to the legislature upon request and a copy shall be made available for public inspection.

67-2808. EMERGENCY EXPENDITURES -- SOLE SOURCE EXPENDITURES.

(1) Emergency expenditures.

(a) The governing board of a political subdivision may declare that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money if:

(i) There is a great public calamity, such as an extraordinary fire, flood, storm, epidemic or other disaster;

(ii) It is necessary to do emergency work to prepare for the national or local defense; or

(iii) It is necessary to do emergency work to safeguard life, health or property.

(b) Upon making the declaration of emergency, any sum required in

the emergency may be expended without compliance with formal bidding procedures.

(2) Sole source expenditures.

(a) The governing board of a political subdivision may declare that there is only one (1) vendor if there is only one (1) vendor for the personal property to be acquired. For purposes of this subsection (2), only one (1) vendor shall refer to situations where there is only one (1) source reasonably available and shall include, but not be limited to, the following situations:

(i) Where property is required to respond to a life-threatening situation or a situation which is immediately detrimental to the public welfare or property;

(ii) Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration;

(iii) Where a sole supplier's item is needed for trial use or testing;

(iv) The purchase of mass-produced movies, videos, books or other copyrighted materials;

(v) The purchase of property for which it is determined there is no functional equivalent;

(vi) The purchase of public utility services;

(vii) The purchase of products, merchandise or trademarked goods for resale at a political subdivision facility; or

(viii) Where competitive solicitation is impractical, disadvantageous or unreasonable under the circumstances.

(b) Upon making the declaration that there is only one (1) vendor for personal property, unless the property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property, notice of a sole source procurement shall be published in the official newspaper of the political subdivision at least fourteen (14) calendar days prior to the award of the contract.

SECTION 38. That Section 67-4912, Idaho Code, be, and the same is hereby amended to read as follows:

67-4912. GENERAL POWERS OF BOARD. For and on behalf of the district the board shall have the following powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued, and be a party to suits, actions, and proceedings;

(d) Except as otherwise provided in this ~~act~~ chapter, to enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, and contracts with corporations, public or private, municipalities, or governmental subdivisions, and to cooperate with any one (1) or more of them in building, erecting, marketing or constructing facilities within the district. Except in cases in which a district will receive aid from a governmental agency, ~~a--notice--shall-be-published-for-bids-on-all-construction-contracts-for-work-or-material,-or-both,-involving-an-expense-of-five-thousand-dollars-($5,000)-or-more.-The-district-may-reject-any-and-all-bids,~~

~~and if it shall appear that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do~~ purchasing shall be accomplished in accordance with the provisions of chapter 28, title 67, Idaho Code;

(e) To borrow money and incur indebtedness and evidence the same by certificate, notes or debentures, and to issue bonds, in accordance with the provisions of this ~~act~~ chapter;

(f) To acquire, dispose of and encumber real and personal property, and any interest therein, including leases and easements within said district;

(g) To refund any bonded indebtedness of the district without any election; provided, however, that the obligations of the district shall not be increased by any refund of bonded indebtedness. Otherwise the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds;

(h) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district facilities therein or therefor;

(i) To hire and retain agents, employees, engineers and attorneys;

(j) To construct and maintain works and establish and maintain facilities across or along any public street or highway, and in, upon or over any vacant public lands, which public lands are now, or may become, the property of the state of Idaho, and to construct works and establish and maintain facilities across any stream of water or watercourse; provided, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof;

(k) To fix and from time to time to increase or decrease rates, tolls or charges for services or facilities furnished by the district, and to pledge such revenue for the payment of any indebtedness of the district. The board shall fix rates, tolls and charges;

(l) To petition to enlarge the district by obtaining the consent of not less than ten percent (10%) of the qualified electors of any area to be so included, and then to follow the procedure set forth herein for creating said district;

(m) To promote any functions for said district, provided that said board shall not engage in operations that are inconsistent with the purpose of said district; and it shall be the policy of the board not to compete with existing facilities and services in the district, wherever practicable;

(n) To adopt and amend ~~by-laws~~ bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the districts;

(o) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein, except that districts formed prior to January 1, 1987, or districts with twenty-five thousand (25,000) or more population shall have no power to levy and collect ~~ad-valorem~~ property taxes. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this ~~act~~ chapter.

SECTION 39. That Section 67-5711, Idaho Code, be, and the same is hereby amended to read as follows:

67-5711. CONSTRUCTION, ALTERATION, EQUIPPING, FURNISHING AND REPAIR OF PUBLIC BUILDINGS AND WORKS. The director of the department of administration, or his designee, of the state of Idaho, is authorized and empowered, subject to the approval of the permanent building fund advisory council, to provide or secure all plans and specifications for, to let all contracts for, and to have charge of and supervision of the construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance of any and all buildings, improvements of public works of the state of Idaho, the cost of which construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance exceeds the sum of ~~thirty~~ one hundred thousand dollars ($~~3~~100,000) for labor, materials and equipment, which sum shall exclude design costs, bid advertising and related bidding expenses, provided, that the director or his designee, and permanent building fund advisory council shall, in the letting of contracts under this section, comply with the procedure for the calling of bids provided in section 67-5711C, Idaho Code; provided, however, that this section shall not apply to the construction, alteration, equipping or furnishing or repair or maintenance other than preventive maintenance of public buildings under the jurisdiction and control of the board of regents of the university of Idaho; provided further, that the bidding procedures required by this section and section 67-5711C, Idaho Code, shall not apply to performance contracts as provided in section 67-5711D, Idaho Code; provided further, that public works for the Idaho transportation department, the department of fish and game, the department of parks and recreation, and the department of lands, except for administrative office buildings and all associated improvements, are exempt from the provisions of this section that relate to the administration and review of such projects by the director of the department of administration or his designee and by the permanent building fund advisory council. This exemption shall not relieve the Idaho transportation department, the department of fish and game, the department of parks and recreation, and the department of lands in the letting of contracts for public works, from complying with the procedures of section 67-5711C, Idaho Code, related to the advertising and bidding for contracts. The permanent building fund advisory council may adopt rules consistent with existing law, including rules for a program of inspection and maintenance, to carry out the provisions of this ~~act~~ chapter.

SECTION 40. That Section 67-5711C, Idaho Code, be, and the same is hereby amended to read as follows:

67-5711C. CONSTRUCTION OF PUBLIC PROJECTS -- COMPETITIVE SEALED BIDDING. (1) All construction contracts for public works shall be awarded to the lowest responsible and responsive bidder after receipt of competitive sealed bidding except as otherwise provided in sections 67-5711B, 67-5711D and 67-5713, Idaho Code.

(2) An invitation for bids shall be issued and shall include a project description and all contractual terms and conditions applicable to the public works.

(3) Adequate public notice of the invitation for bids shall be

given at least fourteen (14) days prior to the date set forth therein for the opening of bids. Such notice shall include publication at least fourteen (14) days prior to bid opening in a newspaper of general circulation in the area where the work is located.

(4) When prequalification is deemed in the best interest of the state, competitive bidding procedures shall be open only to licensed public works contractors that meet preliminary supplemental qualifications. The solicitation for bids in a prequalified bidder public works project shall consist of two (2) stages, an initial stage for identifying prequalified contractors, either prime or specialty contractors, followed by a stage during which bid prices will be accepted only from prequalified contractors. Notice of the prequalification stage shall be given in the same manner that notice of open competitive bidding is provided. Prequalification standards must be premised upon demonstrated technical competence, experience constructing similar facilities, prior experience with the state, available nonfinancial resources, equipment and personnel as they relate to the subject project, and overall performance history based upon a contractor's entire body of work. Any request for qualifications must include the standards for evaluating the qualifications of prospective bidders. Licensed contractors desiring to be prequalified to bid on a project must submit a written response to a request for qualifications. After a review of qualification submittals, licensed contractors that meet the prequalification standards shall be notified. Thereafter, bids may be solicited from contractors that meet the prequalification standards. The department may promulgate rules or develop procedures to implement the prequalification process.

(5) Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record and the record shall be open to public inspection. After the time of the award all bids and bid documents shall be open to public inspection in accordance with the provisions of sections 9-337 through 9-347 and 67-5725, Idaho Code.

(~~5~~6) With respect to a project having a written cost estimate of greater than ~~two~~ twenty-five thousand ~~five hundred~~ dollars ($~~2,~~525,000) but less than the public works limit established in section 67-5711, Idaho Code, the agency, if it does not perform the work with existing physical plant staff, must award a written contract to the lowest responsible and responsive bidder after soliciting at least three (3) documented informal bids from contractors licensed in Idaho to perform public works contracts, if reasonably available. Adequate public notice of the invitation for informal bids shall be given at least seven (7) days prior to the date set forth therein for the receipt of the informal bids. Such notice may include publication at least seven (7) days prior to bid opening in a newspaper of general circulation in the area where the work is located; or the agency may advertise the invitation for bids in appropriate trade journals, and otherwise notify persons believed to be interested in the award of a contract. Informal bids must be submitted by the contractor in writing in response to a prepared written document describing the project's scope of work in sufficient detail so as to enable a contractor familiar with such work to prepare a responsible bid. Nothing herein exempts an agency from the responsibility of utilizing formal plans and specifications if the work involves the public health or safety as described in chapters 3 and 12, title 54, Idaho

Code. The agency must document receipt of the informal bids in the project file.

(~~6~~7) Any personal property including goods, parts, supplies and equipment which is to be supplied or provided by a state agency for use in any public work, project, or preventive maintenance programs, whether the public work, project, or preventive maintenance program is constructed, undertaken or performed by agency in-house personnel, or by delegation pursuant to section 67-5710A, Idaho Code, or otherwise provided or supplied by the agency to a contractor, the personal property, goods, parts, supplies or equipment supplied or provided by the agency must be purchased or procured by the agency through the division of purchasing in accordance with the Idaho Code.

SECTION 41. That Section 70-1612, Idaho Code, be, and the same is hereby amended to read as follows:

70-1612. PURCHASING PROCEDURES -- CONTRACTS. (1) ~~Upon all purchases and/or works involving twenty-five thousand dollars ($25,000) or less, based upon the liability assumed by a port district thereon, all material required by a port district may be procured in the open market or by contract and all work ordered may be done by contract or day labor. All such purchases and/or works involving in excess of twenty-five thousand dollars ($25,000), as so measured, shall be let upon contract in the manner herein provided. All such contracts shall be let at public bidding upon notice published at least once in a newspaper in the district at least ten (10) days before the letting, calling for sealed bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice~~ Except as otherwise provided in this section and in section 70-1613, Idaho Code, procurement by port districts shall comply with the provisions of chapter 28, title 67, Idaho Code. In addition to the standards established thereby, a port district may also call for bids on such work or material based upon plans and specifications submitted by the bidder.

(2) Should emergency repairs to, or replacements of any equipment or other property owned or operated by any port district, become necessary in order to keep the port from ceasing operations, the port commission may, upon passing a resolution declaring such emergency, cause such repairs or replacements to be made without the necessity of compliance with subsection (1) of this section.

(3) The provisions of subsection (1) of this section shall not apply to the purchase or acquisition of used personal property.

SECTION 42. That Section 70-1613, Idaho Code, be, and the same is hereby amended to read as follows:

70-1613. NOTICE -- AWARD OF CONTRACT -- BOND. ~~The notice shall state generally the nature of the work to be done and require that bids be sealed and filed with the commission at a time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, money order or surety bid bond to the commission for a sum to be determined by the commission but not less than five per cent (5%) of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit or bond. Such notice shall further state the time and place at which such bids shall be opened, and at~~

~~such time and place a quorum of the commission shall attend and publicly open and read such bids; and~~ Upon following the procedural steps established by chapter 28, title 67, Idaho Code, for receipt of bids, as modified by provisions of this title, the port commission shall proceed to canvass the bids, and at the proper time thereafter may let the contract upon the bid which the commission determines to be the best responsible bid, whether or not the same be the lowest bid, upon the plans and specifications on file, or the best responsible bid of a bidder submitting his own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and ~~re-advertise~~ readvertise, and in such case all such bid proposal deposits shall be returned to the bidders; but, if the contract is let, then all bid proposal deposits shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract is entered into for the purchase of such material or doing of such work. A bond shall be given to the port district by the successful bidder for the performance of the contract and otherwise conditioned as required by law, with surety satisfactory to the commission, in an amount to be fixed by the commission, but not in any event less than twenty-five ~~per cent~~ percent (25%) of the contract price. If said bidder fails to enter into the contract in accordance with his bid and furnish such bond within ten (10) days from the date on which he is notified that he is the successful bidder, the check or money order and the amount thereof shall be forfeited to the port district, or the port district shall recover the amount of the surety bid bond. In the alternative, a port district may, by passage of a resolution by the board of commissioners, elect to exclusively follow the provisions of chapter 28, title 67, Idaho Code, concerning procurement.

Approved March 31, 2005.

CHAPTER 214
(S.B. No. 1044, As Amended)

AN ACT

RELATING TO PUBLIC CONTRACTS; AMENDING SECTION 18-1359, IDAHO CODE, TO PROHIBIT PUBLIC SERVANTS FROM ENGAGING IN CERTAIN ACTS AND TO SPECIFY THE PENALTIES FOR VIOLATIONS; AMENDING CHAPTER 2, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-210, IDAHO CODE, TO PROHIBIT PUBLIC OFFICERS FROM ENGAGING IN CERTAIN ACTS AND TO SPECIFY THE PENALTIES FOR VIOLATIONS; AND AMENDING SECTION 59-208, IDAHO CODE, TO CLARIFY THAT DESIGNATED PENALTIES APPLY UNLESS OTHERWISE PROVIDED.

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

SECTION 1. That Section 18-1359, Idaho Code, be, and the same is hereby amended to read as follows:

18-1359. USING PUBLIC POSITION FOR PERSONAL GAIN. (1) No public servant shall:

(a) Without the specific authorization of the governmental entity

for which he serves, use public funds or property to obtain a pecuniary benefit for himself.

(b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars ($50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves.

(d) Be interested in any contract made by him in his official capacity, or by any body or board of which he is a member, except as provided in section 18-1361, Idaho Code.

(e) Appoint or vote for the appointment of any person related to him by blood or marriage within the second degree, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds or fees of office, or appoint or furnish employment to any person whose salary, wages, pay or compensation is to be paid out of public funds or fees of office, and who is related by either blood or marriage within the second degree to any other public servant when such appointment is made on the agreement or promise of such other public servant or any other public servant to appoint or furnish employment to anyone so related to the public servant making or voting for such appointment. Any public servant who pays out of any public funds under his control or who draws or authorizes the drawing of any warrant or authority for the payment out of any public fund of the salary, wages, pay, or compensation of any such ineligible person, knowing him to be ineligible, is guilty of a misdemeanor and shall be punished as provided in this chapter.

(f) Unless specifically authorized by another provision of law, commit any act prohibited of members of the legislature or any officer or employee of any branch of the state government by section 67-5726, Idaho Code, violations of which are subject to penalties as provided in section 67-5734, Idaho Code, which prohibition and penalties shall be deemed to extend to all public servants pursuant to the provisions of this section.

(2) No person related to any member of the legislature by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty within the legislative branch of government or otherwise be employed by the legislative branch of government when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(3) No person related to a mayor or member of a city council by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the mayor's or city council's city when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(4) No person related to a county commissioner by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the commissioner's county when the

salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(5) (a) An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position and receive general pay increases, step increases, cost of living increases, and/or other across the board increases in salary or merit increases, benefits and bonuses or promotions.

(b) Nothing in this section shall be construed as creating any property rights in the position held by an employee subject to this section, and all authority in regard to disciplinary action, transfer, dismissal, demotion or termination shall continue to apply to the employee.

(6) The prohibitions contained within this section shall not include conduct defined by the provisions of section 59-703(4), Idaho Code.

(7) The prohibitions within this section and section 18-1356, Idaho Code, as it applies to part-time public servants, do not include those actions or conduct involving the public servant's business, profession or occupation and unrelated to the public servant's official conduct, and do not apply to a pecuniary benefit received in the normal course of a legislator's business, profession or occupation and unrelated to any bill, legislation, proceeding or official transaction.

SECTION 2. That Chapter 2, 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 59-210, Idaho Code, and to read as follows:

59-210. VIOLATION RELATING TO PUBLIC CONTRACTS. Officers shall not commit any act prohibited by section 67-5726, Idaho Code, violations of which are subject to penalties as provided in section 67-5734, Idaho Code, and which prohibitions and penalties shall be deemed to extend to all public officers governed by the provisions of this chapter.

SECTION 3. That Section 59-208, Idaho Code, be, and the same is hereby amended to read as follows:

59-208. VIOLATION. A violation of the provisions of this chapter, unless otherwise provided, is a misdemeanor and shall be punished by a fine not exceeding one thousand dollars ($1,000), or incarceration in the county jail for a period not exceeding one (1) year, or by both such fine and incarceration.

Approved March 31, 2005.

CHAPTER 215
(S.B. No. 1122, As Amended in the House)

AN ACT

RELATING TO CLANDESTINE DRUG LABORATORY CLEANUP; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 26, TITLE 6, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO SET FORTH THE PURPOSE OF THE CLANDESTINE DRUG LABORATORY CLEANUP ACT, TO DEFINE TERMS, TO REQUIRE THE PROMUL-

GATION OF RULES, TO SET FORTH LAW ENFORCEMENT AGENCY RESPONSIBILITIES, TO SET FORTH CLEANUP RESPONSIBILITIES OF RESIDENTIAL PROPERTY OWNERS, TO PROVIDE FOR IMMUNITY AND TO PROVIDE FOR VOLUNTARY COMPLIANCE.

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

SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 26, Title 6, Idaho Code, and to read as follows:

CHAPTER 26
CLANDESTINE DRUG LABORATORY CLEANUP ACT

6-2601. SHORT TITLE. This chapter shall be known and may be cited as the "Clandestine Drug Laboratory Cleanup Act."

6-2602. PURPOSE. The legislature finds that some residential properties are being contaminated with hazardous chemical residues created by the manufacture of clandestine drugs. Innocent members of the public may be harmed when they are exposed to chemical residues if the residential properties are not decontaminated prior to any subsequent rental, sale or use of the properties. The purpose of this chapter is to protect the public health, safety and welfare by authorizing the department of health and welfare to establish a program providing a process and standards for the cleanup of clandestine drug laboratories.

6-2603. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

(1) "Clandestine drug laboratory" means the areas where controlled substances or their immediate precursors, as those terms are defined in section 37-2701, Idaho Code, have been, or were attempted to be, manufactured, processed, cooked, disposed of or stored, and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing.

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

(3) "Law enforcement agency" means any policing agency of the state or of any political subdivision of the state.

(4) "Residential property" means any building or structure to be primarily occupied by people, either as a dwelling or as a business, including a storage facility, mobile home, manufactured home or recreational vehicle that may be sold, leased or rented for any length of time. "Residential property" does not include any water system, sewer system, land or water outside of a building or structure.

(5) "Residential property owner" means the person holding record title to residential property, as defined in this section.

6-2604. RULES. The department shall promulgate rules establishing the acceptable process and standards for the cleanup of clandestine drug laboratories. The department shall also promulgate rules establishing a program for addition to, and removal from, a list of residential properties that housed a clandestine drug laboratory.

6-2605. LAW ENFORCEMENT AGENCY RESPONSIBILITY. Following the adoption of rules pursuant to section 6-2604, Idaho Code, and using a format established by the department, a law enforcement agency, upon locating chemicals, equipment, supplies or immediate precursors indicative of a clandestine drug laboratory on a residential property, shall notify the residential property owner and the department.

6-2606. RESIDENTIAL PROPERTY OWNER CLEANUP RESPONSIBILITY. (1) Except as otherwise provided in subsection (2) of this section, and pursuant to rules adopted as provided in this chapter, upon notification to a residential property owner by a law enforcement agency that chemicals, equipment, supplies or immediate precursors indicative of a clandestine drug laboratory have been located on the owner's residential property, the residential property owner shall meet the cleanup standards established by the department. The residential property shall remain vacant from the time the residential property owner is notified, in accordance with rules adopted as provided in this chapter, of the clandestine drug laboratory until such time as the residential property owner has received a certificate issued by the department evidencing that the cleanup standards have been met.

(2) A residential property owner may, at his or her option, elect to demolish the residential property instead of meeting the cleanup standards established by the department.

6-2607. RESIDENTIAL PROPERTY OWNER IMMUNITY. Once a residential property meets the cleanup standards established by the department pursuant to rules adopted as provided in this chapter, the residential property owner and any representative or agent of the residential property owner shall be immune from civil actions involving health claims brought by any future owner, renter or other person who occupies the residential property, and by any neighbor of such residential property, where the alleged cause of injury or loss is based upon the use of the residential property for the purposes of a clandestine drug laboratory, provided however, that such immunity shall not apply to any person alleged to have produced the clandestine drugs.

6-2608. VOLUNTARY COMPLIANCE. Any residential property owner who chooses to voluntarily and successfully accomplish the cleanup standards established by the department pursuant to rules adopted as provided in this chapter, whether or not such owner was notified by a law enforcement agency, shall be afforded the protections from civil actions provided in section 6-2607, Idaho Code.

Approved March 31, 2005.

CHAPTER 216
(S.B. No. 1134)

AN ACT

RELATING TO VULNERABLE ADULTS; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1505B, IDAHO CODE, TO PROHIBIT THE SEXUAL ABUSE AND EXPLOITATION OF VULNERABLE ADULTS, TO DEFINE TERMS AND TO SET FORTH PENALTIES.

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

SECTION 1. That Chapter 15, 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 18-1505B, Idaho Code, and to read as follows:

18-1505B. SEXUAL ABUSE AND EXPLOITATION OF A VULNERABLE ADULT. (1) It is a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party, to:

(a) Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to: genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex;

(b) Involve a vulnerable adult in any act of bestiality or sadomasochism as defined in section 18-1507, Idaho Code; or

(c) Cause or have sexual contact with a vulnerable adult, not amounting to lewd conduct as defined in paragraph (a) of this subsection.

(2) For the purposes of this section:

(a) "Sexual contact" means any physical contact between a vulnerable adult and any person or between vulnerable adults, which is caused by the actor, or the actor causing the vulnerable adult to have self-contact; and

(b) "Vulnerable adult" is as defined in section 18-1505, Idaho Code.

(3) Sexual abuse of a vulnerable adult is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed twenty-five (25) years or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both such fine and imprisonment.

(4) It shall be a felony for any person to commit sexual exploitation of a vulnerable adult if, for any commercial purpose, as defined in section 18-1507, Idaho Code, he knowingly:

(a) Causes, induces or permits a vulnerable adult to engage in or be used in any explicit sexual conduct as defined in section 18-1507, Idaho Code; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses or distributes sexually exploitative material as defined in section 18-1507, Idaho Code, depicting a vulnerable adult engaged in, observing, or being used for explicit sexual conduct.

(5) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.

(6) Sexual exploitation of a vulnerable adult shall be punishable by imprisonment in the state prison for a period not to exceed fifteen (15) years or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both such fine and imprisonment.

Approved March 31, 2005.

CHAPTER 217
(S.B. No. 1136, As Amended)

AN ACT

RELATING TO PERSONAL PROPERTY; AMENDING SECTION 19-3807, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO THE CONFISCATION OF FIREARMS OR AMMUNITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-403, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO ABANDONED OR UNCLAIMED PROPERTY IN THE POSSESSION OF A SHERIFF OR CITY POLICE DEPARTMENT; AND REPEALING SECTION 55-403A, IDAHO CODE, RELATING TO THE DISPOSAL OF FIREARMS AND OTHER ITEMS.

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

SECTION 1. That Section 19-3807, Idaho Code, be, and the same is hereby amended to read as follows:

19-3807. CONFISCATION OF FIREARMS, EXPLOSIVES OR CONTRABAND UPON CONVICTION. (1) At the time any person is convicted of a felony in any court of the state of Idaho, firearms, ammunition, bombs, nitroglycerin, or explosives of any nature, including illegal fireworks, or any other deadly weapons or contraband of any kind found in his possession or under his control at the time of his arrest may be confiscated and disposed of in accordance with the order of the court before which such person was tried. "Contraband" as used in this section shall mean any personal property, possession of which is illegal under the laws of the state of Idaho or the United States.

(2) Notice of confiscation proceedings shall be given to each owner or person who is believed to have an interest in the property in question by serving a copy of the state's motion describing the property with a notice of hearing on the motion as follows:

(a) Upon each owner or interested party whose name and address is known, by mailing a copy of the state's motion to confiscate and notice of hearing by certified mail to the owner or party's last known address, or to his attorney;

(b) Upon all other owners or interested parties whose addresses are unknown, but who are believed to have an interest in the property, by publishing one (1) notice in a newspaper of general circulation in the county where the property was seized.

(3) Within twenty (20) days after the mailing or publication of the notice, the owner of the property in question and any other interested party may file with the court a claim to the property described in the motion to confiscate.

(4) If one (1) or more claims are filed, the confiscation proceeding shall be set for hearing at least thirty (30) days after the last timely claim is filed.

(5) At the confiscation hearing any person who has filed a timely claim may show by competent evidence that the property in question was not in the possession or control of the defendant at the time of his arrest or that the owner is innocent of any involvement in the acts which led to the defendant's arrest, in which case the court may return the property to the owner or interested person or order any other disposition which is appropriate under the circumstances.

(6) If no claim has been filed within twenty (20) days after the state's motion to confiscate and notice of hearing has been mailed or published, the court shall hear evidence concerning the defendant's possession and control of the property in question at the time of arrest. If it finds that the property was in the defendant's possession and control at the time of arrest or, if pursuant to subsection (5) above of this section, the court rejects any claim which has been filed, the court may direct the delivery to the law enforcement agency which apprehended the defendant, for its use or for any other disposition in its discretion or, in the case of a firearm or ammunition, the court shall direct the delivery to the law enforcement agency which apprehended the defendant for disposition in accordance with section 55-403(4), Idaho Code.

SECTION 2. That Section 55-403, Idaho Code, be, and the same is hereby amended to read as follows:

55-403. ABANDONED OR UNCLAIMED PROPERTY IN POSSESSION OF SHERIFF OR CITY POLICE DEPARTMENT -- SALE AT PUBLIC AUCTION. (1) Except as otherwise provided in subsection (4) of this section, aAny personal property which may have has come into the possession or custody of the sheriff of any county in this state or the city police department of any city in this state by reason of the same having been abandoned, or impounded, or otherwise left with the sheriff or city police department, or if originally taken into custody under legal process, such process property has been lawfully released or discharged from the attachment or other process under which it was taken into custody and which remains unclaimed or unredeemed by the owner or one entitled to possession thereof for more than six (6) months from the date of such abandonment, impoundment, leaving, or release from attachment or other process under which the same was originally taken into custody, as the case may be, shall be subject to sale by the sheriff or city police department at public auction for cash on not less than five (5) or more than ten (10) days' notice except as otherwise provided in subsection (2) of this section, the conduct and notice of which sale shall be given and had in conformity with sales on execution; provided, however, that prior to public auction, bicycles need only be unclaimed or unredeemed by the owner or one entitled to possession for more than ninety (90) days and that personal property with a fair market value of less than twenty-five dollars ($25.00) need only be unclaimed or unredeemed by the owner or one entitled to possession for more than thirty (30) days.

(2) Further provided, that wWhenever the sheriff or city police department has knowledge of the name and address of the owner or one entitled to possession of personal property, a copy of such notice of sale at public auction as provided in subsection (1) or of a bid for sale as provided in subsection (4) of this section, shall be mailed to such owner or one entitled to possession, with postage prepaid, at least five fourteen (514) days prior to such sale.;

(3) Aas many items of personal property may be noticed for sale and sold at the same sale as the sheriff or city police department may deem advisable, and said property may be sold singly or in lots or as a whole as the sheriff or city police department may determine. The sheriff or city police department shall give a bill of sale to the highest bidder upon payment of the amount bid upon payment of the bid price.

(4) (a) Any firearm or ammunition that meets the established specifications for official law enforcement duty use and will be used for official law enforcement duty use and which has come into the possession or custody of the sheriff of any county in this state or the city police department of any city in this state by reason of the firearm or ammunition having been abandoned, impounded or otherwise acquired by the sheriff or city police department, or if originally released or discharged from the attachment or other process under which it was taken into custody and which remains unclaimed or unredeemed by the owner or person entitled to possession thereof for more than six (6) months from the date of such abandonment, impoundment, leaving or release from attachment or other process under which the firearm or ammunition was originally taken into custody, as the case may be, may be converted by the county sheriff or city police department in the county or city in which it was first acquired. A serial number record shall be maintained for all firearms thus converted, and such record shall include the description, acquisition and disposition for each firearm converted.

(b) Any firearm or ammunition not converted for official law enforcement duty use as provided in subsection (4)(a) of this section, where such firearm or ammunition may be lawfully possessed by a licensed firearm dealer, shall be subject to sale to a licensed firearm dealer by sealed or opened bids after notification as provided in subsection (2) of this section. If no sale is completed for the firearm or ammunition pursuant to this paragraph (b), the firearm or ammunition may be converted to public agency ownership for official law enforcement purposes provided an actual or appraised value is determined for each firearm or any ammunition converted. If the firearm or ammunition is not converted, or if following conversion the firearm or ammunition is deemed unusable or unsafe, the firearm or ammunition may be scrapped by melting or other method of destruction. The public agency shall maintain procedures and records as to the acquisition, serial number, location, use and final disposition of the firearm.

(c) Notwithstanding any other provision of law, a court shall direct the county sheriff or city police department to dispose of any firearm that has been used in the commission of a homicide in a manner the sheriff or city police department deems appropriate, provided however, this paragraph (c) shall not apply to a firearm confiscated or otherwise acquired pursuant to an action under section 18-4009, 18-4011 or 18-4012, Idaho Code.

(5) Any public agency that confiscates a firearm shall maintain a serial number record, including a record of the acquisition and disposition, of such firearm and shall provide the firearm to the sheriff or city police department in the county or city in which the confiscation takes place. The firearm shall thereafter be handled in accordance with the provisions of this section.

SECTION 3. That Section 55-403A, Idaho Code, be, and the same is hereby repealed.

Approved March 31, 2005.

CHAPTER 218
(S.B. No. 1154, As Amended)

AN ACT
RELATING TO LICENSURE TO PRACTICE PHARMACY; AMENDING SECTION 54-1723, IDAHO CODE, TO AUTHORIZE THE BOARD OF PHARMACY TO GRANT TEMPORARY RECIPROCAL LICENSURE TO PRACTICE PHARMACY UPON COMPLIANCE WITH CERTAIN CONDITIONS SPECIFIED AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-1723, Idaho Code, be, and the same is hereby amended to read as follows:

54-1723. QUALIFICATIONS FOR LICENSURE BY RECIPROCITY. (1) To obtain a license as a pharmacist by reciprocity, an applicant for licensure shall:

(a) Have submitted a written application in the form prescribed by the board of pharmacy.

(b) Have attained the age of majority.

(c) Have good moral character and temperate habits.

(d) Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in this state.

(e) Have engaged in the practice of pharmacy for a period of at least one (1) year or have met the internship requirements of this state within the one (1) year immediately previous to the date of such application.

(f) Have presented to the board proof of initial licensure by examination and proof that such license and any other license or licenses granted to the applicant by any other state or states have not been suspended, revoked, ~~cancelled~~ canceled or otherwise restricted for any reason except nonrenewal or the failure to obtain required continuing education credits in any state where the applicant is licensed but not engaged in the practice of pharmacy.

(g) Have paid the fees specified by the board of pharmacy for issuance of a license.

(2) Eligibility. No applicant shall be eligible for licensure by reciprocity unless the state in which the applicant was initially licensed as a pharmacist also grants reciprocal licensure to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

(3) Temporary reciprocity license.

(a) In conjunction with an application for a license as a pharmacist by reciprocity, the applicant may be granted a temporary license as a pharmacist upon compliance with the following terms and conditions:

(i) The applicant has filed a complete application for licensure by reciprocity and paid all fees for such application, which fees shall not be refundable upon grant of a temporary license;

(ii) The applicant has passed the state jurisprudence examination with a score of not less than seventy-five (75);

(iii) The applicant submits photocopies of all current licenses to practice pharmacy in any other states or jurisdictions;
(iv) The applicant provides documentation of any and all actions taken against any of the applicant's licenses to practice pharmacy by any other state or jurisdiction, and any such action does not otherwise render the applicant ineligible for licensure by reciprocity in Idaho;
(v) The applicant submits evidence that the applicant has lawfully practiced pharmacy in the United States or its territories for the preceding twelve (12) months prior to filing of the application;
(vi) The applicant submits evidence that the applicant has completed all continuing education requirements of the applicant's active licenses for the three (3) calendar years preceding the application; and
(vii) The applicant executes a sworn statement that all of the documents, evidence and statements of the applicant submitted to the board in conjunction with the application for licensure by reciprocity and the request for temporary licensure are true and correct, and that the applicant has fully disclosed all information required for licensure by reciprocity and for temporary licensure.

(b) Upon completion of the above requirements to the satisfaction of the executive director, the applicant may be granted a temporary license by reciprocity for a period of not more than sixteen (16) consecutive weeks as follows:
(i) The temporary license shall not be renewable nor may the applicant reapply for temporary licensure for a period of one (1) year after lapse of a temporary license;
(ii) The temporary license shall lapse automatically upon the grant or denial of a license by reciprocity upon subsections (1) and (2) of this section;
(iii) The temporary license shall not include acting as a pharmacist-in-charge or as a preceptor or supervising interns or externs;
(iv) The temporary license shall be subject to discipline in the same manner as a full license, and shall also be subject to immediate suspension by the executive director upon reasonable evidence that the applicant has not fulfilled the requirements for such temporary license or that the documents, evidence and statement of the applicant submitted to the board are not true and correct, or that the applicant's disclosures required by this section are not complete. Suspension of a temporary license by the executive director shall be immediate subject only to reinstatement upon appeal by the applicant to the board at its next scheduled meeting; and
(v) In the event the temporary license lapses without the contemporaneous grant of full licensure by reciprocity, or the temporary license is suspended by the executive director, then all privileges allowed under the temporary license, including those relating to any controlled substance registration granted under the temporary license, shall also cease.

Approved March 31, 2005.

CHAPTER 219
(S.B. No. 1156)

AN ACT

RELATING TO ACQUISITION OF PERSONAL IDENTIFYING INFORMATION BY FALSE AUTHORITY; AMENDING CHAPTER 31, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3126A, IDAHO CODE, TO PROVIDE THAT IT IS UNLAWFUL FOR ANY PERSON TO FALSELY ASSUME OR PRETEND TO BE A MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR AN OFFICER OR EMPLOYEE ACTING UNDER AUTHORITY OF THE UNITED STATES OR ANY DEPARTMENT, AGENCY OR OFFICE THEREOF OR OF THE STATE OF IDAHO OR ANY DEPARTMENT, AGENCY OR OFFICE THEREOF, AND IN SUCH PRETENDED CHARACTER, SEEK, DEMAND, OBTAIN OR ATTEMPT TO OBTAIN PERSONAL IDENTIFYING INFORMATION OF ANOTHER PERSON; AND AMENDING SECTION 18-3128, IDAHO CODE, TO PROVIDE FELONY PENALTIES FOR THE CRIME OF ACQUISITION OF PERSONAL IDENTIFYING INFORMATION BY FALSE AUTHORITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 31, 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 18-3126A, Idaho Code, and to read as follows:

18-3126A. ACQUISITION OF PERSONAL IDENTIFYING INFORMATION BY FALSE AUTHORITY. It is unlawful for any person to falsely assume or pretend to be a member of the armed forces of the United States or an officer or employee acting under authority of the United States or any department, agency or office thereof or of the state of Idaho or any department, agency or office thereof, and in such pretended character, seek, demand, obtain or attempt to obtain personal identifying information of another person.

SECTION 2. That Section 18-3128, Idaho Code, be, and the same is hereby amended to read as follows:

18-3128. PENALTY FOR VIOLATION. (1) Any person found guilty of a violation of section 18-3124, 18-3125A, 18-3126 or 18-3127, Idaho Code, is guilty of a misdemeanor. In the event that the retail value of the goods obtained or attempted to be obtained through any violation of the provisions of section 18-3124, 18-3125A, 18-3126 or 18-3127, Idaho Code, exceeds three hundred dollars ($300), any such violation will constitute a felony, and will be punished as provided in this section. Any person found guilty of a violation of section 18-3126A, Idaho Code, is guilty of a felony.

(2) For purposes of this section, the punishment for a misdemeanor shall be a fine of up to one thousand dollars ($1,000) or up to one (1) year in the county jail, or both such fine and imprisonment.

(3) For purposes of this section, the punishment for a felony shall be a fine of up to fifty thousand dollars ($50,000) or imprisonment in the state prison not exceeding five (5) years, or both such fine and imprisonment.

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 31, 2005.

CHAPTER 220
(S.B. No. 1161, As Amended)

AN ACT

RELATING TO ADMINISTRATIVE RULES; AMENDING SECTION 67-5224, IDAHO CODE, TO REQUIRE AN AGENCY TO PUBLISH A NOTICE OF ADOPTION OF THE PENDING RULE IN THE BULLETIN, TO INCLUDE IN THE NOTICE OF ADOPTION THE SPECIFIC STATUTORY AUTHORITY FOR THE RULEMAKING INCLUDING A CITATION TO THE SPECIFIC SECTION OF THE IDAHO CODE THAT HAS OCCASIONED THE RULEMAKING, OR THE FEDERAL STATUTE OR REGULATION IF THAT IS THE BASIS OF AUTHORITY OR REQUIREMENT FOR THE RULEMAKING, AND TO REQUIRE IN AN AGENCY'S NOTICE OF ADOPTION A SPECIFIC DESCRIPTION, IF APPLICABLE, OF ANY NEGATIVE FISCAL IMPACT ON THE STATE GENERAL FUND GREATER THAN TEN THOUSAND DOLLARS DURING THE FISCAL YEAR WHEN THE PENDING RULE WILL BECOME EFFECTIVE, PROVIDED HOWEVER, THE ABSENCE OR ACCURACY OF A FISCAL IMPACT STATEMENT SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF THE RULE.

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

SECTION 1. That Section 67-5224, Idaho Code, be, and the same is hereby amended to read as follows:

67-5224. PENDING RULE -- FINAL RULE -- EFFECTIVE DATE. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall consider fully all written and oral submissions respecting the proposed rule.

(2) Subject to the provisions of subsection (3) of this section, the agency shall publish the text of a pending rule and a notice of adoption of the pending rule in the bulletin. ~~In--addition,--the--agency shall--publish~~ The notice of adoption of the pending rule shall consist of a concise explanatory statement containing:

(a) reasons for adopting the rule;

(b) a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes;

(c) the date on which the pending rule will become final and effective, as provided in subsection (5) of this section, and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature; ~~and~~

(d) an identification of any portion of the pending rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;

(e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and

(f) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

(3) With the permission of the coordinator, the agency need not publish in full the text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and note all changes that have been made.

(4) An agency shall not publish a pending rule until at least seven (7) days after the close of all public comment.

(5) (a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a pending rule shall become final and effective upon the conclusion of the legislative session at which the rule was submitted to the legislature for review, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.

(b) When the legislature approves, amends or modifies a pending rule pursuant to section 67-5291, Idaho Code, the rule shall become final and effective upon adoption of the concurrent resolution or such other date specified in the concurrent resolution.

(c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, no pending rule or portion thereof imposing a fee or charge of any kind shall become final and effective until it has been approved, amended or modified by concurrent resolution.

(6) Each agency shall provide the administrative rules coordinator with a description of any pending rule or portion thereof imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. The administrative rules coordinator shall provide the legislature with a compilation of the descriptions provided by the agencies.

(7) At the conclusion of the legislative session or as soon thereafter as is practicable, the coordinator shall publish the date upon which the legislature adjourned sine die and rules became effective and a list of final rules becoming effective on a different date, as provided in section 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided in section 67-5226(3), Idaho Code.

Approved March 31, 2005.

CHAPTER 221
(S.B. No. 1166)

AN ACT

RELATING TO COUNTY EMPLOYEES; AMENDING CHAPTER 16, TITLE 1, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 1-1613A, IDAHO CODE, TO PROVIDE THAT CERTAIN COUNTY OFFICIALS AND EMPLOYEES PERFORMING FUNCTIONS AND DUTIES OF DISTRICT COURTS SHALL BE CONSIDERED EMPLOYEES OF THE STATE FOR PURPOSES OF THE IDAHO TORT CLAIMS ACT AND TO DEFINE "DISTRICT COURT."

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 1-1613A, Idaho Code, and to read as follows:

1-1613A. COUNTY EMPLOYEES PERFORMING FUNCTIONS OF THE DISTRICT COURT UNDER COURT CONTROL -- LIABILITY. (1) For the purposes of the Idaho tort claims act, as set forth in sections 6-901 et seq., Idaho Code, any county official or employee, including any elected or appointed county official, while acting in the course and scope of performing clerical, judicial and other administrative functions and duties of the district court, shall be considered an employee of the state of Idaho.

(2) For the purposes of this section only, the term "district court" includes all district courts and magistrates divisions thereof, administrative judges of each district, and all district and magistrate judges in the judicial districts of the state of Idaho.

Approved March 31, 2005.

CHAPTER 222
(S.B. No. 1074, As Amended)

AN ACT

RELATING TO SIMULCASTING OF DOG RACES; AMENDING SECTION 54-2514A, IDAHO CODE, TO AUTHORIZE SIMULCASTS AND PARI-MUTUEL WAGERING AT AN ALTERNATE FACILITY IN THE SAME COUNTY AS A FORMER DOG RACING TRACK IF APPROVED BY THE IDAHO RACING COMMISSION AND TO CLARIFY THAT NO MORE THAN ONE LICENSE CAN BE GRANTED TO CONDUCT SIMULCAST PARI-MUTUEL WAGERING IN ANY COUNTY.

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

SECTION 1. That Section 54-2514A, Idaho Code, be, and the same is hereby amended to read as follows:

54-2514A. DOG RACING ILLEGAL AFTER THE EFFECTIVE DATE OF THIS ACT. On and after the effective date of this act, live dog races and pari-mutuel betting on such races or the training of dogs to compete in live dog races shall be illegal in the state of Idaho. Notwithstanding any other provision of law to the contrary, t~~T~~he provisions of this sec-

tion shall not be deemed to alter or affect simulcasts and simulcast pari-mutuel wagering at a facility that was licensed and authorized prior to January 1, 1996, to conduct live dog races and pari-mutuel wagering on them prior to the effective date of this act, and such horse and dog race simulcasts and pari-mutuel wagering on such simulcasts may be conducted at that facility, or at an alternate facility in the same county and approved by the commission as if the facility were still licensed and under the same conditions and restrictions imposed by law on a licensee. Under no circumstances shall the provisions of this section or section 54-2512, Idaho Code, be used to grant more than one (1) license to conduct simulcast pari-mutuel wagering in any county. Any person participating or conducting a live dog race or pari-mutuel betting on such a live dog race or the training of dogs to compete in live dog races in violation of this section shall be guilty of a felony.

Approved April 1, 2005.

CHAPTER 223
(S.B. No. 1165)

AN ACT

RELATING TO JUVENILES; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-511A, IDAHO CODE, TO SET FORTH PROVISIONS REQUIRING MENTAL HEALTH ASSESSMENTS AND PLANS OF TREATMENT FOR JUVENILES UNDER CERTAIN CIRCUMSTANCES IN PROCEEDINGS UNDER THE JUVENILE CORRECTIONS ACT OR THE CHILD PROTECTIVE ACT.

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

SECTION 1. 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 20-511A, Idaho Code, and to read as follows:

20-511A. MENTAL HEALTH ASSESSMENTS AND PLANS OF TREATMENT. (1) A judge of any court shall order the department of health and welfare to submit appropriate mental health assessments and a plan of treatment for the court's approval if at any stage of a proceeding under this chapter or the child protective act, chapter 16, title 16, Idaho Code, a judge has reason to believe, based upon the record and proceedings of the court or upon an affidavit of a party, state or county agency or any person having physical custody of the juvenile, that the juvenile:

(a) Is suffering a substantial increase or persistence of a serious emotional disturbance as defined in section 16-2403, Idaho Code, which impairs his or her ability to comply with the orders and directives of the court, or which presents a risk to the juvenile's safety or well-being or the safety of others; and

(b) Such condition has not been adequately addressed with supportive services and/or corrective measures previously provided to the juvenile, or the juvenile's needs with respect to the serious emotional disturbance are not being met or have not been met.

(2) The court may convene a screening team consisting of representatives from the department of health and welfare, county probation,

local school officials, the department of juvenile corrections and/or other agencies or persons designated by the court to review the plan of treatment and provide written recommendations to the court. Parents and guardians of the juvenile, if available, shall be included in the screening team and consulted with regard to the plan of treatment.

(3) If the court, after receiving the mental health assessment and plan of treatment submitted by the department of health and welfare and any recommendations from the screening team, determines that additional information is necessary to determine whether the conditions set forth in subsections (1)(a) and (1)(b) of this section are present, or to determine an appropriate plan of treatment for the juvenile, the court may order an evaluation and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist, with the expenses of such evaluation and/or recommendations to be borne by the department of health and welfare.

(4) If the court concludes that the conditions set forth in subsections (1)(a) and (1)(b) of this section are present, the plan of treatment, as approved by the court, shall be entered into the record as an order of the court. The department of health and welfare shall provide mental health treatment as designated by the approved plan of treatment. If in-patient or residential treatment is required as part of the plan of treatment, the court shall hold a hearing on whether to order such treatment unless the hearing is waived by the juvenile and the juvenile's parents or guardians. The court may order parents, legal guardians or custodians to adhere to the treatment designated in the plan of treatment. Representatives from the department of health and welfare, county probation, local school officials, the department of juvenile corrections and/or other agencies or persons designated by the court shall attend case review hearings as scheduled by the court.

(5) All costs associated with assessment and treatment shall be the responsibility of the parents of the juvenile according to their ability to pay based upon the sliding fee scale established pursuant to section 16-2433, Idaho Code. The financial obligation of the family shall be determined after consideration of all available payment and funding sources including title XIX of the social security act, as amended, all available third party sources, and parent resources according to any order for child support under chapter 10, title 32, Idaho Code. Services shall not be conditioned upon transfer of custody or parental rights.

Approved April 1, 2005.

CHAPTER 224
(S.B. No. 1200)

AN ACT
APPROPRIATING MONEYS TO THE BOARD OF TAX APPEALS FOR FISCAL YEAR 2006; 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 Board of Tax Appeals in the Department of Revenue and Taxation the following amounts to be

expended according to the designated expense classes from the listed fund for the period July 1, 2005, through June 30, 2006:

FOR:	
Personnel Costs	$270,500
Operating Expenditures	63,800
TOTAL	$334,300
FROM:	
General Fund	$334,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Board of Tax Appeals is authorized no more than four (4) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 April 1, 2005.

CHAPTER 225
(S.B. No. 1202)

AN ACT

APPROPRIATING MONEYS TO THE STATE TREASURER FOR FISCAL YEAR 2006; PROVIDING FOR THE RECOVERY OF BANKING SERVICES COSTS TO THE GENERAL FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; 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 Treasurer the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$ 921,400	$302,100	$1,223,500
State Treasurer LGIP Fund	204,500	72,200	276,700
Treasurer's Office - Professional Services Fund	194,400	103,900	298,300
TOTAL	$1,320,300	$478,200	$1,798,500

SECTION 2. The moneys assessed by the Division of Financial Management in accordance with Section 67-3531, Idaho Code, for State Treasurer banking services shall be placed in the Indirect Cost Recovery Fund. On

June 30, 2006, the State Controller shall transfer the amount assessed in the statewide cost allocation plan from the Indirect Cost Recovery Fund to the General Fund.

SECTION 3. There is hereby reappropriated to the State Treasurer the unexpended and unencumbered balance of any appropriation made to the State Treasurer from the State Treasurer LGIP Fund for fiscal year 2005, to be used for nonrecurring expenditures only for the period July 1, 2005, through June 30, 2006. Provided however, that if said reappropriation exceeds the unencumbered cash balance in the State Treasurer LGIP Fund as of June 30, 2005, the reappropriation is hereby reduced to an amount equal to the unencumbered cash balance.

SECTION 4. In accordance with Section 67-3519, Idaho Code, the Office of the State Treasurer is authorized no more than eighteen (18) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 April 1, 2005.

CHAPTER 226
(S.B. No. 1203)

AN ACT
APPROPRIATING MONEYS TO THE SECRETARY OF STATE FOR FISCAL YEAR 2006; 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 Secretary of State 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. ADMINISTRATION:			
FROM:			
General Fund	$1,696,500	$343,000	$2,039,500
II. COMMISSION ON UNIFORM LAWS:			
FROM:			
General Fund		$ 30,000	$ 30,000
GRAND TOTAL	$1,696,500	$373,000	$2,069,500

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Office of the Secretary of State is authorized no more than thirty-one (31) full-time equivalent positions at any point during the period July

1, 2005, through June 30, 2006, 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 April 1, 2005.

CHAPTER 227
(S.B. No. 1204)

AN ACT

APPROPRIATING MONEYS TO THE STATE CONTROLLER FOR FISCAL YEAR 2006; PROVIDING FOR THE RECOVERY OF STATE CONTROLLER SERVICES COSTS TO THE GENERAL FUND; REQUIRING CERTAIN PURCHASES BE SUBJECT TO CERTAIN CONDITIONS; REAPPROPRIATING UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; SETTING FORTH THE CONDITIONS FOR THE REAPPROPRIATION; STATING LEGISLATIVE INTENT AUTHORIZING THE SOLICITATION OF FUNDS FROM STATE AGENCIES; 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 Controller the following amounts to be expended for the designated programs from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. ADMINISTRATION:				
FROM:				
General Fund	$ 406,000	$ 57,400		$ 463,400
II. STATEWIDE ACCOUNTING:				
FROM:				
General Fund	$1,434,200	$1,193,400		$ 2,627,600
III. STATEWIDE PAYROLL:				
FROM:				
General Fund	$1,197,300	$ 857,300		$ 2,054,600
IV. COMPUTER CENTER:				
FROM:				
Data Processing Services Fund	$3,723,700	$2,559,700	$168,300	$ 6,451,700
GRAND TOTAL	$6,761,200	$4,667,800	$168,300	$11,597,300

SECTION 2. The moneys assessed by the Division of Financial Management in accordance with Section 67-3531, Idaho Code, for State Controller services shall be placed in the Indirect Cost Recovery Fund. On June 30, 2006, the State Controller shall transfer the amount assessed in the statewide cost allocation plan from the Indirect Cost Recovery Fund to the state General Fund.

SECTION 3. Any purchases or obligations involving information technology items for the period July 1, 2005, through June 30, 2006, are to be submitted to and coordinated with the Information Technology Resource Management Council.

SECTION 4. There is hereby reappropriated to the State Controller, the unexpended and unencumbered cash balance of any appropriation made to the State Controller for fiscal year 2005, to be used for nonrecurring expenditures only for the period July 1, 2005, through June 30, 2006.

SECTION 5. As it relates to the General Fund, the reappropriation granted in Section 4 of this act is subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 2005, is zero, the reappropriation of General Fund money in Section 4 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, 2005, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount of General Fund moneys reappropriated in Section 4 of this act shall be in the proportion that the General Fund reappropriation for the State Controller bears to the total General Fund reappropriation authority granted to all state agencies.

SECTION 6. It is legislative intent that the State Controller shall have the authority to solicit financial contributions from state agencies in support of the next phase of the Idaho Business Intelligence Solution. Agency financial contributions should come from one-time fiscal year 2005 savings beyond that which is needed to meet payroll and operational needs.

SECTION 7. In accordance with Section 67-3519, Idaho Code, the State Controller is authorized no more than ninety-nine and eighty-five hundredths (99.85) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 April 1, 2005.

CHAPTER 228
(S.B. No. 1205)

AN ACT

APPROPRIATING MONEYS FOR THE DIVISION OF FINANCIAL MANAGEMENT FOR FISCAL YEAR 2006; 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 following programs according to the designated expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. DIVISION OF FINANCIAL MANAGEMENT:			
FROM:			
General Fund	$1,863,700	$182,400	$2,046,100
Miscellaneous Revenue Fund	24,700	7,000	31,700
TOTAL	$1,888,400	$189,400	$2,077,800

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Financial Management is authorized no more than twenty-four (24) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 April 1, 2005.

CHAPTER 229
(S.B. No. 1206)

AN ACT

APPROPRIATING MONEYS TO THE EXECUTIVE OFFICE OF THE GOVERNOR FOR FISCAL YEAR 2006; 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 expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
I. GOVERNOR'S OFFICE ADMINISTRATION:			
General Fund	$1,187,500	$249,300	$1,436,800
II. GOVERNOR'S EXPENSE ALLOWANCE:			
TO BE EXPENDED PURSUANT TO SECTION 67-808d, IDAHO CODE:			
FROM:			
General Fund		$ 4,900	$ 4,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
III. SOCIAL SERVICES:			
FROM:			
Federal Grant Fund	$ 175,400		$ 175,400
IV. ACTING GOVERNOR PAY:			
FROM:			
General Fund	$ 19,200		$ 19,200
GRAND TOTAL	$1,382,100	$254,200	$1,636,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Executive Office of the Governor is authorized no more than twenty-four (24) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 April 1, 2005.

CHAPTER 230
(S.B. No. 1207)

AN ACT
APPROPRIATING MONEYS FOR THE COMMISSION ON AGING FOR FISCAL YEAR 2006; 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 expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
COMMISSION ON AGING:				
FROM:				
General Fund	$ 511,700	$ 59,500	$ 3,929,200	$ 4,500,400
Federal Grant Fund	439,500	292,200	6,927,800	7,659,500
Miscellaneous Revenue Fund	50,000	85,000		135,000
TOTAL	$1,001,200	$436,700	$10,857,000	$12,294,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on Aging is authorized no more than fifteen (15) full-time

equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 April 1, 2005.

CHAPTER 231
(S.B. No. 1208)

AN ACT
APPROPRIATING MONEYS TO THE LEGISLATIVE COUNCIL FOR FISCAL YEAR 2006.

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

SECTION 1. There is hereby appropriated to the Legislative Council the following amounts to be expended from the listed funds for the period July 1, 2005, through June 30, 2006:

A. LEGISLATIVE SERVICES OFFICE:	
FROM:	
General Fund	$3,726,500
Miscellaneous Revenue Fund	44,000
Professional Services Fund	1,139,300
TOTAL	$4,909,800
B. LEGISLATIVE TECHNOLOGY:	
FROM:	
General Fund	$ 431,600
C. OFFICE OF PERFORMANCE EVALUATIONS:	
FROM:	
General Fund	$ 640,600
GRAND TOTAL	$5,982,000

Approved April 1, 2005.

CHAPTER 232
(S.B. No. 1209)

AN ACT
APPROPRIATING MONEYS TO THE IDAHO STATE POLICE FOR FISCAL YEAR 2006; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SALARIES.

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

SECTION 1. There is hereby appropriated to the Idaho State Police 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. BRAND INSPECTION:					
FROM:					
State Brand Board Fund	$ 2,096,200	$ 263,500	$ 85,900		$ 2,445,600
II. DIVISION OF THE IDAHO STATE POLICE:					
A. DIRECTOR'S OFFICE:					
FROM:					
General Fund	$ 1,812,800	$ 457,300			$ 2,270,100
Idaho Law Enforcement Fund	82,400	7,900			90,300
Peace Officers Fund	800				800
Miscellaneous Revenue Fund	72,400	55,300			127,700
Federal Grant Fund	702,000	142,300		$3,734,300	4,578,600
TOTAL	$ 2,670,400	$ 662,800		$3,734,300	$ 7,067,500
B. EXECUTIVE PROTECTION:					
FROM:					
General Fund	$ 204,500	$ 80,400			$ 284,900
C. INVESTIGATIONS:					
FROM:					
General Fund	$ 4,814,100	$ 935,500			$ 5,749,600
Drug Donation Fund	100,000	270,800			370,800
Federal Grant Fund	106,600	284,200			390,800
TOTAL	$ 5,020,700	$ 1,490,500			$ 6,511,200
D. PATROL:					
FROM:					
General Fund	$ 1,989,400	$ 549,600			$ 2,539,000
Idaho Law Enforcement Fund	13,316,100	2,250,700	$795,500		16,362,300
Hazardous Materials/ Waste Enforcement Fund	133,100	17,800		$ 67,800	218,700
Federal Grant Fund	958,600	1,078,800			2,037,400
TOTAL	$16,397,200	$ 3,896,900	$795,500	$ 67,800	$21,157,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
E. LAW ENFORCEMENT PROGRAMS:					
FROM:					
General Fund	$ 737,800	$ 328,900			$ 1,066,700
Miscellaneous Revenue Fund	71,300	18,400			89,700
Federal Grant Fund	35,000	30,000			65,000
TOTAL	$ 844,100	$ 377,300			$ 1,221,400
F. SUPPORT SERVICES:					
FROM:					
General Fund	$ 1,406,600	$ 831,800			$ 2,238,400
Idaho Law Enforcement Fund	486,900	63,800	$ 5,100		555,800
Idaho Law Enforcement Telecommunications Fund	337,100	500,400			837,500
Miscellaneous Revenue Fund	763,400	1,080,800	3,200		1,847,400
Federal Grant Fund		280,500			280,500
TOTAL	$ 2,994,000	$ 2,757,300	$ 8,300		$ 5,759,600
G. FORENSIC SERVICES:					
FROM:					
General Fund	$ 1,954,100	$ 483,000			$ 2,437,100
Miscellaneous Revenue Fund	73,400	179,700			253,100
Drug Donation Fund		130,000			130,000
Federal Grant Fund		19,800			19,800
TOTAL	$ 2,027,500	$ 812,500			$ 2,840,000
DIVISION TOTAL	$30,158,400	$10,077,700	$803,800	$3,802,100	$44,842,000
III. PEACE OFFICERS STANDARDS AND TRAINING ACADEMY:					
FROM:					
Peace Officers Fund	$ 1,060,400	$ 1,165,600	$ 56,500	$ 109,300	$ 2,391,800
Miscellaneous Revenue Fund		205,100			205,100
Federal Grant Fund	184,800	430,200		37,900	652,900
TOTAL	$ 1,245,200	$ 1,800,900	$ 56,500	$ 147,200	$ 3,249,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
IV. RACING COMMISSION:					
FROM:					
Idaho State Racing Commission Fund	$ 354,800	$ 316,300			$ 671,100
Pari-mutuel Distributions Fund				$ 100,000	100,000
TOTAL	$ 354,800	$ 316,300		$ 100,000	$ 771,100
GRAND TOTAL	$33,854,600	$12,458,400	$946,200	$4,049,300	$51,308,500

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho State Police is authorized no more than five hundred thirty-three and seven-hundredths (533.07) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that the Director of the Idaho State Police has the support of the Legislature to be flexible in using the Idaho State Police personnel appropriation to enhance salaries for recruitment and retention of quality employees. The source of funding for this purpose shall come from the base appropriation and the department shall not request restoration of the funds used for this purpose.

Approved April 1, 2005.

CHAPTER 233
(H.B. No. 97, As Amended)

AN ACT

RELATING TO SEXUAL OFFENDERS; AMENDING SECTION 18-8304, IDAHO CODE, TO REVISE APPLICATION OF THE CHAPTER AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 18-8307, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO INITIAL, LOCAL AND ANNUAL REGISTRATION OF SEXUAL OFFENDERS.

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

SECTION 1. That Section 18-8304, Idaho Code, be, and the same is hereby amended to read as follows:

18-8304. APPLICATION OF CHAPTER. (1) The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section 18-909 (assault with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-911 (battery with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A (ritualized abuse of a child), 18-1507 (sexual exploitation of a child), 18-1507A (possession of sexually exploitative material for other than a commercial purpose), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-1509A (enticing a child over the internet), 18-4003(d) (murder committed in perpetration of rape), 18-4116 (indecent exposure, but excluding a misdemeanor conviction), 18-4502 (first degree kidnapping committed for the purpose of rape, committing the infamous crime against nature or for committing any lewd and lascivious act upon any child under the age of sixteen, or for purposes of sexual gratification or arousal), 18-4503 (second degree kidnapping where the victim is an unrelated minor child), 18-6101 (rape, but excluding 18-6101(1) where the defendant is eighteen years of age or younger), 18-6108 (male rape), 18-6110 (sexual contact with a prisoner), 18-6602 (incest), 18-6605 (crime against nature), 18-6608 (forcible sexual penetration by use of a foreign object), or upon a second or subsequent conviction under 18-6609, Idaho Code (video voyeurism)~~;~~.

(b) ~~Enters--the--state--o~~On or after July 1, 1993, ~~and-who~~ has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section and enters the state to establish permanent or temporary residence.

(c) Has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section and was required to register as a sex offender in any other state or jurisdiction when he established permanent or temporary residency in Idaho.

(d) Pleads guilty to or has been found guilty of a crime covered in this chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail facility or a penal facility or is under probation or parole supervision, on or after July 1, 1993.

(~~d~~e) Is a nonresident regularly employed or working in Idaho or is a student in the state of Idaho and was convicted, found guilty or pleaded guilty to a crime covered by this chapter and, as a result of such conviction, finding or plea, is required to register in his state of residence.

(2) The provisions of this chapter shall not apply to any such person while the person is incarcerated in a correctional institution of the department of correction, a county jail facility or committed to a mental health institution of the department of health and welfare.

(3) A conviction for purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

SECTION 2. That Section 18-8307, Idaho Code, be, and the same is hereby amended to read as follows:

18-8307. ~~LOCAL AND ANNUAL~~ INITIAL REGISTRATION.

(1) ~~(a) Within ten (10) days of coming into any county to establish residence or temporary domicile, an offender shall register with the sheriff of the county. Individuals registered under the prior sex offender registration act, including those who registered within twelve (12) months of the effective date of this act, shall register with the sheriff of the county of residence within ten (10) days of the effective date of this act. The offender thereafter shall update the registration annually. If the offender intends to reside in another state, the offender shall register in the other state within ten (10) days of moving to that state.~~

~~(b) Nonresidents required to register pursuant to subsection (1)(d) of section 18-8304, Idaho Code, shall register with the sheriff of the county where employed or enrolled as a student within ten (10) days of the commencement of employment or enrollment as a student in an educational institution; provided that nonresidents employed in counseling, coaching, teaching, supervising or working with minors in any way regardless of the period of employment, must register prior to the commencement of such employment.~~

~~(2) Annual registration shall be conducted as follows:~~

~~(a) On or about the first day of the month containing the anniversary date of the initial registration, the department shall mail a non-forwardable notice of annual registration to the offender's last reported address;~~

~~(b) Within ten (10) days of the mailing date of the notice, the offender shall appear in person at the office of the sheriff with jurisdiction for the purpose of completing the registration process;~~

~~(c) If the notice is returned to the department as not delivered, the department shall inform the sheriff with whom the offender last registered of the returned notice.~~

~~(3)~~ Registration, whether initial, local or annual, shall consist of a form provided by the department and approved by the attorney general, which shall be signed by the offender and shall require the following information about the offender:

(a) Name and all aliases which the person has used or under which the person has been known;

(b) A complete description of the person including the date of birth and social security number;

(c) Name of each offense enumerated in section 18-8304, Idaho Code, of which the person was convicted, where each offense was committed, where the person was convicted of each offense, and the name under which the person was convicted of each offense;

(d) The name and location of each hospital, jail or penal institution to which the person was committed for each offense covered under this chapter;

(e) School or college enrollment; and

(f) Address or physical description of current residence and place of employment.

(~~4~~2) At the time of any registration, the sheriff shall obtain a photograph and fingerprints, in a manner approved by the department, and may require the offender to provide full palm print impressions of each hand. An offender shall pay a fee of ten dollars ($10.00) to the sheriff at the time of each registration. The sheriff may waive the registration fee if the offender demonstrates indigency. The fees collected under this section shall be used by the sheriff to defray the costs of sexual offender registration.

(~~5~~3) The sheriff shall forward the completed and signed form, photograph and fingerprints to the department within three (3) working days of the registration.

(a) The official conducting the initial registration shall ensure that the notification form is complete and that the offender has read and signed the form.

(b) No person subject to registration shall furnish false or misleading information when complying with registration and notification requirements of this chapter.

(4) (a) Within ten (10) days of coming into any county to establish permanent or temporary residence, an offender shall register with the sheriff of the county. The offender thereafter shall update the registration annually. If the offender intends to reside in another state, the offender shall register in the other state within ten (10) days of moving to that state.

(b) A nonresident required to register pursuant to section 18-8304(1)(e), Idaho Code, shall register with the sheriff of the county where employed or enrolled as a student within ten (10) days of the commencement of employment or enrollment as a student in an educational institution, provided that nonresidents employed in counseling, coaching, teaching, supervising or working with minors in any way, regardless of the period of employment, must register prior to the commencement of such employment.

(5) Annual registration shall be conducted as follows:

(a) On or about the first day of the month containing the anniversary date of the last registration which required fingerprints and a photograph, the department shall mail a nonforwardable notice of annual registration to the offender's last reported address;

(b) Within ten (10) days of the mailing date of the notice, the offender shall appear in person at the office of the sheriff with jurisdiction for the purpose of completing the registration process;

(c) If the notice is returned to the department as not delivered, the department shall inform the sheriff with whom the offender last registered of the returned notice.

(6) The sheriff, or appointed deputies, may visit the residence of a registered sexual offender within the county at any reasonable time to verify the address provided at the time of registration.

(7) All written notifications of duty to register as provided herein shall include a warning that it is a felony as provided in section 18-8327, Idaho Code, for an offender to accept employment in any day care center, group day care facility or family day care home, as those terms are defined in chapter 11, title 39, Idaho Code, or to be upon or to remain on the premises of a day care center, group day care facility or family day care home while children are present, other than to drop off or pick up the offender's child or children.

Approved April 1, 2005.

CHAPTER 234
(H.B. No. 138)

AN ACT

RELATING TO THE BOARD OF ARCHITECTURAL EXAMINERS; AMENDING SECTION 54-312, IDAHO CODE, TO PROVIDE THAT COMPENSATION OF BOARD MEMBERS SHALL BE CONSIDERED SALARY FOR PURPOSES OF PARTICIPATION IN THE PUBLIC EMPLOYEES RETIREMENT SYSTEM.

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

SECTION 1. That Section 54-312, Idaho Code, be, and the same is hereby amended to read as follows:

54-312. ARCHITECTS -- BOARD OF EXAMINERS -- POWERS AND DUTIES -- COMPENSATION. (1) The board of architectural examiners is hereby created in the department of self-governing agencies. The board of architectural examiners shall consist of six (6) members, to be appointed by the governor, each of whom shall be an architect, and shall have been a resident of and a lawfully practicing architect within the state of Idaho for a period of at least five (5) years next before his appointment. At all times the board shall have at least one (1) member who is engaged primarily in professional architectural education.

(2) The board shall have, in addition to the powers conferred elsewhere in this chapter, the following powers and duties:

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

(b) To adopt, pursuant to the administrative procedure act, such rules as the board, in its discretion, deems necessary for the administration and enforcement of this chapter.

(c) To conduct investigations into violations of this chapter.

(d) The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records, and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, which fees and mileage shall be paid in the same manner as other expenses of the board are paid. In any case

of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of any district court in this state on application by the board to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

(e) To adopt rules requiring annual continuing education as a condition for the renewal of licenses issued under this chapter.

(3) Each member of the board of architectural examiners shall be compensated as provided by section 59-509(~~o~~i), Idaho Code.

Approved April 1, 2005.

CHAPTER 235
(H.B. No. 139, As Amended)

AN ACT

RELATING TO ELECTRICAL CONTRACTORS AND JOURNEYMEN; AMENDING SECTION 54-1016, IDAHO CODE, TO PROVIDE ADDITIONAL EXEMPTIONS FROM THE PROVISIONS OF ELECTRICAL CONTRACTING LAW FOR SPECIFIED PERSONS, ENTITIES AND EMPLOYEES PERFORMING SPECIFIED WORK.

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

SECTION 1. That Section 54-1016, Idaho Code, be, and the same is hereby amended to read as follows:

54-1016. EXEMPTIONS. (1) Nothing in this chapter shall be deemed to apply to:

(a) ~~The~~ Any regulated utility, telephone company, rural telephone cooperative or municipal communications utility, or their employees, in the installation or maintenance of communication circuits, wires and apparatus by or for such entities or their communications service customers;

(b) Any electrical public utility, or its employees, in the installation and maintenance of electrical wiring, circuits, apparatus and equipment by or for such public utility, or comprising a part of its plants, lines or system;

(c) Modular buildings as defined in section 39-4105, Idaho Code, that are constructed in the state of Idaho for installation on building sites outside the state; provided however, that no modular building shall be installed on a building site in the state of Idaho until it has been approved and bears the insignia of approval of the division as being in compliance with the requirements set forth in section 39-4121, Idaho Code.

(2) The licensing provisions of this chapter shall not apply to: ~~persons making~~

(a) Any property owner performing electrical ~~installations on their own property or to~~ work in the owner's primary or secondary residence or associated outbuildings;

(b) Any person regularly employed as a maintenance electricians ~~working~~ performing electrical maintenance work on the premises of ~~their~~ the person's employer;
(c) Any telephone company, rural telephone cooperative, or municipal communications utility, their employees, their subsidiaries, and employees of the subsidiaries performing work on customer-owned facilities under the exclusive control of the telephone company, rural telephone cooperative, or municipal communications utility;
(d) Any telephone company, rural telephone cooperative, or municipal communications utility, their employees, their subsidiaries, and employees of the subsidiaries performing repair work on customer-owned facilities at the request of the customer;
(e) Any electrical public utility, rural electrical cooperative, municipal power utility, their employees, their subsidiaries, and employees of the subsidiaries performing work on customer-owned facilities under the exclusive control of the electrical public utility, rural electrical cooperative, or municipal power utility; and
(f) Any electrical public utility, rural electrical cooperative, municipal power utility, their employees, their subsidiaries, and employees of the subsidiaries performing emergency repair work on customer-owned facilities at the request of the customer.

Approved April 1, 2005.

CHAPTER 236
(H.B. No. 159)

AN ACT

RELATING TO ESCROW AGENCIES; REPEALING CHAPTER 9, TITLE 30, IDAHO CODE; AMENDING TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 9, TITLE 30, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO DEFINE CONDUCT REQUIRING A LICENSE, TO SPECIFY LOCATIONS WHERE BUSINESS MAY BE CONDUCTED, TO PROVIDE EXEMPTIONS, TO PROVIDE FOR THE DIRECTOR'S ISSUANCE OR DENIAL OF LICENSES, TO PROVIDE FOR RENEWAL OF LICENSES, TO REQUIRE EVIDENCE OF FINANCIAL RESPONSIBILITY, TO PROVIDE FOR ACTION IN THE CASE OF A BOND CANCELLATION, TO LIMIT THE TIME WITHIN WHICH AN ACTION MAY BE BROUGHT AGAINST A BOND, TO PROVIDE THAT LICENSES ARE NOT TRANSFERABLE OR ASSIGNABLE, TO REQUIRE PRIOR WRITTEN CONSENT OF THE DIRECTOR FOR THE CONTROL OF A LICENSE ACQUIRED THROUGH A STOCK PURCHASE OR OTHER DEVICE, TO PROVIDE FOR CIVIL AND CRIMINAL PENALTIES, TO PROVIDE FOR THE MAINTENANCE, INSPECTION AND RETENTION OF BOOKS, ACCOUNTS AND RECORDS, TO REQUIRE SEPARATE ESCROW TRUST FUND ACCOUNTS, TO REQUIRE WRITTEN ESCROW AGREEMENTS, TO REQUIRE THAT RECORDS BE RECONCILED AT LEAST MONTHLY, TO PROVIDE FOR THE INTEREST RECEIVED ON FUNDS, TO REQUIRE DISCLOSURE OF CONFLICTS OF INTEREST, TO REQUIRE DELIVERY OF CLOSING STATEMENTS, TO PROVIDE THAT FUNDS OR OTHER VALUE RECEIVED BY A LICENSEE PURSUANT TO AN ESCROW OR TRUST ARE NOT SUBJECT TO EXECUTION OR ATTACHMENT IN ANY CLAIM AGAINST THE LICENSEE, TO PROVIDE FOR EXAMINATIONS AND INVESTIGATIONS, TO SET FORTH ADDITIONAL POWERS AND DUTIES OF THE DIRECTOR, TO SET FORTH PROHIBITED PRACTICES, TO PROVIDE REMEDIES, TO

LIMIT THE IMPAIRMENT OF OTHER REMEDIES, TO PROVIDE FOR CONTINUING JURISDICTION, TO PROVIDE FOR LIMITATION OF THE ACT, TO PROVIDE FOR SEVERABILITY AND TO PROVIDE FOR INITIAL LICENSING AND COMPLIANCE; AND AMENDING SECTION 45-1504, IDAHO CODE, TO REVISE PROVISIONS RELATING TO TRUSTEES OF TRUST DEEDS.

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

SECTION 1. That Chapter 9, Title 30, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 9, Title 30, Idaho Code, and to read as follows:

CHAPTER 9
IDAHO ESCROW ACT

30-901. SHORT TITLE. (1) This chapter shall be known and may be cited as the "Idaho Escrow Act."

(2) It is the intent of the legislature that the escrow industry be supervised and regulated by the department of finance in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly, with due regard to the ultimate consumers in this important area of property protection.

30-902. DEFINITIONS. As used in this chapter and in rules promulgated pursuant to this chapter:

(1) "Act" means the "Idaho Escrow Act," chapter 9, title 30, Idaho Code.

(2) "Department" means the Idaho department of finance.

(3) "Director" means the director of the Idaho department of finance.

(4) "Escrow" means any transaction in which any person, for the purpose of effecting the sale, transfer, encumbrance, or lease of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence of title or thing of value is then to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter, pursuant to written instructions.

(5) "Escrow agency" means any person engaged in the business of accepting or receiving escrows for deposit or delivery by any means, including over the internet, or by any other electronic means.

(6) "Escrow agent" means any person engaged in the business of accepting or receiving escrows for deposit or delivery on behalf of an escrow agency.

(7) "License" means a license issued pursuant to this chapter.

(8) "Licensee" means a person holding a valid license as an escrow agency under this chapter.

(9) "Person" means an individual, cooperative, association, company, firm, partnership, corporation, limited liability company, or

other legal entity, or the plural thereof, whether or not resident, nonresident or citizen.

30-903. LICENSE REQUIRED. (1) It shall be unlawful for any person to directly or indirectly engage in or carry on, or purport to engage in or carry on, the business of, or act in the capacity of, an escrow agency in or from Idaho without first obtaining a license under this chapter.

(2) The requirements of this chapter shall also apply to any escrow transaction effecting the sale, transfer, encumbrance or lease to another person of any real or personal property located in Idaho.

30-904. PLACE OF BUSINESS. No licensee under this chapter shall engage in the escrow business at any place of business for which it does not hold a license, nor shall it engage in business under any other name than that on the license. Every escrow agency licensed under this chapter shall maintain a home office as its principal location for the transaction of escrow business. The director may, on application, issue additional branch licenses to the same escrow agency licensee upon compliance with all the provisions of this chapter governing the issuance of a single escrow agency license.

30-905. EXEMPT PERSONS AND TRANSACTIONS. The requirements of this chapter do not apply to:

(1) Any person licensed to practice law in this state while engaged in the performance of his professional duties, except an attorney or law firm actively engaging in a separate business as an escrow agency;

(2) Any person licensed or chartered under the laws of any state or of the United States as a bank, savings and loan association, credit union or industrial loan company as well as wholly-owned subsidiaries and affiliates of such organizations;

(3) Title insurance companies having a valid certificate of authority, and title insurance agents having a valid license as a title insurance agent, issued by the Idaho department of insurance;

(4) Any real estate company, broker or salesperson licensed by and subject to the jurisdiction of the Idaho real estate commission, while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by such real estate company, broker or salesperson;

(5) Any receiver, trustee in bankruptcy, executor, administrator, guardian or other person acting under the supervision or order of any court of this state or of any federal court;

(6) A person licensed in this state as a certified public accountant while engaged in the performance of his professional duties who is not actively engaged in a separate business as an escrow agency;

(7) Any state or federally chartered nondepository financial institution;

(8) Regulated lenders subject to the requirements of the Idaho credit code, chapters 41 through 46, title 28, Idaho Code, to the extent not engaged in a separate business as an escrow agency;

(9) Agencies of the United States and agencies of this state and their political subdivisions;

(10) Mortgage brokers and mortgage lenders subject to the requirements of the Idaho residential mortgage practices act, chapter 31, title

26, Idaho Code, to the extent not engaged in a separate business as an escrow agency; or

(11) A mortgage company to the extent that such mortgage company is regularly engaged in the business of a mortgage company as defined in the mortgage company act, chapter 28, title 26, Idaho Code.

30-906. EXEMPTION -- BURDEN OF PROOF. In any proceeding or action under this chapter, the burden of proving an exemption from the requirements of this chapter is upon the person claiming the exemption.

30-907. DIRECTOR'S ISSUANCE OR DENIAL OF LICENSE. (1) The director shall receive and act upon all applications for licenses to engage in business as an escrow agency under this chapter. If the director finds that all requirements of statute and rule have been met and all applicable fees paid, and the applicant is not otherwise unqualified for licensure, the director shall issue a license to the applicant.

(2) An application for a license as an escrow agency shall be in writing and filed with the director in such form as is prescribed by the director, shall include such information as the director may reasonably require, and shall be verified on oath by the applicant. Such information shall be updated and filed with the director as necessary to keep the information current. The application for licensure shall be accompanied by an application fee of three hundred fifty dollars ($350). When an application for licensure is denied or withdrawn, the director shall retain all fees paid by the applicant.

(3) An application for an escrow agency license under this chapter may be denied if the director finds that:

(a) The escrow agency's business was or will be formed for any business other than legitimate escrow services, or proposes to use a name that is misleading or in conflict with the name of an existing licensee;

(b) Any incorporator, officer, director, member, general partner, employee or agent of the escrow agency applicant has been:

(i) Convicted of, or received a withheld judgment for, any felony or a misdemeanor involving dishonesty or moral turpitude; or

(ii) Committed any crime or act involving dishonesty, fraud or deceit, which crime or act is substantially related to the qualifications, functions or duties of a person engaged in an escrow business;

(c) There is no natural person possessing a minimum of three (3) years of supervisory experience in relation to an escrow business supervising each escrow agency office;

(d) The applicant or any officer, director, member, general partner, employee or agent of the applicant has demonstrated lack of fitness to transact escrow business;

(e) The applicant has made any false statement of a material fact in the application for a license; or

(f) The applicant, any officer, director, member, general partner or any person owning or controlling, directly or indirectly, ten percent (10%) or more of the outstanding equity securities of the applicant has violated any provision of this chapter or rules promulgated thereunder, or any similar regulatory scheme in this state or in any foreign jurisdiction.

30-908. RENEWAL OF LICENSE. (1) On or before April 30 of each year, every licensee under this chapter shall pay an annual license renewal fee of one hundred fifty dollars ($150), and shall file with the director a renewal form containing such information as the director may require.

(2) As a condition of renewal, each licensee shall file with the director a statement of its financial condition and status of its escrow transactions as of the preceding December 31. The financial statement must be in a form and contain the information prescribed by the director.

(3) Each license under this chapter shall remain in full force and effect unless the licensee fails to timely satisfy the renewal requirements of this section, or the license is relinquished, suspended or revoked; provided however, branch licenses shall be terminated upon the relinquishment or revocation of a home office license. Any licensee may relinquish the license by notifying the director of its relinquishment, but this relinquishment shall not affect the licensee's liability for acts previously committed, and may not occur after the filing of a complaint for revocation or suspension of the license.

(4) Following the failure of a licensee to satisfy the renewal requirements of this section, a person previously licensed as an escrow agency may, for an additional nonrefundable fee of two hundred dollars ($200), apply for the reinstatement of its previous license provided that he satisfies the renewal requirements of this section no later than the last business day of May immediately following expiration of such license.

30-909. FINANCIAL RESPONSIBILITY -- FIDELITY BOND -- ERRORS AND OMISSIONS POLICY -- SURETY BOND. At the time of filing an application for an escrow agency license, and at the time of any renewal or reinstatement of such license, the applicant or licensee shall provide satisfactory evidence to the director of having obtained the following as evidence of financial responsibility:

(1) A fidelity bond providing coverage in the aggregate amount of two hundred thousand dollars ($200,000) with a deductible no greater than ten thousand dollars ($10,000) covering the applicant or licensee, as well as each corporate officer, partner, managing member, escrow agent and employee of the applicant or licensee;

(2) An errors and omissions policy issued to the escrow agency providing coverage in the minimum aggregate amount of fifty thousand dollars ($50,000) or, alternatively, cash or securities in such amount deposited in a depository approved by the director on condition that they be available for payment of any claim payable under an equivalent errors and omissions policy in such amount; and

(3) A surety bond in an amount as set forth in paragraphs (a) through (f) of this subsection. The surety bond shall be in a form provided by the director and the applicant shall be named as principal. The bond shall be executed by the applicant as obligor and by a company authorized to do a surety business in Idaho. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted thereunder, and shall be liable for reimbursement to all persons who suffer loss by reason of a violation of this chapter or rules adopted thereunder. The surety bond provided shall be in an amount based upon the average month-end balance of

the escrow trust accounts of the applicant or licensee for the preceding calendar year, in increments as described in the following subsections:

(a) For average month-end escrow trust account balances of fifty thousand dollars ($50,000) or less, a surety bond in the amount of twenty thousand dollars ($20,000) is required;

(b) For average month-end escrow trust account balances of more than fifty thousand dollars ($50,000) but not more than two hundred fifty thousand dollars ($250,000), a surety bond in the amount of fifty thousand dollars ($50,000) is required;

(c) For average month-end escrow trust account balances of more than two hundred fifty thousand dollars ($250,000) but not more than five hundred thousand dollars ($500,000), a surety bond in the amount of one hundred thousand dollars ($100,000) is required;

(d) For average month-end escrow trust account balances of more than five hundred thousand dollars ($500,000) but not more than seven hundred fifty thousand dollars ($750,000), a surety bond in the amount of one hundred fifty thousand dollars ($150,000) is required;

(e) For average month-end escrow trust account balances of more than seven hundred fifty thousand dollars ($750,000) but not more than one million dollars ($1,000,000), a surety bond in the amount of two hundred thousand dollars ($200,000) is required;

(f) For average month-end escrow trust account balances of more than one million dollars ($1,000,000), a surety bond in the amount of two hundred fifty thousand dollars ($250,000) is required.

(4) The escrow agency licensee shall place on file with the director the surety bond and proof of its errors and omissions coverage and its fidelity bond, which bonds and insurance coverage shall be continuous during the period of licensure of the licensee whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced or modified, including increases or decreases in the penal sum. The surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond.

(5) The surety bond shall name as beneficiaries:

(a) The state, for payment of any costs incurred and charges made in connection with any escrow agency's insolvency or default, including costs and charges relating to an examination and receivership of any escrow agency; and

(b) Any person who has a claim against the surety on the bonds based on any default or violation of any duty or obligation of the escrow agency.

(6) In lieu of the bonds required by this section, a certificate of deposit issued by a financial institution authorized to conduct business in Idaho and made payable to the director may be provided to the director in the same principal amount as required for the bonds. The interest on the certificate of deposit shall be payable to the escrow agency licensee. The certificate of deposit shall be maintained at all times during which the licensee is authorized to engage in business as an escrow agency under this chapter, and must provide that it will remain in effect for at least three (3) years following discontinuance of operations unless released earlier by the director.

(7) The director may, in the public interest and for good cause shown, waive or modify any requirements of this section.

30-910. CANCELLATION OF FIDELITY BOND, SURETY BOND, OR BOTH -- NEW BOND REQUIRED. Prior to cancellation of either the fidelity bond or the surety bond required by section 30-909, Idaho Code, or both, the escrow agency licensee shall file with the director satisfactory evidence of a new bond in the appropriate amount with no lapse in coverage from the canceled bond. Failure to do so shall be grounds for the suspension or revocation of the escrow agency's license.

30-911. LIMITATION OF ACTIONS ON BOND. No action may be brought on an escrow agency licensee's bond by any person after the expiration of three (3) years from the time when the act or default complained of becomes known or should have become known.

30-912. TRANSFERABILITY. A license issued under this chapter is not transferable or assignable, and control of a license shall not be acquired through stock purchase or other device without the prior written consent of the director.

30-913. UNLAWFUL ACTS. Any person, except a person exempt under section 30-905, Idaho Code, who engages in activity as an escrow agency without first obtaining a license in accordance with this chapter, shall be guilty of a felony. Such person is also subject to a civil penalty in an amount no greater than five thousand dollars ($5,000) for each violation of this chapter or rule or order thereunder, in addition to other sanctions allowed by law.

30-914. ACCOUNTS TO BE MAINTAINED -- RECORDS OPEN TO INSPECTION -- RETENTION OF RECORDS -- TRUST ACCOUNT -- INTEREST ON ESCROW ACCOUNTS. (1) Each licensee shall maintain sufficient books, accounts and records readily accessible to the department for the department to determine at any time the licensee's financial condition, what duties and responsibilities the licensee has undertaken to perform and whether it is properly performing all such duties, and any other information considered necessary by the director to determine whether the licensee is operating in a safe, competent and lawful manner. The books, records and accounts shall be maintained in accordance with generally accepted accounting principles and sound business practice.

(2) For each individual escrow account, the licensee shall maintain the escrow agreement and all amendments, all instructions affecting the agreement, all related correspondence, and an individual ledger reflecting all activity pertinent to that account.

(3) Each licensee shall continuously maintain the following general accounts:

(a) A general ledger reflecting assets, liabilities, income, expenses and equity accounts;

(b) An escrow liability control ledger for all escrow accounts;

(c) A cash receipts and disbursements journal; and

(d) Copies of all receipts and disbursements used as a medium of posting to individual escrow accounts.

(4) (a) Every licensee shall keep a separate escrow trust fund account established at a financial institution located in Idaho, in which shall be kept separate, distinct and apart and segregated from the licensee's own funds, all funds or moneys of clients which are being held in trust by the licensee pending the closing of an escrow

transaction or the full performance of the escrow agreement. All trust funds shall be deposited not later than the first banking day following receipt thereof. Such funds, when deposited, shall be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the licensee.

(b) Every licensee shall maintain all other assets or property received pursuant to an escrow in accordance with a written escrow agreement in a manner which will reasonably preserve and protect the property from loss, theft or damage, and which will otherwise comply with all duties and responsibilities of a fiduciary or bailee generally.

(5) The records referenced in this section shall be reconciled at least monthly.

(6) All records referenced in this section shall be maintained by the licensee for seven (7) years following the close of each account.

(7) Any interest received on funds deposited with an escrow agency in connection with an escrow must be paid over to the depositing party to the escrow and may not be transferred to an account of the escrow agency. This section shall not limit the right of the escrow agency to contract with the depositing party with respect to the interest received on the deposits by independent agreement.

30-915. NOTICE OF CONFLICT OF INTEREST -- CLOSING STATEMENT. (1) An escrow agency licensee shall act without partiality to any of the parties to the escrow. An escrow agency may not close a transaction where it has, directly or indirectly, a monetary interest in the subject property either as buyer or seller. If an escrow agency has a business interest in the escrow transaction other than as the escrow agency licensee, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement shall appear as follows: "We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agency in this transaction, but you are, nevertheless, free to request the transaction be handled by some other escrow agency."

(2) On completion of an escrow transaction, the escrow agency licensee shall deliver to each principal a signed written closing statement. The closing statement shall show all receipts and disbursements relating to the escrow transaction. Any charges by, or disbursements to, the escrow agency shall be clearly noted.

30-916. ATTACHMENT. Funds or other value received by a licensee under this chapter pursuant to an escrow or trust funds are not subject to execution or attachment in any claim against the licensee.

30-917. EXAMINATION AND INVESTIGATIONS. (1) The director shall examine the books, records and accounts of each licensee, within or without the state of Idaho, at intervals he deems necessary for the protection of the public. The licensee so examined shall pay a fee for the examination at the rate fixed annually by the director, not to exceed fifty dollars ($50.00) per examination hour. If it is necessary for the examination to be conducted outside of Idaho, the actual cost of travel for the examiners shall be reimbursed to the department of finance by the licensee so examined. The director, upon his prior written approval,

may accept an equivalent examination of a licensee by another state or federal agency as a substitute for the examination pursuant to this section.

(2) The director may make necessary public or private investigations within or outside of Idaho to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter.

(3) For the purpose of any investigation or other proceeding under this chapter, the director or any officer designated by the director may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, and require the production of any matter which is relevant to the investigation or other proceeding, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions proposed by the investigating officer and upon reasonable notice to all persons affected thereby, the director may apply to any district court for an order compelling compliance.

(4) Except as otherwise provided in this chapter, all proceedings under this chapter shall be conducted in accordance with the administrative procedure act, chapter 52, title 67, Idaho Code.

30-918. POWERS AND DUTIES OF THE DIRECTOR. (1) In addition to any other powers and duties of the director authorized by law, the director may issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this chapter.

(2) The director shall also:

(a) Administer and enforce the provisions and requirements of this chapter; and

(b) Require that all funds collected by the department under this chapter be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

30-919. PROHIBITED PRACTICES. No escrow agency licensee or person required to be licensed under this chapter, or any of its officers, directors, members, general partners, employees or agents shall:

(1) Issue, circulate, make use of, publish or advertise, by any means of communication, that a person is engaged in accepting or receiving escrows if that person is not licensed under this chapter;

(2) Solicit or accept an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after signing or initialing of the escrow instruction or permitting any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion or alteration is signed or initialed by any affected party who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion or alteration;

(3) Fail to carry out an escrow transaction pursuant to the written escrow instructions unless amended by the written agreement of all parties to the escrow agreement or their assigns;

(4) Accept funds or papers in escrow without a dated, written instruction signed by the parties, or their authorized representatives, adequate to administer the escrow account and to provide for sufficient funds and documents to carry out the terms of the escrow instructions. Funds and documents deposited shall be used only in accordance with such written instruction; provided that if additional specific instructions are needed, the escrow agency shall obtain the consent of both parties or such representatives to the escrow or an order of a court of competent jurisdiction at the expense of the escrow parties;

(5) Fail to promptly distribute funds, deeds or other personal property or instruments pursuant to escrow instructions;

(6) Fail to submit to an examination by the department of its books, records and accounts, or refuse to provide to the department, within a reasonable time, all information requested by the department pursuant to this chapter;

(7) Fail to deliver, without reasonable cause, within a reasonable time after the close of an escrow, to the respective parties of an escrow transaction, any money, documents or other properties held in escrow in violation of the provisions of the escrow instructions;

(8) Directly or indirectly employ any scheme, device or artifice to defraud or mislead any person or engage in any unfair or deceptive practice toward any person;

(9) Fail to supervise diligently and control the escrow-related activities of its agents, employees and independent contractors;

(10) Engage in fraudulent or dishonest abstraction or misappropriation or embezzlement of funds or other property held in trust;

(11) Pay a fee or give any portion of its fees or charges, including fees for escrow services or other consideration, to any person as an inducement or as compensation for the referral of any escrow business; or

(12) Disburse funds or deliver documents from an escrow for recording or otherwise unless the escrow contains a credit balance consisting of collected funds, other than funds of the escrow agency or its affiliates, sufficient to discharge all monetary conditions of the escrow. This requirement does not apply to escrows established for the purpose of receiving two (2) or more periodic payments over a total period of time after establishment in excess of thirty (30) days.

30-920. REMEDIES. (1) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order thereunder, is conducting its business in an unsafe and injurious manner, or that its capital or assets are impaired, the director may in his discretion:

(a) Order the person to cease and desist from the violation of any provision of this chapter, rule or order thereunder;

(b) Issue an order revoking or suspending the licensee's escrow agency license;

(c) After notice and the opportunity for a hearing, except as otherwise provided in this chapter, issue an order imposing a civil penalty not to exceed five thousand dollars ($5,000) for each violation of this chapter or any rule or order thereunder.

(2) In addition to such remedies, the director may bring an action in the fourth district court in and for Ada county or in such other

court as the director deems appropriate. Upon a proper showing, the court may:

(a) Grant a temporary restraining order, followed by a preliminary injunction and a permanent injunction for the department or receiver to exercise control of, operate or liquidate an escrow agency's business in this state, or such other injunctive relief as appropriate; and

(b) Except as otherwise provided by this chapter, impose a civil penalty not to exceed five thousand dollars ($5,000) for each violation.

(3) The court may not require the director to post a bond.

30-921 -- 30-930. RESERVED.

30-931. NO IMPAIRMENT OF OTHER REMEDIES. Nothing in this chapter shall be construed so as to impair or affect any statutory or common law right of any person to bring an action in any court having jurisdiction for any act involved in the transaction of an escrow business or the right of the state of Idaho to sanction any person for any violation of any provision of this chapter.

30-932. CONTINUING JURISDICTION. If a license under this chapter is surrendered, suspended or revoked, the former licensee shall continue to be subject to the provisions of this chapter and to the duties previously undertaken for so long as it acts as a fiduciary with respect to any escrow previously undertaken.

30-933. STATUS OF PREEXISTING ESCROWS. Nothing contained in this chapter shall be so construed as to impair or affect the obligation of any escrow agreement that was lawfully entered into prior to the effective date of this act.

30-934. 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.

30-935. INITIAL LICENSING AND COMPLIANCE. A person who conducts any of the activities set forth in section 30-902(4), Idaho Code, shall, within one hundred twenty (120) days following the effective date of this act, apply to the department for a license.

SECTION 3. That Section 45-1504, Idaho Code, be, and the same is hereby amended to read as follows:

45-1504. TRUSTEE OF TRUST DEED -- WHO MAY SERVE -- SUCCESSORS. (1) The trustee of a trust deed under this act shall be:

(a) Any member of the Idaho state bar;

(b) Any bank or savings and loan association authorized to do business under the laws of Idaho or the United States;

(c) An authorized trust institution having a charter under chapter 32, title 26, Idaho Code, or a~~A~~ny corporation authorized to conduct a trust business under the laws of ~~Idaho or~~ the United States; or

(d) A licensed title insurance agent or title insurance company authorized to transact business under the laws of the state of Idaho.

(2) ~~In the event of death, dissolution, incapacity, disability or resignation of the trustee, the beneficiary may nominate in writing another qualified trustee. Provided, however, that the beneficiary may, for any reason obtain the resignation of the trustee by serving upon the trustee and the grantor in the deed of trust, at their last known address, a notice of intention to appoint a successor trustee. Said notice shall be given by registered or certified mail, and twenty (20) days after the date of mailing the notice of intention to appoint a successor trustee the beneficiary may nominate a successor trustee. Upon recording in the mortgage records of the county or counties in which the trust deed is recorded of the appointment of a successor trustee, the successor trustee shall be vested with all of the powers of the original trustee. Provided that a trustee may not be changed at the beneficiary's nomination after foreclosure has commenced by the filing of the notice of default and is proceeding timely~~ The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

Approved April 1, 2005.

CHAPTER 237
(H.B. No. 160, As Amended)

AN ACT

RELATING TO STANDARD FIRE POLICIES; AMENDING SECTION 41-2401, IDAHO CODE, TO PROVIDE THAT COMMERCIAL STANDARD FIRE INSURANCE POLICIES MAY EXCLUDE COVERAGE FOR LOSS BY FIRE OR OTHER PERILS INSURED AGAINST IF THE FIRE OR OTHER PERILS ARE CAUSED DIRECTLY OR INDIRECTLY BY TERRORISM.

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

SECTION 1. That Section 41-2401, Idaho Code, be, and the same is hereby amended to read as follows:

41-2401. STANDARD FIRE POLICY. (1) No fire insurer shall issue any fire insurance policy covering on property or interest therein in this state, other than on the form known as the New York standard as revised in 1943, except as follows:

(a) An insurer may print on or in its policy its name, location, date of incorporation, plan of operation, whether stock, mutual, reciprocal or organized under special charter provisions, and if mutual or reciprocal whether on cash premium or assessment plan; and if it be a stock company, the amount of its paid up capital stock, the names of its officers and agents, the number and date of the policy, and, if it is issued by an agent, the words, "this policy shall not be valid until countersigned by the duly authorized agent of the company at ...."; and, if a mutual or reciprocal insurer, the policy must state the contingent liability, if any, of its policyholders, members, or subscribers for payment of losses and expenses not provided for by its cash funds.

(b) An insurer may print or use in its policies printed forms of description and specifications of the property insured.

(c) An insurer insuring against damage by lightning may print in the clause enumerating the perils insured against the additional words, "also any damage by lightning whether fire ensues or not," and in the clause providing for an apportionment of loss in case of other insurance the words, "whether by fire, lightning or both."

(d) A domestic insurer may print in its policies any provisions which it is authorized or required by the law to insert therein, and any foreign insurer may, with the approval of the director, so print any provision required by its charter or deed of settlement, or by the laws of its own state or country, not contrary to the laws of this state; but the director shall require any provision which, in his opinion modifies the contract of insurance in such a way as to affect the question of loss, to be appended to the policy by an endorsement or rider as hereinafter provided.

(e) The blanks in the standard form may be completed in print or in writing.

(f) An insurer may print upon policies issued in compliance with the preceding provisions of this section the words, "Idaho standard policy."

(g) An insurer may write upon the margin or across the face of the policy, or write or print in type not smaller than nonpareil upon a slip, slips, rider or riders to be attached thereto, provisions adding to or relating to those contained in the standard form; and all such slips, riders, endorsements and provisions must be signed by the officers or agents of the insurer so using them.

(h) If the policy be made by a mutual, reciprocal or other insurer having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance such regulations shall apply to and form a part of the policy as the same may be written or printed upon, attached or appended thereto.

(i) Every policy shall have legibly inscribed upon its face and filing back suitable words to designate whether the insurer making such insurance be a stock, mutual or reciprocal insurer, provided, that any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.

(j) Every fire policy shall contain language that provides for a thirty (30) day written notice to the insured prior to cancellation of the policy.

(k) Every fire policy shall provide that it becomes effective at 12:01 a.m. of the standard time of the place where the property covered by the insurance is located, on the effective date of the policy.

(2) An insurer issuing the standard fire policy is authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under the policy; but nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination.

(3) The standard fire policy is not mandatory for vehicle insurance, or for marine insurance, or inland marine insurance as the same is defined pursuant to section 41-1401(2), Idaho Code, or for insurance on growing crops.

(4) Any policy or contract otherwise subject to the provisions of subsection (1) hereof, which includes either on an unspecified basis as to the coverage or for a single premium coverage against the peril of fire and substantial coverage against other perils need not comply with the provisions of subsection (1) hereof, provided:

(a) Such policy or contract shall afford coverage, with respect to the peril of fire, not less than the coverage afforded by such standard fire policy,

(b) The provisions in relation to mortgagee interests and obligations in such standard fire policy shall be incorporated therein without change,

(c) Such policy or contract is complete as to all of its terms without reference to the standard form of fire insurance policy or any other policy, and

(d) The director is satisfied that such policy or contract complies with the provisions hereof.

(5) With respect to a commercial insurance policy, such standard fire insurance policy may exclude coverage for loss by fire or other perils insured against if the fire or other perils are caused directly or indirectly by terrorism. As used in this section, the term "terrorism" means a violent act or an act that:

(a) Is dangerous to human life, property or infrastructure;

(b) Results in damage within the United States, or outside of the United States in the case of an air carrier or vessel or the premises of a United States mission; and

(c) Is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States government by coercion.

Approved April 1, 2005.

CHAPTER 238
(H.B. No. 197, As Amended)

AN ACT

RELATING TO AGRICULTURAL AND FARM EQUIPMENT AND CONTRACTS; AMENDING SECTION 28-23-101, IDAHO CODE, TO PROVIDE FOR THE PAYMENT OR CREDIT FOR DEMONSTRATION OR RENTAL EQUIPMENT THAT HAS NOT BEEN RETAILED TO AN END USER, TO PROVIDE FOR REPURCHASE OF DATA PROCESSING MATERIALS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-23-102, IDAHO CODE, TO REVISE THE PROCEDURES AND CREDITS FOR REPURCHASE OF REPAIR PARTS, REPAIR MANUALS, SPECIALIZED REPAIR TOOLS AND SIGNAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-23-105, IDAHO CODE, TO PROVIDE FOR ONE HUNDRED PERCENT CURRENT NET PRICE FOR MANUALS AND REPAIR MANUALS AND REASONABLE REIMBURSEMENT FOR SERVICES PERFORMED IN CONNECTION WITH ASSEMBLY AND PREDELIVERY INSPECTIONS OF THE EQUIPMENT, TO PROVIDE VENUE FOR CAUSES OF ACTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-23-106, IDAHO CODE, TO PROVIDE APPLICATION TO TRANSPORTATION CHARGES WHICH HAVE BEEN PAID BY THE RETAILER OR INVOICED TO THE RETAILER'S ACCOUNT, TO PROVIDE APPLICATION TO MULTIPLE PARTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-23-108, IDAHO CODE, TO INCREASE NOTICE PROVISIONS TO NINETY DAYS, TO PROVIDE FOR NOTICE REGARDING ACCESSORIES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-24-102, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 28-24-103, IDAHO CODE, TO REVISE UNLAWFUL ACTS AND PRACTICES REGARDING EQUIPMENT DEALERS; AMENDING SECTION 28-24-104, IDAHO CODE, TO REVISE TIME PERIODS FOR A DEALER TO CURE A DEFICIENCY, TO PROVIDE PROCEDURES PRIOR TO THE TERMINATION OR NONRENEWAL OF A DEALER AGREEMENT AND TO MAKE A TECHNICAL CORRECTION; AMENDING PART 1, CHAPTER 24, TITLE 28, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 28-24-104A, 28-24-104B, 28-24-104C, 28-24-104D AND 28-24-104E, IDAHO CODE, TO PROVIDE THE ESTABLISHMENT OF A NEW DEALERSHIP AND THE SUPPLIER'S DUTIES, TO PROVIDE FOR WARRANTY CLAIMS, TO PROVIDE FOR AUDIT OF WARRANTY CLAIMS, TO PROVIDE FOR ARBITRATION AND TO PROVIDE FOR SUCCESSORS IN INTEREST; AND AMENDING SECTION 28-24-105, IDAHO CODE, TO INCLUDE DATA PROCESSING SOFTWARE IN REMEDIES AND ENFORCEMENT PROVISIONS, TO PROVIDE VENUE FOR CAUSES OF ACTION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 28-23-101, Idaho Code, be, and the same is hereby amended to read as follows:

28-23-101. REPURCHASE OF FARM MACHINERY, IMPLEMENTS, ATTACHMENTS, ACCESSORIES AND PARTS UPON TERMINATION OF CONTRACT AND OBLIGATION TO REPURCHASE. Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements enters into a written or parol contract, sales agreement or security agreement whereby the retailer agrees with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, accessories or repair parts to maintain a stock of parts which may include, but is not limited to, complete or whole machines, or attachments, or demonstration and rental equipment and thereafter the written

or parol contract, sales agreement or security agreement is terminated, ~~cancelled~~ canceled or discontinued, then the wholesaler, manufacturer, or distributor shall pay to the retailer or credit to the retailer's account, if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, unless the retailer should desire and has a contractual right to keep such merchandise, a sum equal to one hundred ~~per-cent~~ percent (100%) of the net cost of all unused complete farm implements, machinery and repair parts and stock of parts, attachments in new condition which have been purchased by the retailer from the wholesaler, manufacturer or distributor within the thirty-six (36) months immediately preceding notification by either party of intent to cancel or discontinue the contract, including the transportation charges to the retailer. ~~and-from-the-retailer-to-the-destination-designated-by the-wholesaler,-manufacturer,-or-distributor,-which-have--been--paid--by the-retailer,-or-invoiced-to-retailer's-account-by-the-wholesaler,-manufacturer--or--distributor~~ The payment or credit for demonstration or rental equipment that has not been retailed to an end user is a sum equal to the depreciated value of the equipment to which the supplier and the retailer have agreed. The wholesaler, manufacturer, or distributor shall pay to the retailer a reasonable reimbursement for services performed in connection with the assembly and predelivery inspections of the farm equipment and attachments. The supplier assumes ownership of farm implements, machinery and repair parts and stock FOB the dealer location.

A supplier must repurchase any specific data processing hardware, software, telecommunications equipment and computer communications hardware specifically required by the supplier to meet the supplier's minimum requirements and purchased by the dealer in the prior five (5) years and held by the dealer on the date of termination. The purchase price is the original net cost to the dealer, less twenty percent (20%) per year.

SECTION 2. That Section 28-23-102, Idaho Code, be, and the same is hereby amended to read as follows:

28-23-102. REPURCHASE OF REPAIR PARTS. Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements enters into a written or parol contract, sales agreement or security agreement whereby the retailer agrees with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, accessories or repair parts to maintain a stock of parts or complete or whole machines, or attachments, manuals and repair manuals and thereafter the written or parol contract, sales agreement or security agreement is terminated, ~~cancelled~~ canceled or discontinued, then the wholesaler, manufacturer, or distributor shall pay to the retailer or credit to the retailer's account, if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, unless the retailer should desire and has a contractual right to keep such merchandise, a sum equal to one hundred ~~per-cent~~ percent (100%) of the current net prices, including the transportation charges from the retailer to the ~~destination,-which-shall-include-a-mailing address,-designated--by--the--wholesaler,--manufacturer--or--distributor within--fifteen--(15)--days-of-said-termination,-cancellation-or-discontinuance,~~ wholesaler, manufacturer or distributor which have been paid by the retailer, or invoiced to a retailer's account by the wholesaler,

manufacturer or distributor, on manuals and repair manuals, repair parts, including superseded or previously included parts listed in current price lists or catalogs or electronic catalogs in use, or previously used within thirty-six (36) months prior to the latest parts price list issue date by the wholesaler, manufacturer or distributor on the date of cancellation or discontinuance of the contract, which parts had previously been purchased by the retailer from the wholesaler, manufacturer, or distributor and are held by the retailer on the date of the cancellation or discontinuance of the contract or thereafter received by the retailer from the wholesaler, manufacturer or distributor.

The wholesaler, manufacturer, or distributor shall also pay the retailer or credit to his account a sum equal to five ~~per--cent~~ percent (5%) of the current net price of all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor unless the wholesaler, manufacturer or distributor elects to perform inventorying, packing and loading of the parts ~~itself~~ themselves.

Upon the payment or allowance of credit to the retailer's account of the sum required by this section and section 28-23-101, Idaho Code, the title to the farm implements, farm machinery, attachments, accessories or repair parts shall pass to the manufacturer, wholesaler or distributor making the payment or allowing the credit and the manufacturer, wholesaler or distributor shall be entitled to the possession of the farm implements, machinery, attachments, accessories or repair parts. Title to farm implements, attachments, accessories and repair parts is transferred to the supplier FOB the dealer location. The provisions of this section shall apply to any part return adjustment agreement made between a dealer and a supplier. All payments or allowances of credit due retailers under this section shall be paid or credited by the manufacturer, wholesaler, or distributor within ninety (90) days after the return of the farm implements, farm machinery, attachments, accessories or repair parts. After the ninety (90) days all sums of credits due shall include interest at the rate specified in section 28-22-104(1), Idaho Code. However, this section and section 28-23-101, Idaho Code, shall not in any way affect any security interest which the wholesaler, manufacturer or distributor may have in the inventory of the retailer.

A supplier shall repurchase at one hundred percent (100%) of net dealer cost, manuals and repair manuals purchased in the previous six (6) years and at fifty percent (50%) for manuals and repair manuals purchased in the previous seven (7) through twelve (12) years as required by the supplier and held by the dealer on the date of termination. Manuals and repair manuals must be unique to the supplier's product line and must be in complete and in readable condition.

A supplier must repurchase, and the dealer must sell to the supplier, specialized repair tools. As applied in this section, "specialized repair tools" is defined as those tools required by the supplier and unique to the diagnosis or repair of the supplier's products. For specialized repair tools that are in new, unused condition and are applicable to the supplier's current products, the purchase price is one hundred percent (100%) of the original net cost to the dealer. For all other specialized repair tools, in complete and resalable condition, the purchase price is the original net cost to the dealer less twenty percent (20%) per year depreciation, but not less than fifty percent (50%) of the original purchase price.

A supplier must repurchase, and the dealer must sell to the supplier, current signage. As used in this section, "current signage" means the principal outdoor signage required by the supplier that displays the supplier's current logo or similar exclusive identifier, and that identifies the dealer as representing either the supplier or the supplier's products, or both. The purchase price shall be the original net cost to the dealer less twenty percent (20%) per year, but may in no case be less than fifty percent (50%) of the original cost to the dealer.

SECTION 3. That Section 28-23-105, Idaho Code, be, and the same is hereby amended to read as follows:

28-23-105. FAILURE TO PAY SUMS SPECIFIED ON CANCELLATION OF CONTRACTS -- LIABILITY. In the event that any manufacturer, wholesaler, or distributor of farm implements, machinery, attachments, accessories and repair parts, upon the cancellation of a contract by either a retailer or such manufacturer, wholesaler or distributor, fails or refuses to make payment to the dealer or his heir or heirs as required by this section, the manufacturer, wholesaler or distributor shall be liable in a civil action to be brought by the retailer or his heir or heirs for (a) one hundred ~~per cent~~ percent (100%) of the net cost of the farm implements, machinery, ~~and~~ attachments and accessories, (b) transportation charges required in sections ~~28-23-101 and~~ 28-23-102, Idaho Code, which have been paid by the retailer, or invoiced to the retailer's account, (c) one hundred ~~per cent~~ percent (100%) of the current net price of repair parts, ~~and~~ (d) five ~~per cent~~ percent (5%) for handling, packing and loading, if applicable, (e) one hundred percent (100%) of the current net price for manuals and repair manuals, and (f) reasonable reimbursement for services performed in connection with assembly and predelivery inspections of the equipment. A person, firm or corporation which brings an action under this section must commence the action in the county in which the principal place of business of the retailer is located.

SECTION 4. That Section 28-23-106, Idaho Code, be, and the same is hereby amended to read as follows:

28-23-106. EXCEPTIONS. This act shall not require the repurchase from a retailer of a repair part where the retailer previously has failed to return the repair part to the wholesaler, manufacturer or distributor after being offered a reasonable opportunity to return the repair part at a price not less than one hundred ~~per cent~~ percent (100%) of the net price of the repair part as listed in the then current price list or catalog, and transportation charges required in section 28-23-102, Idaho Code, which have been paid by the retailer, or invoiced to the retailer's account. This act shall not require the repurchase from a retailer of repair parts ~~which have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets and batteries; repair parts in broken or damaged packages; single repair parts priced as a set of two (2) or more items; and repair~~ the retailer purchased in a set of multiple parts, unless the set is complete and in resalable condition and parts which because of their condition are not resalable ~~as new parts~~ without ~~new packaging or~~ reconditioning.

SECTION 5. That Section 28-23-108, Idaho Code, be, and the same is hereby amended to read as follows:

28-23-108. GUARANTY AND SECURITY AGREEMENT NOTICE REQUIREMENTS. All wholesalers, manufacturers, or distributors of farm implements, machinery, attachments, accessories or repair parts shall give the retailer a minimum of ~~sixty~~ ninety (690) days' notice in writing and obtain consent from the dealer before changing the time and manner of payment of any indebtedness owed by retailer to manufacturer, distributor or wholesaler, and before taking and making any changes in notes or security for any indebtedness, and before releasing or adding additional guarantors, and before granting renewals or extensions of such indebtedness.

SECTION 6. That Section 28-24-102, Idaho Code, be, and the same is hereby amended to read as follows:

28-24-102. DEFINITIONS. As used in this chapter:

(1) "Assigned area of responsibility" means the geographic region for which a particular dealer is responsible for the marketing, selling, leasing or servicing of equipment pursuant to a dealer agreement as assigned by the supplier.

(2) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by supplier.

(~~2~~3) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute or service the supplier's equipment, where there is a continuing commercial relationship between the supplier and the equipment dealer.

(4) "Demonstration and/or rental equipment" is equipment that has been used but has not been sold to an end user.

(~~3~~5) "Equipment" means machines designed for or adapted and used for agriculture, horticulture, livestock and grazing and related industries but not exclusive to agricultural use. Equipment also includes:

(a) "All-terrain vehicles" or "ATVs," including three-wheeled and four-wheeled motorized vehicles, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering. All-terrain vehicles are intended for off-road use.

(b) "Outdoor power equipment" means equipment powered by a two-cycle or four-cycle gas or diesel engine, or electric motor, which is used to maintain commercial, public or residential lawns and gardens or used in landscape, turf, golf course or plant nursery maintenance.

(~~4~~6) "Equipment dealer" or "equipment dealership" means any person, partnership, corporation, association or other form of business enterprise, primarily engaged in the retail sale and/or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services.

(~~5~~7) "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided, such require-

ments are not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement.

(68) "Supplier" means the manufacturer, wholesaler or distributor of the equipment to be sold by the equipment dealer, or any successor in interest to or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, any receiver or any trustee of the original supplier.

(9) "Warranty claim" means a claim for payment submitted by an equipment dealer to a supplier for service or parts, or both, provided to a customer under a:

(a) Warranty issued by the supplier; or

(b) Recall or modification order issued by the supplier.

SECTION 7. That Section 28-24-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-24-103. DEALER AGREEMENTS -- UNLAWFUL ACTS AND PRACTICES. It shall be a violation of the provisions of this chapter for a supplier to:

(1) Require or attempt to require any equipment dealer to order or accept delivery of any equipment or parts or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the equipment dealer has not voluntarily ordered;

(2) Require or attempt to require any equipment dealer to enter into any agreement, whether written or oral, supplementing or amending an existing dealer agreement with such supplier unless such amendment or supplementary agreement is imposed on other similarly situated dealers in the state;

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the equipment dealer's order, to any equipment dealer having a dealer agreement for the retail sale of new equipment sold or distributed by such supplier, equipment covered by such dealer agreement specifically advertised or represented by such supplier to be available for immediate delivery. The failure to deliver any such equipment shall not be considered a violation of the provisions of this chapter when deliveries are based on prior retail sales ordering histories, the priority given to the sequence in which the orders are received or manufacturing schedules or if such failure is due to prudent and reasonable restriction on extension of credit by the supplier to the equipment dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo or other cause over which the supplier has no control;

(4) Terminate, cancel or fail to renew the dealer agreement of any equipment dealer or substantially change the competitive circumstances of the dealer agreement, attempt to terminate or cancel, or threaten not to renew the dealer agreement or attempt or threaten to substantially change the competitive circumstances of the dealer agreement without good cause. Nothing in this paragraph shall be interpreted to apply to a discontinuation of or change in the product line of an equipment dealer;

(5) Condition the renewal, continuation or extension of a dealer agreement on the equipment dealer's substantial renovation of the equip-

ment dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the equipment dealer, unless:

(a) The supplier has advised the equipment dealer in writing of its demand for such renovation, construction, purchase, acquisition or rental within a reasonable time prior to the effective date of the proposed date of renewal or extension, but in no case less than one (1) year; and

(b) The supplier demonstrates the need for such change in the place of business and the reasonableness of the demand with respect to marketing and servicing the supplier's products and any significant economic conditions existing at the time in the equipment dealer's trade area, and the equipment dealer does not make a good faith effort to complete such construction or renovation plans within one (1) year.

(6) Discriminate in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers in this state where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in a line of commerce. The provisions of this subsection do not prevent the use of differentials which make only due allowance for differences in the cost of manufacture, sale or delivery of equipment resulting from the differing methods or quantities in which such equipment is sold or delivered; provided that nothing shall prevent a supplier from offering a lower price in order to meet an equally low price of a competitor, or the services or facilities furnished by a competitor;

(7) Unreasonably withhold consent for an equipment dealer to change the capital structure of the equipment dealership or the means by which it is financed, provided that the equipment dealer meets the reasonable capital requirements of the supplier;

(8) Prevent, by contract or otherwise, any equipment dealer or any officer, member, partner or stockholder of an equipment dealership from selling, assigning, or transferring any interest or portion thereof held by any of them in the equipment dealership to any other person or party; provided, however, that no equipment dealer, officer, partner, member or stockholder shall have the right to sell, transfer, or assign the equipment dealership or the power of management or control thereof without the written consent of the supplier, except that such consent shall not be unreasonably withheld if the buyer, transferee, or assignee meets the reasonable financial, business experience and character standards of the supplier. Should a supplier determine that the designated transferee is not acceptable, the supplier shall provide the equipment dealer with written notice of the supplier's objections and specific reasons for withholding its consent within thirty (30) calendar days of receipt of notice from the equipment dealer;

(9) Require an equipment dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this chapter;

(10) (a) Unreasonably withhold consent, in the event of the death of the equipment dealer or the principal owner of the equipment dealership, to the transfer of the equipment dealer's or the principal owner's interest in the equipment dealership to ~~a member or members of the family of the equipment dealer or of the principal owner or to~~ another ~~qualified~~ individual, if the ~~family member or other~~

~~qualified~~ individual meets the reasonable financial, business experience and character standards of the supplier. A supplier shall have sixty (60) days to consider a request to make a transfer to ~~a family-member-or-other-qualified~~ an individual. If, within that period, the supplier determines that the ~~designated-family-member-or other--qualified~~ individual does not meet the reasonable financial, business experience and character standards of the supplier, it shall provide the ~~designated-family-member-or-other-qualified-individual~~ dealership, heirs to the dealership, or the estate of the dealer with written notice of its objection and the specific reasons for withholding its consent. If the ~~family-member-or-other-qualified~~ individual reasonably satisfies the supplier's objections within sixty (60) days after notice thereof, the supplier shall approve the transfer. ~~As-used-in-this-paragraph,-"family"-means-and--includes--a spouse,--parents;--siblings;--children;--step-children;-sons-in-law; daughters-in-law;-and-lineal-descendants;-including-those--by--adoption--of--the--equipment--dealer-or-principal-owner-of-the-equipment dealership.~~ Nothing in this paragraph shall entitle a ~~family--member or--other~~ qualified individual to continue to operate the dealership without the consent of the supplier.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, in the event that a supplier and equipment dealer have duly executed an agreement concerning succession rights prior to the equipment dealer's death, and if such agreement has not been revoked, such agreement shall be observed.

(11) Cause the equipment dealer to refrain from participation in the management, investment, acquisition or sale of any other related product or product line of equipment, parts or accessories, from the same or separate locations;

(12) Fail to compensate a dealer for preparation and delivery of equipment that the supplier sells or leases for use within this state and that the dealer prepares for delivery and delivers.

SECTION 8. That Section 28-24-104, Idaho Code, be, and the same is hereby amended to read as follows:

28-24-104. TERMINATION OF DEALER AGREEMENT OR CHANGE OF EQUIPMENT DEALER'S COMPETITIVE CIRCUMSTANCES -- NOTICE -- GOOD CAUSE. (1) A supplier shall provide written notice to the equipment dealer of any proposed termination or nonrenewal of a dealer agreement or substantial change in the competitive circumstances of a dealer agreement. The notice shall state the reason(s) constituting good cause for the action proposed to be taken. Except where good cause is alleged under the provisions of paragraphs (a) through (e) of subsection (2) of this section, such notice shall be provided to the equipment dealer not less than ninety (90) days before the proposed action is to become effective. Except where good cause is alleged under paragraphs (a) through (d) of subsection (2) of this section, the equipment dealer shall be given ~~sixty~~ ninety (~~60~~90) days within which to cure any claimed deficiency, and the notice shall advise the dealer of his right to cure. If the claimed deficiency is rectified within ~~sixty~~ ninety (~~60~~90) days, the notice shall be void and the proposed action shall not become effective. Notwithstanding the equipment dealer's failure to cure the deficiency or deficiencies claimed, where a ninety (90) day notice is required to be given

by the supplier, the contractual term of the dealer agreement shall not expire, nor shall the dealer agreement be otherwise terminated or ~~canceled~~ canceled, nor shall the equipment dealer's competitive circumstances be substantially changed prior to the expiration of at least ninety (90) days following such notice without the written consent of the equipment dealer.

(2) As used in this chapter, "good cause" shall exist, but not be limited to the following circumstances when the equipment dealer has:

(a) Transferred a controlling ownership interest in the equipment dealership without the supplier's consent;

(b) Made a material misrepresentation to the supplier;

(c) Filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the equipment dealer which has not been discharged within ~~sixty~~ ninety (~~6~~90) days after the filing; is in default under the provisions of a security agreement in effect with the supplier; or is insolvent or in receivership;

(d) Been convicted of a crime, punishable for a term of imprisonment for one (1) year or more;

(e) Failed to operate in the normal course of business for ten (10) consecutive business days or has terminated said business;

(f) Relocated the equipment dealer's place of business without the supplier's consent;

(g) ~~Consistently engaged in business practices which are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, failure to provide service and replacement parts or perform warranty obligations;~~

~~(h)~~ Inadequately represented the supplier over a one (1) year ~~of such~~ period of time or length of time ~~period specified in the dealer agreement causing lack of performance in sales, service or warranty areas and failed to achieve market penetration at levels consistent with similarly situated equipment dealerships in the state based on available record information~~ or a time mutually agreed upon between the supplier and dealer to reflect the ongoing market conditions;

(~~i~~h) Consistently failed to meet building and housekeeping requirements, or has failed to provide adequate sales, service or parts personnel commensurate with the ~~the~~ dealer agreement;

(~~j~~i) Failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf;

(~~k~~j) Materially failed to comply with the terms of the dealer agreement.

(3) Notwithstanding the provisions of subsection (2) of this section, before the termination or nonrenewal of a dealer agreement based upon a supplier's claim that the dealer has failed to achieve market penetration at levels consistent with similarly situated dealerships in the state, the supplier shall provide written notice of its intention at least one (1) year in advance.

(a) After issuance of such a notice, the supplier shall provide fair and reasonable efforts to work with the dealer to assist the dealer in gaining the required market penetration including, but not limited to, making available to the dealer an adequate inventory of new equipment and parts, and not withhold programs available to all dealers.

(b) Upon the end of the one (1) year period established in this

subsection (3), the supplier may terminate or elect not to renew the dealer agreement only upon written notice specifying the reasons for determining that the dealer failed to meet reasonable market penetration. The notice must specify that termination or nonrenewal is effective one hundred eighty (180) days from the date of the notice and that either party may petition the court.

(c) A supplier bears the burden of proving that a retailer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support the retailer. The supplier's proof must be in writing.

SECTION 9. That Part 1, Chapter 24, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 28-24-104A, 28-24-104B, 28-24-104C, 28-24-104D and 28-24-104E, Idaho Code, and to read as follows:

28-24-104A. ESTABLISHMENT OF NEW DEALERSHIP -- SUPPLIER'S DUTIES. When a supplier enters into an agreement to establish a new dealer or dealership or to relocate a current dealer or dealership for a particular product line or make of equipment, the supplier must give written notice of such an agreement by certified mail to all existing dealers or dealerships whose assigned area of responsibility is contiguous to the new dealer or dealership location. If no area of responsibility has been assigned then the supplier must give written notice of such an agreement by certified mail to the dealers or dealerships within a seventy-five (75) mile radius of the new dealer location. The supplier must provide in its written notice the following information about the proposed new or relocated dealer or dealership:

(1) The proposed location;

(2) The proposed date for commencement of operation at the new location; and

(3) The identities of all existing dealers or dealerships whose assigned area of responsibility is contiguous to the new dealer or dealership location. If no area of responsibility has been assigned then the supplier must give written notice of such an agreement by certified mail to the dealers or dealerships located within a seventy-five (75) mile radius of the new dealer location.

28-24-104B. WARRANTY CLAIMS. (1) An equipment dealer may submit a warranty claim to a supplier if a warranty defect is identified and documented prior to the expiration of a supplier's warranty:

(a) While a dealer agreement is in effect; or

(b) After the termination of a dealer agreement if the claim is for work performed while the dealer agreement was in effect.

(2) A supplier shall accept or reject a warranty claim submitted under subsection (1) of this section, within thirty (30) days of the date the supplier received the claim. A warranty claim not rejected within thirty (30) days of the date the supplier received the claim is considered to be accepted by the supplier.

(3) No later than thirty (30) days after the date a warranty claim is accepted or rejected under subsection (2) of this section, the supplier shall:

(a) Pay an accepted warranty claim; or

(b) Send the dealer written notice of the reason the warranty claim was rejected.

(4) A supplier shall compensate the dealer for the warranty claim as follows:

(a) The dealer's established customer hourly retail labor rate multiplied by the reasonable and customary amount of time required to complete such work by similarly situated dealers, including diagnostic time, and cleanup time, expressed in hours and fractions of an hour;

(b) The dealer's current net price on repair parts reimbursed at not less than net plus twenty percent (20%) of the cost for warranty service performed on behalf of the supplier to compensate for reasonable costs of doing business; and

(c) Extraordinary freight and handling costs. For purposes of this subsection (4)(c), "extraordinary freight and handling costs" means costs that are above and beyond the normal reimbursement policy of the supplier for warranty repair work;

(d) When the repair work is for safety or mandatory modifications ordered by the supplier, the supplier shall reimburse the dealer for transportation costs incurred by the dealer.

(5) After payment of a warranty claim, a supplier may not charge back, off-set or otherwise attempt to recover from the dealer all or part of the amount of the claim unless:

(a) The warranty claim was submitted in error;

(b) The services for which the warranty claim was made were not properly performed or were unnecessary to comply with the warranty; or

(c) The dealer did not substantiate the warranty claim according to the written requirements of the supplier that were in effect when the equipment was delivered to the dealer by the customer for warranty repairs.

(6) If a supplier denies a warranty claim due to a particular item or part of the claim, the denial shall only affect the items or parts in question and not the complete warranty claim.

(7) A supplier may not pass the cost of covering warranty claims under this chapter on to a dealer through any means including:

(a) Surcharges;

(b) Reduction of discounts; or

(c) Certification standards.

(8) Notwithstanding the provisions of subsection (4) of this section, a dealer may accept the supplier's reimbursement terms and conditions in lieu of the terms and conditions set forth in subsection (4) of this section.

28-24-104C. AUDIT OF WARRANTY CLAIMS. A supplier may not audit a dealer's records with respect to any warranty claim submitted more than two (2) years before the date of the audit.

28-24-104D. ARBITRATION. Any party to a retailer agreement aggrieved by the conduct of the other party to the agreement under sections 28-23-101 through 28-23-111, Idaho Code, or under part 1, chapter 24, title 28, Idaho Code, may seek arbitration of the issues under sections 7-901 through 7-922, Idaho Code. Unless the parties agree to different arbitration rules, the arbitration shall be conducted in Idaho

pursuant to the commercial arbitration rules of the American arbitration association. When the parties agree, the arbitration shall be the parties' only remedy and the findings and conclusions of the arbitrator or panel of arbitrators shall be binding upon both parties.

(1) The arbitrator or arbitrators may award the prevailing party:

(a) The costs of witness fees and other fees in the case;

(b) Reasonable attorney's fees; and

(c) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in competitive circumstances.

(2) Any retailer has a civil cause of action in district court in this state against a supplier for damages sustained by the retailer as a consequence of the supplier's violation of part 1, chapter 24, title 28, Idaho Code, or sections 28-23-101 through 28-23-111, Idaho Code, together with:

(a) The actual costs of the action;

(b) Reasonable attorney's fees; and

(c) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in competitive circumstances.

(3) No dealer shall be required to waive his rights to judicial recourse by contractual agreements through penalty of loss of trade discounts or changes in the competitive circumstances of the dealer by the supplier deemed to be punitive in nature or effect. The remedies set forth in this section are not exclusive and are in addition to any other remedies permitted by law, unless the parties have mutually agreed to binding arbitration under this section.

28-24-104E. SUCCESSORS IN INTEREST. The obligations of any supplier under this chapter are applied to any successor in interest or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, and any receiver or any trustee of the original supplier.

SECTION 10. That Section 28-24-105, Idaho Code, be, and the same is hereby amended to read as follows:

28-24-105. REMEDIES AND ENFORCEMENT. Monetary damages may be recovered for losses sustained as a consequence of any violation of the provisions of this chapter. Such recovery may also include a requirement that the supplier repurchase at fair market value any data processing hardware, software and specialized repair tools and equipment previously purchased from the supplier or approved vendor of the supplier pursuant to requirements of the supplier. Injunctive relief may also be granted against any actual or threatened violation of the provisions of this chapter. In any action brought under this chapter the prevailing party shall be entitled to recover reasonable attorney's fees and costs. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law. A person, firm or corporation which brings an action under this section must commence the action in the county in which the principal place of business of the retailer is located.

Approved April 1, 2005.

CHAPTER 239
(H.B. No. 203, As Amended)

AN ACT

RELATING TO PIRACY; AMENDING TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 69, TITLE 18, IDAHO CODE, TO SET FORTH THE IDAHO ANTI-CAMCORDER PIRACY ACT, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROHIBIT PIRACY, TO PROVIDE A PENALTY, TO AUTHORIZE CERTAIN ACTIONS, TO PROVIDE FOR IMMUNITY AND TO PROVIDE APPLICABILITY.

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

SECTION 1. That Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 69, Title 18, Idaho Code, and to read as follows:

CHAPTER 69
IDAHO ANTI-CAMCORDER PIRACY ACT

18-6901. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Anti-Camcorder Piracy Act."

18-6902. DEFINITIONS. As used in this chapter:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(2) "Motion picture theater" means a movie theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

18-6903. PROHIBITION AGAINST PIRACY. Any person who, without the written consent of the motion picture theater owner, knowingly operates the audiovisual recording function of any device in a motion picture theater while a motion picture is being exhibited for the purpose of recording the motion picture being exhibited shall be guilty of a misdemeanor and upon conviction shall be imprisoned for not more than one (1) year, fined not more than five thousand dollars ($5,000), or shall be punished by both such fine and imprisonment.

18-6904. AUTHORIZED ACTIONS -- IMMUNITY. (1) The owner or lessee of a motion picture theater, or the authorized agent or employee of such owner or lessee may request a person on his premises to place or keep in full view any audiovisual recording device or related item such person may have operated, or which the owner or lessee or authorized agent or employee of such owner or lessee has reason to believe he may have operated, in violation of the provisions of this chapter. No merchant shall be criminally or civilly liable on account of having made such a request.

(2) The owner or lessee of a motion picture theater, or the authorized agent or employee of such owner or lessee, who has reason to believe that any audiovisual recording device or related item has been operated by a person in violation of this chapter and that he can recover such audiovisual recording device or related item by taking such

a person into custody and detaining him may, for the purpose of attempting to effect such recovery or for the purpose of informing a peace officer of the circumstances of such detention, take the person into custody and detain him, in a reasonable manner and for a reasonable length of time.

18-6905. APPLICABILITY. (1) This chapter does not prevent any lawfully authorized investigative, law enforcement, protective, or intelligence-gathering employee or agent of the federal government, the state or a political subdivision of the state, from operating any audio-visual recording device in a motion picture theater as part of lawfully authorized investigative, law enforcement, protective, or intelligence-gathering activities.

(2) Nothing in this chapter shall prevent prosecution instead under other applicable law providing a greater penalty.

Approved April 1, 2005.

CHAPTER 240
(H.B. No. 207)

AN ACT

RELATING TO THE IDAHO STATEWIDE TRIAL COURT AUTOMATED RECORDS SYSTEM; AMENDING SECTION 1-1623, IDAHO CODE, TO PROVIDE THAT MONEYS IN THE ISTARS TECHNOLOGY FUND MAY BE USED FOR OTHER TECHNOLOGIES THAT ASSIST IN THE EFFICIENT MANAGEMENT OF THE COURTS OR THAT IMPROVE ACCESS TO THE COURTS AND COURT RECORDS; AMENDING SECTION 31-3201, IDAHO CODE, TO INCREASE THE ISTARS TECHNOLOGY FEE; AMENDING SECTION 31-3201A, IDAHO CODE, TO REVISE COURT FEES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 1-1623, Idaho Code, be, and the same is hereby amended 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, and other technologies that assist in the efficient management of the courts or that improve access to the courts and court records. 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. Interest earned on the investment of idle moneys in the ISTARS technology fund shall be returned to the ISTARS technology fund.

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 ten dollars ($10.00) as an administrative surcharge fee on each criminal 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 ten dollars ($10.00) 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~~ ten dollars ($~~5~~10.00) 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 forty-four dollars ($~~39~~44.00) 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 twenty-two dollars ($~~17~~22.00) in each case where the amount of money or damages or the value of personal property claimed does not exceed three hundred dollars ($300). The filing fee shall be twenty-four dollars ($~~19~~24.00) in the following types of cases:

(1) Where the amount of money or damages or the value of personal property claimed exceeds three hundred dollars ($300) but does not exceed one thousand dollars ($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 ~~S~~summary ~~A~~administration of ~~S~~small ~~E~~estates ~~A~~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 ~~J~~juvenile ~~C~~corrections ~~A~~act;

(3) In cases brought under the ~~C~~child ~~P~~protective ~~A~~act.

In all cases in which a filing fee of forty-four dollars ($~~39~~44.00) is paid, seventeen dollars ($17.00) of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars ($510.00) 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 seventeen dollars ($17.00) of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. In all cases in which a filing fee of twenty-four dollars ($~~19~~24.00) is paid, four dollars ($4.00) of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county;

ten dollars ($510.00) 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 ten dollars ($10.00) of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. In all cases in which a filing fee of twenty-two dollars ($~~17~~22.00) is paid, three dollars ($3.00) of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars ($510.00) 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 nine dollars ($9.00) of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(b) A fee of seventeen dollars and fifty cents ($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, five dollars ($5.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and twelve dollars and fifty cents ($12.50) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. If the magistrate court facilities are provided by a city, five dollars ($5.00) of such fee shall be paid to the city treasurer for deposit in the city general fund, two dollars and fifty cents ($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 ten dollars ($10.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(c) A fee of sixteen dollars and fifty cents ($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, five dollars ($5.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and eleven dollars and fifty cents ($11.50) of such fee shall be paid to the county treasurer, who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. If the magistrate court facilities are provided by a city, five dollars ($5.00) of such fee shall be paid to the city treasurer for deposit in the city general fund, two dollars and fifty cents ($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 nine dollars ($9.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(d) A fee of twenty-four dollars ($~~19~~24.00) 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, four dollars ($4.00) shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars ($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 into the ISTARS technology fund; and ten dollars ($10.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(e) A fee of nine dollars ($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 nineteen dollars ($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, six dollars ($6.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and thirteen dollars ($13.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(g) A fee of seven dollars ($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 eight dollars ($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 eight dollars ($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 nine dollars ($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 nine dollars ($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 thirty-two dollars ($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 nine dollars ($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 nine dollars ($9.00) shall be paid by the party taking an appeal from the district court to the supreme court for comparing and certifying the transcript on appeal, if such certificate is required. All of such fee shall be paid to the county treasurer for deposit in the

district court fund of the county.

(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 pursuant to subsections (a), (b), (c), (d) and (f) of this section shall be apportioned ninety percent (90%) to the state general fund and ten percent (10%) to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, 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, the county treasurer shall retain five dollars ($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(7), Idaho Code, relating to the evaluation and counseling or other treatment of such persons, 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.

Approved April 1, 2005.

CHAPTER 241
(H.B. No. 252)

AN ACT

RELATING TO PROPERTY TAX RELIEF; AMENDING SECTION 63-701, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE AND TO EXCLUDE BENEFITS PAID BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS TO DEPENDENTS OF

DECEASED VETERANS UNDER THE DEFINITION OF "INCOME"; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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 sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year or before April 15 in which the claim was filed a claimant must be an owner of a homestead and be:

(a) Not less than sixty-five (65) years old; or

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; 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 department of veterans affairs; ~~administration;~~ or

(f) A person, as specified in 42 U.S.C. 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 as described in this chapter and used as the primary dwelling place of the claimant and may be 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 the claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) "Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.

(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:

(a) Alimony;
(b) Support money;
(c) Nontaxable strike benefits;
(d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);
(e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;
(f) Worker's compensation; and
(g) The gross amount of loss of earnings insurance.

It does not include capital gains, gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and, if married, the claimant's spouse, may be deducted from income. To the extent not reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars ($5,000) per claim. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include dependency and indemnity compensation or death benefits paid to a person described in subsection (1) of this section by the United States department of veterans affairs and arising from a service-connected death or disability. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission in such form as the county assessor, board of equalization or state tax commission shall determine. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

(6) "Occupied" means actual use and possession.

(7) "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:

(a) Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(b) Is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or

(c) Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered as ownership for determining initial 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 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 or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. 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 of the deceased person shall be the "owner," provided that the time periods during which the deceased person held such title shall be attributed to the estate for the computation of any time periods under subsection (8)(a) or (8)(b) of this section.

(8) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 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 to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 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 for less than one (1) year. The county assessor may require written or other

proof of the foregoing in such form as the county assessor may determine.

(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. Payment of utilities shall not be payment of 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, nursing 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(16), 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 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, 2005.

Approved April 1, 2005.

CHAPTER 242
(H.B. No. 261)

AN ACT

RELATING TO SALES AND USE TAXATION AND TAXATION OF RESEARCH AND DEVELOPMENT ACTIVITIES; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3622RR, IDAHO CODE, TO EXEMPT FROM THE SALES AND USE TAX PROPERTY WHICH IS USED IN RESEARCH AND DEVELOPMENT ACTIVITIES AND TO DEFINE A TERM; AMENDING SECTION 63-3622NN, IDAHO CODE, TO ADD TO THE DEFINITION OF "CLEAN ROOMS" THOSE ROOMS IN WHICH RESEARCH AND DEVELOPMENT ACTIVITIES OCCUR; AMENDING SECTION 63-3622D, IDAHO CODE, TO REMOVE PROPERTY USED FOR RESEARCH AND DEVELOPMENT AS AN EXCLUSION FROM THE PRODUCTION EXEMPTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 36, 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 63-3622RR, Idaho Code, and to read as follows:

63-3622RR. RESEARCH AND DEVELOPMENT. (1) There is exempted from the taxes imposed by this chapter, the lease, rental, purchase, sale at retail, storage, use or other consumption in this state of tangible personal property which is primarily used in research and development activities.

(2) "Research and development" means an activity which is:
(a) Designed to advance existing knowledge or capability in the field of science or technology, the development of new products, materials, technologies or processes, including new uses for or improvements to existing products, materials, technologies or processes; and
(b) Related to the development, design, manufacture, processing, production or fabrication of:
(i) A product or potential product which is tangible personal property; or
(ii) Machinery, materials or components utilized or potentially utilized in the development, design, manufacture, processing, production or fabrication of a product or potential product which is tangible personal property.

SECTION 2. That Section 63-3622NN, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622NN. CLEAN ROOMS. (1) There is exempted from the taxes imposed by this chapter the sale at retail, storage, use or other consumption in this state of tangible personal property which is exclusively used in or to maintain the environment of, or is or becomes a component part of, a clean room, without regard to whether the property is actually contained within the clean room or whether such tangible personal property ultimately becomes affixed to or incorporated into real property.
(2) The following definitions apply to this section:
(a) "Clean room" means an environment in a defined space, within a larger building, where humidity, temperature, particulate matter and contamination are precisely and regularly controlled; and
(i) Which is a "Class 10,000" clean room or better, and
(ii) In which the primary activities are:
1. Activities which qualify for the production exemption in section 63-3622D, Idaho Code, resulting in the manufacture of products which are either semiconductors, products manufactured using semiconductor manufacturing processes, or equipment used to manufacture semiconductors;
2. Activities which qualify for the research and development exemption in section 63-3622RR, Idaho Code; or
3. A combination of the activities described in subparagraphs 1. and 2. above.
(b) "Class 10,000 clean room" means a specified area in which the concentration of airborne particulates of five-tenths (0.5) micrometers or larger is regularly maintained at a level of cleanliness no greater than ten thousand (10,000) particles per cubic foot of air.
(c) "Semiconductor" means a small piece of semiconductor material including silicon:
(i) On which an integrated circuit is embedded, or
(ii) Which is altered in the manufacturing process by primarily using semiconductor processes.
(d) "Integrated circuit" means a complex of multiple active electronic components and their interconnections built upon a semiconductor substrate.

(e) "Semiconductor manufacturing processes" means chemical vapor deposition, plasma vapor deposition, wet and dry etch, chemical mechanical planarization or polishing and such other manufacturing processes generally recognized by the semiconductor industry as being standard processes in the industry.

(f) Property is "exclusively used" for a purpose when its use for any other purpose is insignificant or inconsequential.

SECTION 3. That Section 63-3622D, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622D. PRODUCTION EXEMPTION. There are exempted from the taxes imposed by this chapter:

(a) The sale at retail, storage, use or other consumption in this state of:

(1) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for sale.

(2) Tangible personal property primarily and directly used or consumed in or during a manufacturing, processing, mining, farming, or fabricating operation, including, but not limited to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such tangible personal property; provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation.

(3) Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change in the product or for removing impurities from the product or otherwise placing the product in a more marketable condition as part of an operation described in subsection (a)(2) of this section, and chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries.

(4) Safety equipment and supplies required to meet a safety standard of a state or federal agency when such safety equipment and supplies are used as part of an operation described in subsection (a)(2) of this section.

(5) Plants to be used as part of a farming operation.

(b) Other than as provided in subsection (c) of this section, the exemptions allowed in subsections (a)(1), (2), (3) and (4) of this section are available only to a business or separately operated segment of a business which is primarily devoted to producing tangible personal property which that business will sell and which is intended for ultimate sale at retail within or without this state. A contractor providing services to a business entitled to an exemption under this section is not exempt as to any property owned, leased, rented or used by it unless, as a result of the terms of the contract, the use of the property is exempt under section 63-3615(b), Idaho Code.

(c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in farming or mining, whether as a subcontractor, contractor, contractee or subcontractee, when such business or segment of a business is primarily devoted to producing tangible personal property which is intended for ultimate sale at

retail within or without this state, without regard to the ownership of the product being produced.

(d) As used in this section, the term "directly used or consumed in or during" a farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. It includes disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats or other milking equipment.

(e) The exemptions allowed in this section do not include machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operations such as maintenance and janitorial equipment and supplies.

(f) Without regard to the use of such property, this section does not exempt:

(1) Hand tools with a unit purchase price not in excess of one hundred dollars ($100). A hand tool is an instrument used or worked by hand.

(2) Tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming or fabricating operations such as office equipment and supplies, and equipment and supplies used in selling or distributing activities.

(3) ~~Property used in research or development.~~

~~(4)~~ Property used in transportation activities.

(~~5~~4) Machinery, equipment, tools or other property used to make repairs. This subsection does not include repair parts that become a component part of tangible property exempt from tax under this section or lubricants, hydraulic oil, or coolants used in the operation of tangible personal property exempt under this section.

(~~6~~5) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or install tangible personal property which is:

(i) Not held for resale in the regular course of business; and

(ii) Owned by the manufacturer, processor, miner, farmer or fabricator;

provided, however, this subsection does not prevent exemption of machinery, equipment, tools or other property exempted from tax under subsection (a)(2) or (a)(3) of this section.

(~~7~~6) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

(~~8~~7) Motor vehicles and aircraft.

(~~9~~8) Tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from tax under this chapter in sections 63-3622F, 63-3622G and 63-3622I, Idaho Code.

(~~10~~9) Tangible personal property described in section 63-3622HH, Idaho Code.

(g) Any tangible personal property exempt under this section which ceases to qualify for this exemption, and does not qualify for any other exemption or exclusion of the taxes imposed by this chapter, shall be subject to use tax based upon its value at the time it ceases to qualify

for exemption. Any tangible personal property taxed under this chapter which later qualifies for this exemption shall not entitle the owner of it to any claim for refund.

SECTION 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 April 1, 2005.

CHAPTER 243
(H.B. No. 266)

AN ACT

RELATING TO DUTIES OF THE COUNTY RECORDER; AMENDING SECTION 31-2401, IDAHO CODE, TO PROVIDE FOR ELECTRONIC STORAGE METHODS FOR RECORDS; AMENDING SECTION 31-2402, IDAHO CODE, TO PROVIDE FOR RECORDING OF INSTRUMENTS THROUGH APPROVED ELECTRONIC STORAGE SYSTEMS, TO ALLOW THE RECORDER TO REFUSE TO RECORD ANY DOCUMENT WHICH IS NOT AUTHORIZED BY LAW TO BE RECORDED AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-2402A, IDAHO CODE, TO PROVIDE FOR ELECTRONIC COPYING PROCESSES OR ELECTRONIC STORAGE DEVICES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-2404, IDAHO CODE, TO ALLOW THE RECORDER TO CREATE AN ELECTRONIC MANAGEMENT SYSTEM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-2410, IDAHO CODE, TO PROVIDE FOR AN APPROVED ELECTRONIC STORAGE AND RETRIEVAL SYSTEM WHEN THE RECORDER MUST ENDORSE THE RECORD AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-2411, IDAHO CODE, TO PROVIDE FOR AN INSTRUMENT NUMBER, TO PROVIDE FOR A SUITABLE REFERENCE NUMBER TO ENABLE DIRECT RETRIEVAL OF THE RECORDED DOCUMENT FROM THE ELECTRONIC SYSTEM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-2417, IDAHO CODE, TO REVISE STANDARDS FOR LIABILITY FOR NEGLECT IN RECORDING AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-2419, IDAHO CODE, TO PROVIDE FOR PUBLIC ACCESS TERMINALS AND TO PROVIDE FOR PENALTIES FOR PERSONS INSPECTING THE RECORDS WHO ATTEMPT TO ALTER THE RECORDS; AMENDING SECTION 55-810, IDAHO CODE, TO PROVIDE FOR AN APPROVED ELECTRONIC STORAGE SYSTEM CONTAINING SEGREGATED SEARCHABLE AND RETRIEVAL FILES; AND AMENDING SECTION 55-1910, IDAHO CODE, TO PROVIDE FOR AN APPROVED ELECTRONIC STORAGE SYSTEM AND TO PROVIDE FOR ELECTRONIC SEGREGATED SEARCHABLE AND RETRIEVAL FILES.

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

SECTION 1. That Section 31-2401, Idaho Code, be, and the same is hereby amended to read as follows:

31-2401. BOOKS TO BE PROCURED -- CUSTODY. The recorder must procure such books <u>or other electronic storage methods</u> for records as the business of his office requires. He has the custody of and must keep all books, records, maps and papers deposited in his office. <u>The recorder may keep all books, documents, records, maps and papers within an approved electronic storage system.</u>

SECTION 2. That Section 31-2402, Idaho Code, be, and the same is hereby amended to read as follows:

31-2402. INSTRUMENTS TO BE RECORDED. (1) He must, upon the payment of his fees for the same, record separately, in large and well-bound separate books or through approved electronic storage systems, in legible handwriting, typewriting or by photographic reproduction:

~~1.~~(a) Deeds, grants, transfers and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate and leases which have been acknowledged or proved and transcripts of judgments or decrees which affect the title or possession of real property, including water rights, any part of which is situate in the county of which the person is the recorder.

~~2.~~(b) Certificates of marriage and marriage contracts.

~~3.~~(c) Wills admitted to probate.

~~4.~~(d) Official bonds.

~~5.~~(e) Notices of mechanics' liens.

~~6.~~(f) Transcripts of judgments which by law are made liens upon real estate.

~~7.~~(g) Notices of attachments upon real estate.

~~8.~~(h) Notices of the pendency of an action affecting real estate, the title thereto or possession thereof.

~~9.~~(i) Instruments describing or relating to the separate property of married women.

~~10.~~(j) Notices of preemption claims.

~~11.~~(k) Certified copies of any petitions, with the schedules omitted, ~~filed~~ filled in, and certified copies of any order or decree made or entered in, any proceeding under the national bankruptcy act.

~~12.~~(l) Financing statements under the uniform commercial code which cover timber to be cut, minerals or the like (including oil and gas), pursuant to section 28-9-301, Idaho Code, or fixtures.

~~13.~~(m) Notice of order of a general adjudication in conformance with section 42-1408, Idaho Code.

~~14.~~(n) Such other writings as are required or permitted by law to be recorded.

(2) The recorder may refuse to record any document which, in his discretion and through consultation with the county prosecutor, is not authorized by law to be recorded. Refusal pursuant to this section shall not create any liability.

SECTION 3. That Section 31-2402A, Idaho Code, be, and the same is hereby amended to read as follows:

31-2402A. MICROFILM RECORDS -- METHOD OF DESIGNATION -- OFFICIAL RECORDS. In lieu of any or all of the separate books provided for in section 31-2402, Idaho Code, the county recorder may, in his discretion, where such record or document has been copied or reproduced by microfilm, scanned images, digital imaging, or microphotographic process ~~as provided by law~~ or other approved electronic copying process, designate such record or document by consecutive volume and instrument numbers to be called "official records" and recorded consecutively in his office in suitable containers and cabinets or electronic storage devices.

The recording of such instruments and documents in such "official records" will impart notice in like manner and effect as if such instruments or documents were recorded in any of the separate books provided for in section 31-2402, Idaho Code.

SECTION 4. That Section 31-2404, Idaho Code, be, and the same is hereby amended to read as follows:

31-2404. INDEXES TO BE KEPT. Every recorder must keep:

(1.) An index of deeds, grants and transfers, labeled "Grantors," each page divided into four (4) columns, headed respectively, "Names of grantors," "Names of grantees," "Date of deeds, grants or transfers" and "Where recorded."

(2.) An index of deeds, labeled "Grantees," each page divided into four (4) columns, headed respectively, "Names of grantees," "Names of grantors," "Date of deeds, grants or transfers" and "Where recorded."

(3.) An index of mortgages, labeled "Mortgagors of real property," with the pages thereof divided into five (5) columns, headed respectively, "Names of mortgagors," "Names of mortgagees," "Date of mortgages," "Where recorded," and "When discharged."

(4.) An index of mortgages, labeled "Mortgagees of real property," with the pages thereof divided into five (5) columns, headed respectively, "Names of mortgagees," "Names of mortgagors," "Date of mortgages," "Where recorded," and "When discharged."

(5.) An index of release of mortgages, labeled "Releases of mortgages of real property--mortgagors," with the pages thereof divided into six (6) columns, headed respectively, "Parties releasing," "To whom releases are given," "Date of releases," "Where releases are recorded," "Date of mortgages released," and "Where mortgages released are recorded."

(6.) An index of releases of mortgages, labeled "Releases of mortgages of real property--mortgagees," with the pages thereof divided into six (6) columns, headed respectively, "Parties whose mortgages are released," "Parties releasing," "Date of releases," "Where recorded," "Date of mortgages released," and "Where mortgages released are recorded."

(7.) An index of powers of attorney, labeled "Powers of attorney," each page divided into five (5) columns, headed respectively, "Names of parties executing powers," "To whom powers are executed," "Date of powers," "Date of recording," and "Where powers are recorded."

(8.) An index of leases, labeled "Lessors," each page divided into four (4) columns, headed respectively, "Names of lessors," "Names of lessees," "Date of leases," and "When and where recorded."

(9.) An index of leases, labeled "Lessees," each page divided into four (4) columns, headed respectively, "Names of lessees," "Names of lessors," "Date of leases," and "When and where recorded."

(10.) An index of marriage certificates, labeled "Marriage certificates--Men," each page divided into six (6) columns, headed respectively, "Men married," "To whom married," "When married," "By whom married," "Where married," and "Where certificates are recorded."

(11.) An index of marriage certificates, labeled "Marriage certificates--Women," each page divided into six (6) columns, headed respectively, "Women married" (and under this head placing the family names of the women), "To whom married," "When married," "By whom mar-

ried," "Where married," and "Where certificates are recorded."

(12.) An index of assignments of real property mortgages and leases, labeled "Assignments of mortgages and leases--assignors," each page divided into five (5) columns, headed respectively, "Assignors," "Assignees," "Instruments assigned," "Date of assignment," and "When and where recorded."

(13.) An index of assignments of real property mortgages and leases, labeled "Assignments of mortgages and leases--assignees," each page divided into five (5) columns, headed respectively, "Assignees," "Assignors," "Instruments assigned," "Date of assignments," and "When and where recorded."

(14.) An index of wills, labeled, "Wills," each page divided into four (4) columns, headed respectively, "Names of testators," "Date of wills," "Date of probate," and "When and where recorded."

(15.) An index of official bonds, labeled "Official bonds," each page divided into five (5) columns, headed respectively, "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," and "When and where recorded."

(16.) An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into three (3) columns, headed respectively, "Parties claiming liens," "Against whom claimed," and "Notices, when and where recorded."

(17.) An index to transcripts of judgment, labeled "Transcripts of judgments," each page divided into seven (7) columns, headed respectively, "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recorded," "When recovered," "When transcript filed," and "When judgment satisfied."

(18.) An index of attachments, labeled "Attachments," each page divided into six (6) columns, headed respectively, "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When recorded," "Where recorded," and "When attachments discharged."

(19.) An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three (3) columns, headed respectively, "Parties to the actions," "Notices, when recorded," and "Where recorded."

(20.) An index of the separate property of married women, labeled "Separate property of married women," each page divided into five (5) columns, headed respectively, "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," and "Where recorded."

(21.) An index of possessory claims, labeled "Possessory claims," each page divided into five (5) columns, headed respectively, "Claimants," "Notices," "When received," "Date of notices," and "When and where recorded."

(22.) An index of homesteads, labeled, "Homesteads," each page divided into five (5) columns, headed respectively, "Claimants," "Date of declaration," "When and where recorded," "Abandonment," and "When and where recorded."

(23.) An index of agreements and bonds affecting the title of real property, labeled, "Real property agreements," each page divided into four (4) columns, headed respectively, "Vendors," "Vendees," "Date of agreement," and "When and where recorded."

(24.) An index of mining claims, labeled "Mining claims," each page

divided into five (5) columns, headed "Locators," "Name of claim," "Date of location," "When filed for record," and "Where recorded."

(25~~.~~) An index of water rights, labeled "Water rights," each page divided into four (4) columns, labeled, "Locators," "Date of notice," "When filed for record," and "Where recorded."

(26~~.~~) A general index of all papers to be entered as they are filed.

(27~~.~~) An index, labeled "Financing Statements," as required under Part 4 of the Uniform Commercial Code--Secured Transactions.

(28) In lieu of the above-named indexes, a recorder may create an electronic management system into which all of the above-named indexes are file names. Each of these files shall segregate the above-referenced records and permit search and retrieval capabilities of each file type under each of the above-enumerated categories.

SECTION 5. That Section 31-2410, Idaho Code, be, and the same is hereby amended to read as follows:

31-2410. ~~INDORSEMENT~~ ENDORSEMENT ON INSTRUMENTS. When any instrument, paper or notice, authorized by law to be recorded, is deposited in the recorder's office for record, the recorder must ~~indorse~~ endorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and at once enter it in the proper index or approved electronic storage and retrieval system, and must record the same without delay, together with the acknowledgment, proofs and certificates, written upon or annexed to the same, with the plats, surveys, schedule and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note on the instrument the exact time of its reception, and the name of the person at whose request it was recorded.

SECTION 6. That Section 31-2411, Idaho Code, be, and the same is hereby amended to read as follows:

31-2411. ~~INDORSEMENT~~ ENDORSEMENT OF BOOK AND PAGE OF RECORD -- DELIVERY TO PARTY. The recorder must also ~~indorse~~ endorse upon each instrument, paper or notice, the book and pages or instrument number in which it is recorded, and must thereafter deliver it upon request to the party leaving the same for record. If an approved electronic system is used, the recorder shall endorse upon each instrument a suitable reference number to enable direct retrieval of the recorded document from the electronic system.

SECTION 7. That Section 31-2417, Idaho Code, be, and the same is hereby amended to read as follows:

31-2417. LIABILITY FOR NEGLECT. (1) If any recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, is delivered for record:

~~1.~~(a) Neglects or refuses without any legal basis to record such instrument, paper or notice within a reasonable time after receiving the same; or

~~2.~~(b) Records any instruments, papers or notices untruly, or in any other manner than as hereinbefore directed; or

~~3.~~(c) Neglects or refuses to keep in his office such indexes as are

required by this chapter, or to make the proper entries therein; or

~~4.~~(d) Alters, changes or obliterates any records deposited in his office or inserts any new matter therein~~;~~.

He is liable to the party aggrieved for the amount of the damages which may be occasioned thereby.

(2) Under no circumstances shall a recorder be liable for the release of any recorded information pursuant to a request and payment of fees.

SECTION 8. That Section 31-2419, Idaho Code, be, and the same is hereby amended to read as follows:

31-2419. RECORDS OPEN TO INSPECTION. All books of record, maps, charts, surveys and other papers on file in the recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and the recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection. The recorder may provide one (1) or more public access terminals through which the public may access electronically stored versions of recorded documents. Any person inspecting the records who makes any attempt to alter any record in any way shall be guilty of a misdemeanor.

SECTION 9. That Section 55-810, Idaho Code, be, and the same is hereby amended to read as follows:

55-810. BOOKS OF RECORD. Grants and conveyances absolute in terms, are to be recorded in one set of books and mortgages in another or in an approved electronic storage system containing segregated searchable and retrieval files.

SECTION 10. That Section 55-1910, Idaho Code, be, and the same is hereby amended to read as follows:

55-1910. DUTIES OF COUNTY RECORDER. The record of survey filed with the county recorder of any county shall be assigned an instrument number and shall be bound or filed with other plats of like character in a book or file or through an approved electronic storage system designated as "Records of Surveys."

Proper indexes or electronic segregated searchable and retrieval files shall be kept of such record of survey by section, township and range.

The survey map transparency shall be stored for safekeeping in a reproducible condition. It shall be proper for the recorder to maintain for public reference a set of counter maps that are prints of the transparencies. The transparencies shall be produced for comparison upon demand, and full scale copies shall be made available to the public, at direct cost, by the county recorder.

Approved April 1, 2005.

CHAPTER 244
(H.B. No. 271)

AN ACT

RELATING TO WATER, SEWER OR WATER AND SEWER DISTRICTS; AMENDING CHAPTER 32, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-3239, IDAHO CODE, TO PROVIDE FOR THE DISSOLUTION OF A WATER, SEWER OR WATER AND SEWER DISTRICT UPON THE TRANSFER OF ITS ASSETS TO A MUNICIPALITY AND TO PROVIDE THE PROCESS AND CONDITIONS REQUIRED; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 32, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-3239, Idaho Code, and to read as follows:

42-3239. DISSOLUTION OF A DISTRICT UPON TRANSFER OF ASSETS TO MUNICIPALITY. (1) A water, sewer, or combined water and sewer district may transfer to a municipality the assets of the district and dissolve upon a determination that each of the following conditions exists:

(a) The municipality is capable of providing all the essential functions of the district;

(b) The municipality has agreed to assume and perform the essential functions of the district;

(c) The municipality either has or is acquiring sufficient assets, infrastructure, and other resources to perform the essential operations of the district;

(d) Provisions have been made for the retirement, payment or assumption of any debt, bonds, or other liabilities and obligations of the district;

(e) Provisions have been made for the liquidation and disbursement of district assets and infrastructure not intended to be transferred to the municipality; and

(f) Notice of the proposed transfer has been published once a week for two (2) consecutive weeks prior to the hearing in a newspaper of general circulation in the district, including information on the petition for an election on the proposed transfer; and

(g) An election has been held, if required pursuant to subsection (3) of this section, and the transfer has been approved by a majority of the qualified electors of the district voting on the issue.

(2) Prior to passage of a resolution making the required determination, the district board shall hold a hearing to receive public testimony on the proposed transfer. The public hearing shall be preceded by a notice published once a week for two (2) consecutive weeks preceding the hearing, in a newspaper of general circulation in the district. The notice shall state the date, time and location of the hearing and that the purpose of the hearing is to receive public testimony on the proposed transfer and the method for a petition of qualified electors of the district to be submitted requesting an election to approve the proposed transfer.

(3) After the hearing, the district board may submit the proposed transfer to the qualified electors of the district, or shall take the

matter under advisement for a period of thirty (30) days after the hearing. An election shall be held if, prior to the expiration of the thirty (30) day period, a petition signed by not less than ten percent (10%) of the qualified electors of the district is submitted requesting an election on the proposed transfer. If at the end of the thirty (30) day period no petition has been submitted with the required number of signatures, the district board may proceed to adopt the resolution finding the above conditions exist and approving the transfer. An election held pursuant to the provisions of this subsection shall be conducted according to the provisions of section 34-106, Idaho Code, and the proposed transfer shall be approved by a majority of the qualified electors of the district voting on the issue in order for the district board to proceed to adopt a resolution approving the transfer.

(4) In the event the district board and the municipality adopt resolutions finding the above conditions exist and approving the transfer, the district board shall file with the district court in which the district and municipality are located, a certified copy of the district resolution; certified results of the election approving the transfer, if applicable; a certified copy of the resolution of the municipality; and all other necessary documentation requested by the district court. Upon satisfying itself that the required conditions exist, the district court shall enter an order approving the transfer and assumption and establishing the date on which the district shall be dissolved; provided however, upon good cause shown, the court may extend the date upon which the district shall be dissolved. Such order shall be recorded with the county recorder and filed with the county assessor in the counties within which the district is located and filed with the state tax commission within thirty (30) days following the effective date of such dissolution. If an agreement exists between the district and municipality setting the requirements for postdissolution operations, the municipality shall operate the sewer and/or water system(s) in accordance with the agreement.

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 April 1, 2005.

CHAPTER 245
(H.B. No. 327)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2005; 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 200, Laws of 2004, there is hereby appropriated to the Department of Correction 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. OPERATIONS DIVISION:				
A. OPERATIONS ADMINISTRATION:				
FROM:				
General Fund		$1,969,200		$1,969,200
Inmate Labor Fund		535,000		535,000
Parolee Supervision Fund		100,000		100,000
Miscellaneous Revenue Fund		75,000		75,000
TOTAL		$2,679,200		$2,679,200
B. IDAHO STATE CORRECTIONAL INSTITUTION - BOISE:				
FROM:				
General Fund	$347,100	$ 197,600		$ 544,700
C. IDAHO CORRECTIONAL INSTITUTION - OROFINO:				
FROM:				
General Fund		$ 62,900		$ 62,900
D. NORTH IDAHO CORRECTIONAL INSTITUTION - COTTONWOOD:				
FROM:				
General Fund		$ 51,000	$2,700	$ 53,700
Inmate Labor Fund	$107,600			107,600
TOTAL	$107,600	$ 51,000	$2,700	$ 161,300
E. SOUTH IDAHO CORRECTIONAL INSTITUTION - BOISE:				
FROM:				
General Fund	$313,100	$ 148,900		$ 462,000
Inmate Labor Fund		100,000		100,000
TOTAL	$313,100	$ 248,900		$ 562,000
F. ST. ANTHONY WORK CAMP:				
FROM:				
General Fund	$165,000	$ 127,900	$2,900	$ 295,800
G. POCATELLO WOMEN'S CORRECTIONAL CENTER:				
FROM:				
General Fund	$ 33,800	$ 44,000	$2,500	$ 80,300
H. OFFENDER PROGRAMS:				
Miscellaneous Revenue Fund		$ 200,000		$ 200,000
DIVISION TOTAL	$966,600	$3,611,500	$8,100	$4,586,200
II. SUPPORT DIVISION:				
A. MEDICAL SERVICES CONTRACT:				
FROM:				
General Fund		$ 964,700		$ 964,700
GRAND TOTAL	$966,600	$4,576,200	$8,100	$5,550,900

SECTION 2. In addition to the authorization granted in Section 2, Chapter 200, Laws of 2004, the Department of Correction is authorized thirty-seven (37) full-time equivalent positions for the period July 1, 2004, through June 30, 2005.

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 April 1, 2005.

CHAPTER 246
(H.B. No. 328)

AN ACT

APPROPRIATING MONEYS TO THE STATE TAX COMMISSION FOR FISCAL YEAR 2006; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AMENDING SECTION 1, CHAPTER 207, LAWS OF 2004, TO REVISE THE APPROPRIATION TO THE STATE TAX COMMISSION FOR FISCAL YEAR 2005; AND DECLARING AN EMERGENCY FOR SECTION 3 OF THIS ACT.

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

SECTION 1. There is hereby appropriated to the State Tax Commission in the Department of Revenue and Taxation 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. GENERAL SERVICES:				
FROM:				
General Fund	$ 3,811,900	$2,648,200		$ 6,460,100
Administration and Accounting Fund	20,900	41,300	$ 3,700	65,900
Economic Recovery Reserve Fund		1,125,000		1,125,000
Multistate Tax Compact Fund		3,900	19,200	23,100
Administration Services for Transportation Fund	405,500	544,400	80,500	1,030,400
Abandoned Property Trust-Unclaimed Property Fund		169,000	4,600	173,600
Seminars and Publications Fund		28,400		28,400
TOTAL	$ 4,238,300	$4,560,200	$108,000	$ 8,906,500
II. AUDIT AND COLLECTIONS:				
FROM:				
General Fund	$ 9,509,900	$1,542,600		$11,052,500
Multistate Tax Compact Fund	1,187,800	429,600		1,617,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
Administration and Accounting Fund	24,400	22,800		47,200
Administration Services for Transportation Fund	1,458,300	307,400		1,765,700
Abandoned Property Trust-Unclaimed Property Fund	442,100	183,900		626,000
TOTAL	$12,622,500	$2,486,300		$15,108,800
III. REVENUE OPERATIONS:				
FROM:				
General Fund	$ 2,779,800	$1,330,500		$ 4,110,300
Administration and Accounting Fund	155,900	121,100	$ 1,500	278,500
Administration Services for Transportation Fund	491,000	215,900	64,800	771,700
Seminars and Publications Fund		18,300		18,300
Abandoned Property Trust-Unclaimed Property Fund	63,700			63,700
TOTAL	$ 3,490,400	$1,685,800	$ 66,300	$ 5,242,500
IV. COUNTY SUPPORT:				
FROM:				
General Fund	$ 2,399,400	$ 596,600		$ 2,996,000
Seminars and Publications Fund		96,200		96,200
TOTAL	$ 2,399,400	$ 692,800		$ 3,092,200
GRAND TOTAL	$22,750,600	$9,425,100	$174,300	$32,350,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Tax Commission is authorized no more than four hundred ten and five-tenths (410.5) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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. That Section 1, Chapter 207, Laws of 2004, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the State Tax Commission in the Department of Revenue and Taxation 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. GENERAL SERVICES:				
FROM:				
General Fund	$ ~~3,826,400~~ 3,810,100	$2,666,700	$ 70,000	$ ~~6,563,100~~ 6,546,800
Administration and Accounting Fund	14,500	30,700	2,400	47,600
Multistate Tax Compact Fund		3,900		3,900
Administration Services for Transportation Fund	~~410,200~~ 400,900	283,400	57,200	~~750,800~~ 741,500
Abandoned Property Trust-Unclaimed Property Fund		44,400		44,400
Seminars and Publications Fund		28,400		28,400
TOTAL	$ ~~4,251,100~~ 4,225,500	$3,057,500	$129,600	$ ~~7,438,200~~ 7,412,600
II. AUDIT AND COLLECTIONS:				
FROM:				
General Fund	$ 9,424,100	$1,526,700		$10,950,800
Multistate Tax Compact Fund	~~1,172,200~~ 1,186,100	429,600		~~1,601,800~~ 1,615,700
Administration and Accounting Fund	15,100	22,800		37,900
Administration Services for Transportation Fund	1,442,800	307,400		1,750,200
Abandoned Property Trust-Unclaimed Property Fund	~~418,300~~ 436,800	123,900		~~542,200~~ 560,700
TOTAL	$~~12,472,500~~ 12,504,900	$2,410,400		$~~14,882,900~~ 14,915,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
III. REVENUE OPERATIONS:				
FROM:				
General Fund	$ ~~2,771,200~~ 2,746,400	$1,330,500		$ ~~4,101,700~~ 4,076,900
Administration and Accounting Fund	131,300	75,200		206,500
Administration Services for Transportation Fund	~~470,500~~ 483,700	190,900		~~661,400~~ 674,600
Seminars and Publications Fund		18,300		18,300
Abandoned Property Trust-Unclaimed Property Fund	63,700			63,700
TOTAL	$ ~~3,436,700~~ 3,425,100	$1,614,900		$ ~~5,051,600~~ 5,040,000
IV. COUNTY SUPPORT:				
FROM:				
General Fund	$ 2,297,000	$ 602,900		$ 2,899,900
Seminars and Publications Fund		96,200		96,200
TOTAL	$ 2,297,000	$ 699,100		$ 2,996,100
GRAND TOTAL	$~~22,457,300~~ 22,452,500	$7,781,900	$129,600	$~~30,368,800~~ 30,364,000

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 3 of this act shall be in full force and effect on and after its passage and approval.

Approved April 1, 2005.

CHAPTER 247
(H.B. No. 329)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE STATE APPELLATE PUBLIC DEFENDER FOR FISCAL YEAR 2005; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation contained in Section 1, Chapter 278, Laws of 2004, there is hereby appropriated to the Office of the State Appellate Public Defender the following amount to be expended

according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

FOR:	
Operating Expenditures	$233,000
FROM:	
General Fund	$233,000

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 April 1, 2005.

CHAPTER 248
(H.B. No. 330)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2005; 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 153, Laws of 2004, there is hereby appropriated to the Department of Juvenile Corrections the following amount to be expended for the designated program according to the designated expense class from the listed fund for the period July 1, 2004, through June 30, 2005:

ADMINISTRATION	
FOR:	
Operating Expenses	$18,500
FROM:	
General Fund	$18,500

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

Approved April 1, 2005.

CHAPTER 249
(H.B. No. 338)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR FISCAL YEAR 2006; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO CERTAIN TRANSFERS BEING CONTINUOUSLY APPROPRIATED; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES FOR CONTRACT CONSTRUCTION AND RIGHT-OF-WAY ACQUISITION; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF THE RESTRICTED DISASTER STATE HIGHWAY FUND;

REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES FOR AIRPORT DEVELOPMENT GRANTS; AUTHORIZING THE TRANSFER OF HIGHWAY FUNDS TO THE TOURISM AND PROMOTION FUND; AND DISSOLVING THE HIGHWAY SAFETY FUND.

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

SECTION 1. There is hereby appropriated to the Idaho Transportation Department 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT:					
FROM:					
State Highway Fund (Dedicated)	$ 12,412,300	$ 7,376,200	$ 708,200		$ 20,496,700
State Highway Fund (Federal)	244,700	148,600			393,300
State Highway Fund (Billing)	20,200	188,200			208,400
TOTAL	$ 12,677,200	$ 7,713,000	$ 708,200		$ 21,098,400
II. PLANNING:					
FROM:					
State Highway Fund (Dedicated)	$ 577,300	$ 430,100	$ 106,200	$ 140,000	$ 1,253,600
State Highway Fund (Federal)	2,309,000	1,721,100		140,000	4,170,100
TOTAL	$ 2,886,300	$ 2,151,200	$ 106,200	$ 280,000	$ 5,423,700
III. MOTOR VEHICLES:					
FROM:					
State Highway Fund (Dedicated)	$ 11,627,100	$ 5,769,300	$ 300,700		$ 17,697,100
IV. HIGHWAY OPERATIONS:					
FROM:					
State Highway Fund (Dedicated)	$ 65,113,700	$36,496,200	$ 16,864,500		$118,474,400
State Highway Fund (Federal)	10,009,300	1,963,100		$ 2,000,000	13,972,400
State Highway Fund (Billing)		381,400			381,400
State Highway Fund (Local)	191,200	97,000			288,200
TOTAL	$ 75,314,200	$38,937,700	$ 16,864,500	$ 2,000,000	$133,116,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND B ENEFIT PAYMENTS	TOTAL
V. CAPITAL FACILITIES:					
FROM:					
State Highway Fund (Dedicated)			$ 3,800,000		$ 3,800,000
State Aeronautics Fund (Dedicated)			50,000		50,000
TOTAL			$ 3,850,000		$ 3,850,000
VI. CONTRACT CONSTRUCTION & RIGHT-OF-WAY ACQUISITION:					
FROM:					
State Highway Fund (Dedicated)		$ 1,376,800	$ 48,458,900	$ 737,000	$ 50,572,700
State Highway Fund (Federal)		7,609,200	212,945,800	$ 6,580,000	227,135,000
State Highway Fund (Local)		131,000	5,309,400	870,000	6,310,400
TOTAL		$ 9,117,000	$266,714,100	$ 8,187,000	$284,018,100
VII. AERONAUTICS:					
FROM:					
State Aeronautics Fund (Dedicated)	$ 801,700	$ 461,800	$ 57,500	$ 641,000	$ 1,962,000
State Aeronautics Fund (Federal)	18,300	239,900		1,000,000	1,258,200
State Aeronautics Fund (B 11ing)	76,200	118,800			195,000
TOTAL	$ 896,200	$ 820,500	$ 57,500	$ 1,641,000	$ 3,415,200
VIII. PUB LICTRANSPORTATION:					
FROM:					
State Highway Fund (Dedicated)	$ 152,200	$ 50,400	$ 4,900	$ 312,000	$ 519,500
State Highway Fund (Federal)	367,800	49,700		3,286,700	3,704,200
TOTAL	$ 520,000	$ 100,100	$ 4,900	$ 3,598,700	$ 4,223,700
GRAND TOTAL	$103,921,000	$64,608,800	$288,606,100	$15,706,700	$472,842,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho Transportation Department is authorized no more than one thousand eight hundred thirty-three and five-tenths (1,833.5) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that 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 4. There is hereby reappropriated to the Idaho Transportation Department any unexpended and unencumbered balances of the State Highway Fund appropriated for the Contract Construction and Right-of-Way Acquisition Program for fiscal year 2005, to be used for Contract Construction and Right-of-Way Acquisition only for the period July 1, 2005, through June 30, 2006.

SECTION 5. All unexpended and unencumbered moneys previously appropriated to the Idaho Transportation Department from funds deposited to the restricted disaster State Highway Fund are hereby reappropriated to the Idaho Transportation Department for the period July 1, 2005, through June 30, 2006.

SECTION 6. There is hereby reappropriated to the Idaho Transportation Department any unexpended and unencumbered balances of the State Aeronautics Fund appropriated for trustee and benefit payments for fiscal year 2005, to be used for Airport Development Grants for the period July 1, 2005, through June 30, 2006.

SECTION 7. There is hereby appropriated and the State Controller is directed to transfer $25,000 from the State Highway Fund to the Tourism and Promotion Fund in the Department of Commerce and Labor during fiscal year 2006. This transfer will provide the matching fund support of the Gateway Visitor Centers.

SECTION 8. It is legislative intent that the Highway Safety Fund (Fund 0263) be dissolved on June 30, 2005, and that any remaining cash balance in such fund be transferred to the State Highway Account (Fund 0260) upon dissolution.

Approved April 1, 2005.

CHAPTER 250
(H.B. No. 339)

AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF HUMAN RESOURCES FOR FISCAL YEAR 2006; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Division of Human Resources the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
DIVISION OF HUMAN RESOURCES:				
FROM:				
Division of Human Resources Fund	$2,132,100	$611,300	$28,000	$2,771,400
Seminars and Publications Fund		130,000		130,000
TOTAL	$2,132,100	$741,300	$28,000	$2,901,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Human Resources is authorized no more than thirty-six (36) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 April 1, 2005.

CHAPTER 251
(H.B. No. 340)

AN ACT

APPROPRIATING MONEYS FOR THE HEALTH EDUCATION PROGRAMS FOR FISCAL YEAR 2006; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES FOR THE SEVERAL DESIGNATED PROGRAMS; AND SETTING CONDITIONS FOR REAPPROPRIATION.

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 and the State Board of Education 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. WOI VETERINARY EDUCATION:				
FROM:				
General Fund	$ 499,200	$1,128,500		$1,627,700
Restricted Current Fund			$ 100,000	100,000
TOTAL	$ 499,200	$1,128,500	$ 100,000	$1,727,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. WWAMI MEDICAL EDUCATION:				
FROM:				
General Fund	$ 688,100	$ 62,500	$2,483,500	$3,234,100
Unrestricted Current Fund	22,600	70,900	133,800	227,300
TOTAL	$ 710,700	$ 133,400	$2,617,300	$3,461,400
III. IDEP DENTAL EDUCATION:				
FROM:				
General Fund	$ 208,300	$ 14,700	$ 764,200	$ 987,200
Unrestricted Current Fund	115,700			115,700
TOTAL	$ 324,000	$ 14,700	$ 764,200	$1,102,900
IV. UNIVERSITY OF UTAH MEDICAL EDUCATION:				
FROM:				
General Fund			$ 985,900	$ 985,900
V. FAMILY PRACTICE RESIDENCIES:				
FROM:				
General Fund	$ 424,100	$ 205,900	$ 717,000	$1,347,000
VI. WICHE:				
FROM:				
General Fund			$ 198,400	$ 198,400
GRAND TOTAL	$1,958,000	$1,482,500	$5,382,800	$8,823,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the agency is authorized no more than twenty and thirty-nine hundredths (20.39) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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. There is hereby reappropriated to the Board of Regents of the University of Idaho and the State Board of Education for the WOI Veterinary Education Program, WWAMI Medical Education Program, IDEP Dental Education Program, University of Utah Medical Education Program, Family Practice Residencies Program, and the WICHE Program, subject to the provisions of Section 4 of this act, the unexpended and unencumbered balance of any appropriation contained in Section 1, Chapter 364, Laws of 2004, to be used for nonrecurring expenditures, for the period July 1, 2005, through June 30, 2006.

SECTION 4. The reappropriation for the General Fund moneys 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, 2005, is zero, the reappropriation for the General Fund moneys 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, 2005, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, that 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.

Approved April 1, 2005.

CHAPTER 252
(H.B. No. 341)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO STATE LOTTERY FOR FISCAL YEAR 2006; 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 Idaho State Lottery in the Department of Self-Governing Agencies the following amounts to be expended for administrative costs according to the designated expense classes from the listed fund for the period July 1, 2005, through June 30, 2006:

FOR:	
Personnel Costs	$ 2,580,500
Operating Expenditures	8,017,100
Capital Outlay	127,400
TOTAL	$10,725,000
FROM:	
State Lottery Fund	$10,725,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho State Lottery is authorized no more than forty-eight (48) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, 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 Idaho State Lottery under the provisions of Section 67-7428, Idaho Code.

Approved April 1, 2005.

CHAPTER 253
(H.B. No. 342)

AN ACT
APPROPRIATING MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 2006; 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 Industrial Commission 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, 2005, through June 30, 2006:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. COMPENSATION:					
FROM:					
Industrial Administration Fund	$2,537,700	$ 941,500	$ 75,700	$1,131,200	$ 4,686,100
Federal Grant Fund	2,700	2,400			5,100
Miscellaneous Revenue Fund		25,000			25,000
TOTAL	$2,540,400	$ 968,900	$ 75,700	$1,131,200	$ 4,716,200
II. REHABILITATION:					
FROM:					
Industrial Administration Fund	$2,682,700	$ 669,900	$ 83,200		$ 3,435,800
III. CRIME VICTIMS COMPENSATION:					
FROM:					
Crime Victims Compensation Fund	$ 576,000	$ 179,400	$ 16,000	$2,338,500	$ 3,109,900
Federal Grant Fund				845,500	845,500
TOTAL	$ 576,000	$ 179,400	$ 16,000	$3,184,000	$ 3,955,400
IV. ADJUDICATION:					
FROM:					
Industrial Administration Fund	$1,395,500	$ 492,400	$ 2,700		$ 1,890,600
GRAND TOTAL	$7,194,600	$2,310,600	$177,600	$4,315,200	$13,998,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Industrial Commission is authorized no more than one hundred thirty-nine and one-half (139.5) full-time equivalent positions at any point during the period July 1, 2005, through June 30, 2006, for the programs speci-

fied 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 April 1, 2005.

CHAPTER 254
(S.B. No. 1174)

AN ACT

RELATING TO THE STATE CAMPAIGN FINANCE AND REPORTING LAW; AMENDING SECTION 67-6602, IDAHO CODE, TO PROVIDE A DEFINITION OF "ELECTIONEERING COMMUNICATION"; AMENDING CHAPTER 66, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6630, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR PERSONS WHO CONDUCT OR TRANSMIT ANY ELECTIONEERING COMMUNICATION AND TO PROVIDE REQUIREMENTS FOR STATEMENTS FILED WITH THE SECRETARY OF STATE; AMENDING SECTION 67-6625, IDAHO CODE, TO PROVIDE CIVIL PENALTIES AND MISDEMEANOR PENALTIES FOR FAILING TO REPORT ELECTIONEERING COMMUNICATIONS IN COMPLIANCE WITH LAW; AMENDING SECTION 31-2012, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY REFERENCE; AMENDING SECTION 50-477, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY REFERENCE; AND AMENDING SECTION 1-2220A, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY REFERENCE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 67-6602, Idaho Code, be, and the same is hereby amended to read as follows:

67-6602. DEFINITIONS. As used in this chapter, the following terms have the following meanings:

(a) "Candidate" means an individual who has taken affirmative action to seek nomination or election to public office. An individual shall be deemed to have taken affirmative action to seek such nomination or election to public office when he first:

(1) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or

(2) Announces publicly or files for office.

(3) For purposes of this chapter, an incumbent shall be presumed to be a candidate in the subsequent election for his or her office. Contributions received by an incumbent candidate shall not be in excess of the prescribed contribution limits for the subsequent election by which the incumbent candidate's name would first appear on the ballot. An incumbent shall no longer be a candidate for his or her office after the deadline for the filing of a declaration of candidacy to first appear on the ballot for that office has expired.

(b) "Compensation" includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to do any of the foregoing, for services rendered or to be rendered, but does

not include reimbursement of expenses if such reimbursement does not exceed the amount actually expended for such expenses and is substantiated by an itemization of such expenses.

(c) "Contribution" includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, subscription or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee or measure. Such term also includes personal funds or other property of a candidate or members of his household expended or transferred to cover expenditures incurred in support of such candidate but does not include personal funds used to pay the candidate filing fee. Such term also includes the rendering of personal and professional services for less than full consideration, but does not include ordinary home hospitality or the rendering of "part-time" personal services of the sort commonly performed by volunteer campaign workers or advisors or incidental expenses not in excess of twenty-five dollars ($25.00) personally paid for by any volunteer campaign worker. "Part-time" services for the purposes of this definition, means services in addition to regular full-time employment, or, in the case of an unemployed person or persons engaged in part-time employment, services rendered without compensation or reimbursement of expenses from any source other than the candidate or political committee for whom such services are rendered. For the purposes of this act, contributions, other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution.

(d) "Election" means any general, special or primary election.

(e) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a measure.

(f) (1) "Electioneering communication" means any communication broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences, or telephone calls made to personal residences, or otherwise distributed that:

(i) Unambiguously refers to any candidate; and

(ii) Is broadcasted, printed, mailed, delivered, made or distributed within thirty (30) days before a primary election or sixty (60) days before a general election; and

(iii) Is broadcasted to, printed in a newspaper, distributed to, mailed to or delivered by hand to, telephone calls made to, or otherwise distributed to an audience that includes members of the electorate for such public office.

(2) "Electioneering communication" does not include:

(i) Any news articles, editorial endorsements, opinion or commentary, writings, or letter to the editor printed in a newspaper, magazine, or other periodical not owned or controlled by a candidate or political party;

(ii) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party;

(iii) Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families;

(iv) Any communication which refers to any candidate only as part of the popular name of a bill or statute;

(v) A communication which constitutes an expenditure or an independent expenditure under this chapter.

(g) "Expenditure" includes any payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment or a transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

(~~g~~h) "Independent expenditure" means any expenditure by a person for a communication expressly advocating the election, passage or defeat of a clearly identified candidate or measure that is not made with the cooperation or with the prior consent of, or in consultation with, or at the consent of, or in consultation with, or at the request of a suggestion of, a candidate or any agent or authorized committee of the candidate or political committee supporting or opposing a measure. As used in this subsection, "expressly advocating" means any communication containing a message advocating election, passage or defeat including, but not limited to, the name of the candidate or measure, or expression such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat" or "reject."

(~~h~~i) "Lobby" and "lobbying" each means attempting through contacts with, or causing others to make contact with, members of the legislature or legislative committees, to influence the approval, modification or rejection of any legislation by the legislature of the state of Idaho or any committee thereof. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(~~i~~j) "Lobbyist" includes any person who lobbies.

(~~j~~k) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed, directly or indirectly, and all persons by whom he is compensated for acting as a lobbyist.

(~~k~~l) "Measure" means any proposal, to be voted statewide, submitted to the people for their approval or rejection at an election, including any initiative, referendum or revision of or amendment to the state constitution. An initiative or referendum proposal shall be deemed a measure when the attorney general reviews it and gives it a ballot title.

(~~l~~m) "Nonbusiness entity" means any group (of two (2) or more individuals), corporation, association, firm, partnership, committee, club or other organization which:

(1) Does not have as its principal purpose the conduct of business activities for profit; and

(2) Received during the preceding calendar year contributions, gifts or membership fees, which in the aggregate exceeded ten percent (10%) of its total receipts for such year.

(~~m~~n) "Person" means an individual, corporation, association, firm,

partnership, committee, political party, club or other organization or group of persons.

(mo) "Political committee" means:

(1) Any person specifically designated to support or oppose any candidate or measure; or

(2) Any person who receives contributions and makes expenditures in an amount exceeding five hundred dollars ($500) in any calendar year for the purpose of supporting or opposing one (1) or more candidates or measures. Any entity registered with the federal election commission shall not be considered a political committee for purposes of this chapter.

(3) A county, district or regional committee of a recognized political party shall not be considered a political committee for the purposes of this chapter unless such party committee has expenditures exceeding five thousand dollars ($5,000) in a calendar year.

(op) "Political treasurer" means an individual appointed by a candidate or political committee as provided in section 67-6603, Idaho Code.

(pq) "Public office" means any state office or position, state senator, state representative, and judge of the district court that is filled by election.

SECTION 2. That Chapter 66, 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 67-6630, Idaho Code, and to read as follows:

67-6630. ELECTIONEERING COMMUNICATIONS -- STATEMENTS. (1) Any person who conducts or transmits any electioneering communication shall be required to file a statement on a form provided by the secretary of state. Contents of the statement shall include the amount spent on such communications, the name and address of the person, and the names and addresses of any persons who contribute fifty dollars ($50.00) or more to any person described in this section.

(2) Any person that incurs costs in excess of one hundred dollars ($100) when making an electioneering communication shall file a statement in accordance with the time limits established by section 67-6611(2), Idaho Code.

(3) In addition to the requirements of subsection (2) of this section, any person that incurs costs of one thousand dollars ($1,000) or more when making an electioneering communication shall file a statement as provided in subsection (1) of this section within forty-eight (48) hours of incurring the costs for such communication.

SECTION 3. That Section 67-6625, Idaho Code, be, and the same is hereby amended to read as follows:

67-6625. VIOLATIONS -- CIVIL FINE -- MISDEMEANOR PENALTY -- PROSECUTION -- LIMITATION -- VENUE. (a) Any person who violates the provisions of section 67-6603 through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(a), 67-6624, ~~or~~ 67-6629 or 67-6630, Idaho Code, shall be liable for a civil fine not to exceed two hundred fifty dollars ($250) if an individual, and not more than two thousand five hundred dollars ($2,500) if a person other than an individual. The burden of proof for such civil liability shall be met by showing a preponderance of the evidence.

(b) Any person who violates section 67-6605 or 67-6621(b), Idaho Code, and any person who knowingly and willfully violates section 67-6603 through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(a), 67-6624, ~~or~~ 67-6629 or 67-6630, Idaho Code, is guilty of a misdemeanor and, upon conviction, in addition to the fines set forth in subsection (a) of this section, may be imprisoned for not more than six (6) months or be both fined and imprisoned.

(c) The attorney general or the appropriate prosecuting attorney may prosecute any violations of this act.

(d) Prosecution for violation of this act must be commenced within two (2) years after the date on which the violation occurred.

(e) Venue for prosecution under the provisions of this chapter shall be in the county of residence of the defendant if the defendant is a resident of the state of Idaho, otherwise venue shall be in Ada county.

SECTION 4. That Section 31-2012, Idaho Code, be, and the same is hereby amended to read as follows:

31-2012. APPLICATION OF CAMPAIGN REPORTING LAW TO CERTAIN COUNTY ELECTIONS. The provisions of sections 67-6601 through 67-6616 and 67-6623 through 67-66~~28~~30, Idaho Code, insofar as they relate to the reporting of campaign contributions and expenditures are hereby made applicable to all elections for county elected officers in counties of the state, except that the clerk of the district court shall stand in place of the secretary of state.

SECTION 5. That Section 50-477, Idaho Code, be, and the same is hereby amended to read as follows:

50-477. APPLICATION OF CAMPAIGN EXPENDITURES REPORTING LAW TO ELECTIONS IN CERTAIN CITIES. The provisions of sections 67-6601 through 67-6616 and 67-6623 through 67-66~~28~~30, Idaho Code, insofar as they relate to the reporting of campaign contributions, are hereby made applicable to all elections for mayor, councilman and citywide measures in cities of five thousand (5,000) or more population, except that the city clerk shall stand in place of the secretary of state, and the city attorney shall stand in place of the attorney general.

SECTION 6. That Section 1-2220A, Idaho Code, be, and the same is hereby amended to read as follows:

1-2220A. REPORTING OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES -- MAGISTRATE RETENTION ELECTIONS. The provisions of sections 67-6601 through 67-6616, Idaho Code, and sections 67-6623 through 67-66~~29~~30, Idaho Code, insofar as they relate to the reporting of campaign contributions and expenditures, are hereby made applicable to all mag~~istrate~~ retention elections except that, with the exception of section 67-6623(f), Idaho Code, the clerk of the district court shall stand in place of the secretary of state as it relates to the provisions cited in this section.

Approved April 5, 2005.

CHAPTER 255
(S.B. No. 1221)

AN ACT

RELATING TO THE APPROPRIATION FOR THE PUBLIC SCHOOLS DIVISION OF ADMINISTRATORS; PROVIDING FOR EXPENDITURES FOR THE PUBLIC SCHOOLS DIVISION OF ADMINISTRATORS FOR FISCAL YEAR 2006; APPROPRIATING GENERAL FUND MONEYS FOR TRANSFER TO THE PUBLIC SCHOOL INCOME FUND; APPROPRIATING FUNDS TO THE EDUCATIONAL SUPPORT PROGRAM/DIVISION OF ADMINISTRATORS FOR FISCAL YEAR 2006; EXPRESSING LEGISLATIVE INTENT THAT CERTAIN STATE FUNDED BENEFITS BE PAID; AMENDING SECTION 33-1002C, IDAHO CODE, TO CREATE CERTAIN EXEMPTIONS FROM SECTION 33-1003, IDAHO CODE; AMENDING SECTION 33-5208, IDAHO CODE, TO LIMIT THE ANNUAL GROWTH OF SUPPORT UNITS ALLOWED FOR PUBLIC CHARTER SCHOOLS; AMENDING SECTION 33-5203, IDAHO CODE, TO PROVIDE THAT NEW PUBLIC CHARTER SCHOOLS MUST BE AUTHORIZED BY A SPECIFIED DATE; DECLARING AN EMERGENCY FOR SECTION 5 OF THIS ACT; AND PROVIDING AN EFFECTIVE DATE FOR SECTION 7 OF THIS ACT.

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

SECTION 1. The following amount shall be expended for the Public Schools Division of Administrators for the period July 1, 2005, through June 30, 2006:

FROM:

General Fund	$75,195,300
Federal Grant Fund	1,650,200
TOTAL	$76,845,500

SECTION 2. There is hereby appropriated the following amount to be transferred to the Public School Income Fund for the period July 1, 2005, through June 30, 2006:

FROM:

General Fund	$75,195,300

SECTION 3. There is hereby appropriated to the Educational Support Program/Division of Administrators, pursuant to law and the provisions of this act, the following amount to be expended from the listed funds for the period July 1, 2005, through June 30, 2006:

FROM:

Public School Income Fund	$75,195,300
Federal Grant Fund	1,650,200
TOTAL	$76,845,500

SECTION 4. It is legislative intent that public school employee benefits paid by the state, pursuant to Section 33-1004F, Idaho Code, be paid for all eligible employees that a school district or public charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff.

SECTION 5. That Section 33-1002C, Idaho Code, be, and the same is hereby amended to read as follows:

33-1002C. SUMMER SCHOOL PROGRAM SUPPORT UNITS -- ALTERNATIVE SECONDARY SCHOOL -- JUVENILE DETENTION FACILITY. (1) Alternative secondary summer school programs of not less than two hundred twenty-five (225) hours of instruction, which shall be included in the educational support units calculated as provided in section 33-1002, Idaho Code, may be established as approved by the state board of education. The average daily attendance divided by forty (40) shall determine the number of allowable support units which shall be included in the alternative school secondary support units calculated for the school district for the succeeding school term.

(2) Districts which educate pupils placed by court order in a juvenile detention facility may establish a summer school program which shall be included in the educational support units calculated as provided in section 33-1002, Idaho Code. The average daily attendance divided by forty (40) shall determine the number of allowable support units which shall be included in the exceptional education school support units calculated for the school district for the succeeding school term.

(3) Average daily attendance and the support units so generated by this section shall not be included in or subject to the provisions of section 33-1003, Idaho Code, and shall be included as an addition to any other support units generated pursuant to Idaho Code.

SECTION 6. That Section 33-5208, Idaho Code, be, and the same is hereby amended to read as follows:

33-5208. PUBLIC CHARTER SCHOOL FINANCIAL SUPPORT. Except as provided in subsection (8) of this section, from the state educational support program the state department of education shall make the following apportionment to each public charter school for each fiscal year based on attendance figures submitted in a manner and time as required by the department of education:

(1) Per student support. Computation of support units for each public charter school shall be calculated as if it were a separate school according to the schedules in section 33-1002 6., Idaho Code, except that public charter schools with fewer than one hundred (100) secondary ADA shall use a divisor of twelve (12) and the minimum units shall not apply, and no public charter school shall receive an increase in support units that exceeds the support units it received in the prior year by more than twenty (20). Funding from the state educational support program shall be equal to the total distribution factor, plus the salary-based apportionment provided in chapter 10, title 33, Idaho Code. Provided however, any public charter school that is formed by the conversion of an existing traditional public school shall be assigned divisors, pursuant to section 33-1002, Idaho Code, that are no lower than the divisors of the school district in which the traditional public school is located, for each category of pupils listed.

(2) Special education. For each student enrolled in the public charter school who is entitled to special education services, the state and federal funds from the exceptional child education program for that student that would have been apportioned for that student to the school district in which the public charter school is located.

(3) Alternative school support. Public charter schools may qualify under the provisions of sections 33-1002 and 33-1002C, Idaho Code, pro-

vided the public charter school meets the necessary statutory requirements, and students qualify for attendance at an alternative school as provided by rule of the state board of education.

(4) Transportation support. Support shall be paid to the public charter school as provided in chapter 15, title 33, Idaho Code, and section 33-1006, Idaho Code. Each public charter school shall furnish the department with an enrollment count as of the first Friday in November, of public charter school students living more than one and one-half (1 1/2) miles from the school. For charter schools in the initial year of operation, the petition shall include a proposal for transportation services with an estimated first year cost. The state department of education is authorized to include in the annual appropriation to the charter school eighty percent (80%) of the estimated transportation cost. The final appropriation payment in July shall reflect eighty-five percent (85%) of the actual cost.

(5) Payment schedule. The state department of education is authorized to make an advance payment of twenty-five percent (25%) of a public charter school's estimated annual apportionment for its first year of operation, and each year thereafter, provided the public charter school has an increase of student population in any given year of twenty (20) students or more, to assist the school with initial start-up costs or payroll obligations.

(a) For a state public charter school to receive the advance payment, the school shall submit its anticipated fall membership for each grade level to the state department of education by June 1.

(b) Using the figures provided by the public charter school, the state department of education shall determine an estimated annual apportionment from which the amount of the advance payment shall be calculated. Advance payment shall be made to the school on or after July 1 but no later than July 31.

(c) All subsequent payments, taking into account the one-time advance payment made for the first year of operation, shall be made to the public charter school in the same manner as other traditional public schools in accordance with the provisions of section 33-1009, Idaho Code.

A public charter school shall comply with all applicable fiscal requirements of law, except that the following provisions shall not be applicable to public charter schools: section 33-1003B, Idaho Code, relating to guaranteed minimum support; that portion of section 33-1004, Idaho Code, relating to reduction of the administrative and instructional staff allowance when there is a discrepancy between the number allowed and the number actually employed; and section 33-1004E, Idaho Code, for calculation of district staff indices.

(6) Nothing in this chapter shall be construed to prohibit any private person or organization from providing funding or other financial assistance to the establishment or operation of a public charter school.

(7) Nothing in this chapter shall prevent a public charter school from applying for federal grant moneys.

(8) (a) For the period July 1, 2003, through June 30, 2005, all public virtual schools shall be assigned divisors, pursuant to section 33-1002, Idaho Code, that are no higher than the median divisor shown for each respective category of pupils, among the possible divisors listed, for each respective category of pupils that contains more than one (1) divisor. If there is an even number of pos-

sible divisors listed for a particular category of pupils, then the lesser of the two (2) median divisors shall be used. For the period July 1, 2005, through June 30, 2007, all public virtual schools shall be assigned divisors, pursuant to section 33-1002, Idaho Code, that are no higher than the second highest divisor shown, among the possible divisors listed, for each respective category of pupils that contains more than one (1) divisor. The divisor provisions contained herein shall only be applicable to the number of pupils in average daily attendance in such public virtual schools for the period July 1, 2003, through June 30, 2004. If the number of pupils in average daily attendance in any particular category of pupils increases, during the period July 1, 2004, through June 30, 2005, to a number above that which existed in the prior fiscal year, then those additional pupils in average daily attendance shall be assigned the divisor, pursuant to section 33-1002, Idaho Code, that would have otherwise been assigned to the school district or public charter school had this section not been in force.

(b) Each student in attendance at a public virtual school shall be funded based upon either the actual hours of attendance in the public virtual school on a flexible schedule, or the percentage of coursework completed, whichever is more advantageous to the school, up to the maximum of one (1) full-time equivalent student.

(c) At the discretion of the board of directors, and subject to any specific limitations in its charter, all federal educational funds shall be administered and distributed to public virtual schools that enroll students from multiple school districts in the same manner as an independent local education agency (LEA).

(9) Nothing in this section prohibits separate face-to-face learning activities or services.

SECTION 7. That Section 33-5203, Idaho Code, be, and the same is hereby amended to read as follows:

33-5203. AUTHORIZATION -- LIMITATIONS. (1) The creation of public charter schools is hereby authorized. Public charter schools shall be part of the state's program of public education.

(2) The number of charter schools which may be approved shall be limited in number in accordance with the following:

(a) Not more than six (6) newly-chartered public schools may be approved for any one (1) school year, and

(b) Not more than one (1) newly-chartered public school may be granted for any one (1) school district for a school year, and

(c) No whole school district may be converted to a charter district or any configuration which includes all schools as public charter schools.

(d) To begin operations, a newly-chartered public school must be authorized by no later than January 1 of the previous school year.

(3) A public charter school may be formed either by creating a new public charter school, which charter may be granted by any authorized chartering entity, or by converting an existing traditional public school to a public charter school, which charter may only be granted by the board of trustees of the school district in which the existing public school is located.

(4) No charter shall be granted under this chapter:

(a) Which provides for the conversion of any existing private or parochial school to a public charter school.

(b) To a for-profit entity or any school which is operated by a for-profit entity, provided however, nothing herein shall prevent the board of directors of a public charter school from legally contracting with for-profit entities for the provision of products or services that aid in the operation of the school.

(c) By the board of trustees of a school district if the public charter school's physical location is outside the boundaries of the authorizing school district. The limitation provided in this subsection (4)(c) does not apply to a home-based public virtual school.

(5) A public virtual school charter may be granted by the public charter school commission. In addition, a charter may also be approved and granted by the state board of education pursuant to section 33-5207(5)(b), Idaho Code.

(6) The state board of education shall adopt rules, subject to law, to establish a consistent application and review process for the approval and maintenance of all public charter schools.

(7) The state board of education shall be responsible to designate those public charter schools that will be identified as a local education agency (LEA) as such term is defined in 34 CFR 300.18; however, only public charter schools chartered by the board of trustees of a school district may be included in that district's LEA.

SECTION 8. An emergency existing therefor, which emergency is hereby declared to exist, Section 5 of this act shall be in full force and effect on and after passage and approval.

SECTION 9. Section 7 of this act shall be in full force and effect on and after December 31, 2005.

Approved April 5, 2005.

CHAPTER 256
(S.B. No. 1222)

AN ACT

RELATING TO THE APPROPRIATION FOR THE PUBLIC SCHOOLS DIVISION OF TEACHERS; PROVIDING FOR EXPENDITURES FOR THE PUBLIC SCHOOLS DIVISION OF TEACHERS; APPROPRIATING GENERAL FUND MONEYS FOR TRANSFER TO THE PUBLIC SCHOOL INCOME FUND; APPROPRIATING FUNDS TO THE EDUCATIONAL SUPPORT PROGRAM/DIVISION OF TEACHERS FOR FISCAL YEAR 2006; PROVIDING MONEYS FOR THE UNEMPLOYMENT INSURANCE PROGRAM; DIRECTING THAT UP TO $696,400 BE DISTRIBUTED FOR MASTER TEACHER AWARD PAYMENTS; AND DIRECTING THAT $500,000 BE ALLOCATED FOR TRAINING TO SERVE THE NEEDS OF GIFTED AND TALENTED STUDENTS.

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

SECTION 1. The following amount shall be expended for the Public Schools Division of Teachers for the period July 1, 2005, through June 30, 2006:

FROM:

General Fund	$645,725,200
Federal Grant Fund	54,253,400
TOTAL	$699,978,600

SECTION 2. There is hereby appropriated the following amount to be transferred to the Public School Income Fund for the period July 1, 2005, through June 30, 2006:

FROM:

General Fund	$645,725,200

SECTION 3. There is hereby appropriated to the Educational Support Program/Division of Teachers, pursuant to law and the provisions of this act, the following amount to be expended from the listed funds for the period July 1, 2005, through June 30, 2006:

FROM:

Public School Income Fund	$645,725,200
Federal Grant Fund	54,253,400
TOTAL	$699,978,600

SECTION 4. Of the moneys appropriated in Section 3 of this act, the amount necessary for the Unemployment Insurance Program shall be expended according to Section 72-1349A, Idaho Code, for the period July 1, 2005, through June 30, 2006.

SECTION 5. Of the moneys appropriated in Section 3 of this act, an amount up to $696,400 shall be awarded to those instructional staff members who have been recognized as master teachers by the National Board for Professional Teaching Standards, according to the provisions of Section 33-1004E, Idaho Code.

SECTION 6. Of the moneys appropriated in Section 3 of this act, $500,000 shall be distributed to train general education teachers, gifted/talented (G/T) facilitators, administrators and/or parents to better meet the needs of gifted/talented students. One-half (1/2) of these funds shall be allocated pro rata based on each district's prior year total student enrollment compared to the prior year total statewide enrollment. One-half (1/2) of these funds shall be allocated based on the number of gifted/talented students identified and served as indicated on the prior year's December 1 child count. The number of gifted/talented students identified for purposes of this section shall not exceed seven percent (7%) of the district's total student enrollment. No district shall receive less than $500. Funds shall be distributed upon submission and approval of an application submitted to the State Department of Education demonstrating how in-service training will establish or improve identification and service of gifted/talented students in the five (5) mandated talent areas. The Superintendent of Public Instruction may reallocate any gifted/talented funds that are left unrequested by school districts to all other school districts that have requested gifted/talented funds, according to the distribution formula outlined in this section.

Approved April 5, 2005.