

GENERAL LAWS
OF THE
STATE OF IDAHO



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

Convened January 11, 1993
Adjourned March 27, 1993

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

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CHAPTER 249
(H.B. No. 376)

AN ACT

RELATING TO THE STATE LOTTERY; AMENDING SECTION 67-7409, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE STATE LOTTERY SHALL BE RESPONSIBLE FOR MONITORING CLASS III GAMING ON INDIAN RESERVATIONS.

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

SECTION 1. That Section 67-7409, Idaho Code, be, and the same is hereby amended to read as follows:

67-7409. POWERS AND DUTIES OF THE DIRECTOR. The director shall be responsible for the daily operations of the lottery, and shall have the following duties, powers and responsibilities in addition to others herein granted:

(1) The director shall:

(a) Operate and administer the lottery in accordance with the provisions of this act and the policies, rules and regulations of the lottery;

(b) Appoint deputy directors, sales personnel and security staff, who shall be exempt from the provisions of chapter 53, title 67, Idaho Code, as may be required to carry out the functions and duties of his office; and

(c) Hire professional, technical and other employees as may be necessary to perform the duties of his office subject to the provisions of chapter 53, title 67, Idaho Code.

(2) The director shall:

(a) Confer regularly with the commission on the operation and administration of the lottery;

(b) Make available for inspection by the commission, on request, all books, records, files, and other information and documents of the lottery; and

(c) Advise the commission and make such recommendations as the director considers necessary and advisable to improve the operation and administration of the lottery.

(3) The director may enter into contracts for marketing, advertising, promotion, research and studies for the lottery and for products and services for effectuating the purposes of this chapter, however, contracts for major procurements must be approved by the commission. The director may not enter into contracts for the administration of the lottery.

(4) The director shall:

(a) Submit quarterly financial statements to the commission, the governor, the state treasurer, and the legislature. Such financial

statements shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. Such financial statements are to be provided within forty-five (45) days of the last day of each quarter;

(b) Submit annual financial statements to the commission, the governor, the state treasurer, and each member of the legislature. Such financial statements shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. Such financial statements shall have been examined by the state auditor or a firm of independent certified public accountants in accordance with generally accepted auditing standards and shall be provided within ninety (90) days of the last day of the lottery's fiscal year;

(c) Report to the governor and the legislature any matters which require immediate changes in the laws of this state in order to prevent abuses and evasions of this act or the rules and regulations of the lottery or to rectify undesirable conditions in connection with administration or operation of the lottery;

(d) Carry on a continuous study and investigation of the lottery to:

- (i) Identify any defects in the provisions of this chapter or in the rules and regulations of the commission leading to an abuse in the administration or operation of the lottery or an evasion of this act or the rules and regulations of the lottery;
 - (ii) Make recommendations for changes in this chapter or the rules and regulations of the lottery to prevent abuses or evasions or to improve the efficiency of the lottery;
 - (iii) Ensure that the provisions of this chapter and the rules and regulations of the lottery are administered and formulated to serve the purposes of this chapter;
 - (iv) Prevent the use of the lottery, the provisions of this chapter, or the rules and regulations of the lottery from fostering professional gambling or crime;
- (e) Make a continuous study and investigation of:
- (i) The operation and administration of similar laws and lotteries in other states and countries;
 - (ii) The available information on the subject of lotteries and related subjects;
 - (iii) Any federal laws which may affect the operation of the lottery; and
 - (iv) The reaction of citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.
- (5) The director shall provide for secure lottery facilities and lottery systems, including data processing facilities and systems.
- (6) The director shall be responsible for monitoring class III gaming on Indian reservations as may be required by compacts entered into by the state in accordance with state statutory law and pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. section 2701 et seq.

and 18 U.S.C. sections 1166-1168.

(7) The director shall perform all other acts necessary to carry out the purposes and provisions of this chapter.

Approved March 29, 1993.

CHAPTER 250
(S.B. No. 1019, As Amended)

AN ACT

RELATING TO THE OPERATION OF BOATS; AMENDING CHAPTER 70, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-7037, IDAHO CODE, TO PROVIDE WHEN A VESSEL OPERATOR HAS GIVEN HIS CONSENT TO AN EVIDENTIARY TEST FOR CONCENTRATION OF ALCOHOL, DRUGS OR OTHER INTOXICATING SUBSTANCES, TO REQUIRE A PEACE OFFICER TO HAVE LEGAL CAUSE TO REQUEST SUCH A TEST, AND TO PROVIDE A CIVIL PENALTY FOR REFUSAL TO SUBMIT TO A TEST; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 70, 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 67-7037, Idaho Code, and to read as follows:

67-7037. TEST OF OPERATOR FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES. (1) Any person who operates or is in actual physical control of a vessel on the waters of the state of Idaho shall be deemed to have given his consent to evidentiary testing for concentration of alcohol, as defined in section 67-7034, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been operating or in actual physical control of a vessel in violation of the provisions of section 67-7034, Idaho Code, or section 67-7035, Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete evidentiary testing:

(a) He is subject to a civil penalty of two hundred dollars (\$200) for refusing to take the test;

(b) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to, or complete evidentiary testing;

(c) If he does not request a hearing or does not prevail at the hearing, the court shall sustain the civil penalty; and

(d) After submitting to the evidentiary testing he may, when practicable, at his own expense, have additional tests made by a

person of his own choosing.

(4) After submitting to evidentiary testing at the request of the peace officer, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) If the operator refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) of this section:

(a) A written request may be made, by the operator, within seven (7) calendar days of receipt of the complaint and summons, for a hearing before the court. If requested, the hearing must be held within thirty (30) days of the arrest unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. The hearing shall be limited to the question of why the defendant did not submit to, or complete evidentiary testing, and the burden of proof shall be upon the defendant. The court shall sustain a two hundred dollar (\$200) civil penalty immediately unless it finds that the peace officer did not have legal cause to stop and request the operator to take the test or that the request violated the operator's civil rights;

(b) If a hearing is not requested by written notice to the court concerned within seven (7) calendar days, upon receipt of a sworn statement by the peace officer of the circumstances of the refusal, the court shall sustain a two hundred dollar (\$200) civil penalty.

(6) A sustained civil penalty under this section shall be a civil penalty separate and apart from any other penalty imposed for a violation of other Idaho vessel statutes or for a conviction of an offense pursuant to this chapter, and may be appealed to the district court.

(7) Notwithstanding any other provision of law to the contrary, the civil penalty imposed under the provisions of this section must be paid, as ordered by the court, to the county justice fund or the county current expense fund where the incident occurred.

(8) If a person does not pay the civil penalty imposed as provided in this section within thirty (30) days of the time the penalty was imposed, the prosecuting authority representing the political subdivision where the incident occurred may petition the court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the penalty, attorney's fees, costs, and interest may be assessed against any person who fails to pay the civil penalty.

(9) A peace officer is empowered to order evidentiary testing as provided in section 18-8002(6), Idaho Code.

(10) Any written notice required by this section shall be effective upon mailing.

(11) For the purposes of this section "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (12) of this section,

utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.

(12) A person who submits to a breath test for alcohol concentration, as defined in subsection (5) of section 67-7034, Idaho Code, may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was operating under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his report the facts upon which that belief is based.

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 29, 1993.

CHAPTER 251
(S.B. No. 1037)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM AND DISABILITY RETIREMENT; AMENDING SECTION 59-1352, IDAHO CODE, TO CLARIFY THAT AN ACTIVE MEMBER IS ELIGIBLE FOR DISABILITY RETIREMENT IF THE MEMBER BECOMES DISABLED AFTER AT LEAST TEN YEARS OF CREDITED SERVICE; AMENDING SECTION 59-1353, IDAHO CODE, TO CLARIFY HOW DISABILITY RETIREMENT ALLOWANCES ARE TO BE COMPUTED, TO CLARIFY THAT LUMP SUM WORKER'S COMPENSATION PAYMENTS MADE IN LIEU OF PERIODIC INCOME PAYMENTS SHALL BE CONVERTED TO EQUAL PERIODIC PAYMENTS OF THE SAME NUMBER OF MONTHS FOR WHICH THE WORKER'S COMPENSATION PAYMENT IS AWARDED; AND AMENDING SECTION 59-1354, IDAHO CODE, TO CLARIFY THE TIME AT WHICH A DISABILITY RETIREMENT ALLOWANCE SHALL CEASE, TO CLARIFY THE TIME AT WHICH AN EARLY OR SERVICE RETIREMENT SHALL BECOME PAYABLE AFTER THE DISABILITY ALLOWANCE CEASES, TO CLARIFY THE MEMBER'S STATUS ONCE A DISABILITY RETIREMENT ALLOWANCE CEASES, AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 59-1352, Idaho Code, be, and the same is hereby amended to read as follows:

59-1352. ELIGIBILITY FOR DISABILITY RETIREMENT. An active member ~~who is not eligible for service retirement~~ is eligible for disability retirement if the member becomes disabled after at least ten (10) years of credited service including six (6) months of membership service.

SECTION 2. That Section 59-1353, Idaho Code, be, and the same is hereby amended to read as follows:

59-1353. COMPUTATION OF DISABILITY RETIREMENT ALLOWANCES. (1) The base disability retirement allowance of any member shall be equal to an initial service retirement allowance, as defined in section 59-1342, Idaho Code, based upon the years of service which would have been credited to the member had the member continued in eligible employment until service retirement eligibility age, as defined in section 59-1341, Idaho Code. Provided, however, that the total years of credited service shall not exceed the greater of:

(a) Thirty (30) years; or

(b) The member's accrued membership and prior service.

(2) The annual amount of initial disability retirement allowance of any member shall equal the excess, if any, of (a) over (b), as follows where:

(a) an initial service Is the base disability retirement allowance, based upon the sum of his accrued credited service and such disabled service as would accrue if he were to remain disabled until he would have been eligible for a service retirement allowance as an active member and federal social security disability benefits, if any, without any reduction for worker's compensation provided in subsection (1) of this section; and

(b) the annual amount payable Is the sum of:

(i) Any payment or portion of a payment under the provisions of any workers' compensation law for income benefits because of the same disability plus the actual amount received from, which payment is not being offset by federal social security disability benefits; and

(ii) The service retirement allowance payable under the provisions of section 59-1342, Idaho Code, where the member is the older of either age sixty-two (62) or the respective service retirement eligibility age provided in section 59-1341, Idaho Code.

(23) If a single payment is made under the provisions of any workers' compensation law and such single payment is in lieu of periodic income payments, such single payment shall be considered as its annual equivalent for the purposes of this section such single payment shall be converted, pursuant to regulations adopted by the board, to equal periodic payments of the same number of months for which the worker's compensation payment is awarded.

(4) Each adjustment in the payment of a disability retirement allowance due to a change in the amount payable under the provisions of any workers' compensation law shall take effect on the first of the month coinciding with or next following the effective date of month in which such change is effective.

SECTION 3. That Section 59-1354, Idaho Code, be, and the same is hereby amended to read as follows:

59-1354. TIME FOR PAYMENT OF DISABILITY RETIREMENT ALLOWANCE. (1) A disability retirement allowance shall become payable to a member on the first of the month next following the later of:

(a) The day salary, sick leave or other temporary compensation benefits terminate under any plan paid for in whole or in part by the employer of the member; or

(b) ~~the~~ the day five (5) months after the member becomes eligible for disability retirement.

(2) The disability retirement allowance shall be paid monthly thereafter to, but not including, the first of the month next following the earliest of the date:

(a) ~~the day of~~ Of the retired member's death; or

(b) ~~the day That~~ That the retired member ~~would be eligible for elects to receive an early or~~ elects to receive an early or service retirement; ~~were he still an active member; or~~ allowance;

(c) ~~the day That~~ That the retired member ceases to be disabled; or

(d) That the member waives, in writing, the member's disability allowance.

(3) When a disability retirement allowance ceases pursuant to (b) of subsection (2) ~~(b)~~ of this section, the ~~retired member shall thereupon become eligible for service retirement; his~~ early or service retirement allowance ~~to commence~~ shall become payable on the first of the month following the date of the last payment of the disability retirement allowance.

(4) When Effective the date a disability retirement allowance ceases pursuant to ~~(c)~~ of subsections (2)(c) and (d) of this section, the ~~retired member's status shall thereupon resume the status of an active member. Should he not become an employee~~ be inactive unless the member again becomes an employee or elects to receive an either early or service retirement allowance ~~within sixty (60) days thereafter; his status shall be considered to be an inactive member for the purposes of this chapter as of the date his disability retirement allowance ceases.~~

Approved March 29, 1993.

CHAPTER 252
(S.B. No. 1044)

AN ACT

RELATING TO INTERSTATE RECIPROCAL AGREEMENTS; AMENDING CHAPTER 70, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-7050, IDAHO CODE, TO PROVIDE FOR LAW ENFORCEMENT CAPABILITIES ON BOUNDARY WATERS OF THE STATE.

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

SECTION 1. That Chapter 70, 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 67-7050, Idaho Code, and to read as follows:

67-7050. RECIPROCAL AGREEMENTS. (1) The department is authorized to enter into bilateral, reciprocal agreements with other jurisdictions to provide mutual assistance in the disposition of vessel offenses committed by residents of one (1) jurisdiction while in the other jurisdiction.

(2) The vessel offense reciprocal agreements entered into on behalf of this state with all other states legally joining therein shall be in a form substantially as follows:

ARTICLE I -- FINDINGS AND DECLARATION OF POLICY

(1) The party states find that:

(a) The safety of their waters is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of vessels.

(b) Violation of such laws or ordinances is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(2) It is the policy of each of the party states to promote compliance with the laws, ordinances and administrative rules and regulations relating to the operation of vessels by their operators in each of the jurisdictions where such operators operate vessels.

ARTICLE II -- DEFINITION

"State" means a state of the United States and the District of Columbia.

ARTICLE III -- CONCURRENT JURISDICTION

(1) If conduct is prohibited by two (2) adjoining party states, courts and law enforcement officers in either state who have jurisdiction over vessel offenses committed where waters form a common interstate boundary have concurrent jurisdiction to arrest, prosecute and try offenders for the prohibited conduct committed anywhere on the boundary water between the two (2) states.

(2) These reciprocal agreements will not authorize:

(a) Prosecution of any person for conduct that is unlawful in the state where it was committed, but lawful in the other party state.

(b) A prohibited conduct by the party state.

ARTICLE IV -- CONSTRUCTION AND SEVERABILITY

These reciprocal agreements shall be liberally construed so as to effectuate the purposes thereof. The provisions of these reciprocal agreements shall be severable and if any phrase, clause, sentence or provision of these reciprocal agreements is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of these reciprocal agreements and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If the reciprocal agreements shall be held contrary to the constitution of any state party thereto, the reciprocal agreements shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Approved March 29, 1993.

CHAPTER 253
(S.B. No. 1045)

AN ACT
RELATING TO PROBATE OF WILLS AND ADMINISTRATION; AMENDING SECTION

15-3-1201, IDAHO CODE, TO INCREASE THE MAXIMUM VALUE OF AN ESTATE WHERE COLLECTION OF PERSONAL PROPERTY MAY BE DONE BY AFFIDAVIT.

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

SECTION 1. That Section 15-3-1201, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-1201. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT. (a) Thirty (30) days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

- (1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed ~~five~~ ten thousand dollars (\$510,000);
- (2) thirty (30) days have elapsed since the death of the decedent;
- (3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
- (4) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a) of this section.

Approved March 29, 1993.

CHAPTER 254
(S.B. No. 1053)

AN ACT

RELATING TO UNLAWFUL DISCHARGE OF A FIREARM; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3317, IDAHO CODE, TO PROVIDE FELONY CRIMINAL PENALTIES FOR UNLAWFUL DISCHARGE OF A FIREARM AT A DWELLING HOUSE, OCCUPIED BUILDING, OCCUPIED MOTOR VEHICLE, INHABITED MOBILE HOME, INHABITED TRAVEL TRAILER OR INHABITED CAMPER; AND DECLARING AN EMERGENCY.

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 18-3317, Idaho Code, and to read as follows:

18-3317. UNLAWFUL DISCHARGE OF A FIREARM AT A DWELLING HOUSE, OCCUPIED BUILDING, VEHICLE OR MOBILE HOME. It shall be unlawful for any person to intentionally and unlawfully discharge a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, inhabited mobile home, inhabited travel trailer, or inhabited camper. Any person violating the provisions of this section shall be guilty of a felony.

As used in this section, "inhabited" means currently being used for dwelling purposes, whether occupied or not.

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 29, 1993.

CHAPTER 255
(S.B. No. 1054)

AN ACT

RELATING TO THE APPROPRIATION OF WATER IN THE STATE OF IDAHO; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-202A, IDAHO CODE, TO PROVIDE FOR THE TEMPORARY APPROVAL OF APPROPRIATIONS OF WATER BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES; PROVIDING AN EXCEPTION FOR FIRE FIGHTING; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-202A, Idaho Code, and to read as follows:

42-202A. TEMPORARY APPROVAL -- APPLICATION -- CRITERIA -- EXCEPTIONS. (1) Any person, association or corporation hereafter intending to use the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, for a minor use of short duration may make application to the department of water resources for temporary approval.

(2) Application for temporary approval shall be upon forms provided by the department of water resources and shall be accompanied by a fifty dollar (\$50.00) fee.

(3) The director of the department of water resources is not required to publish notice of the application pursuant to the provisions of section 42-203A, Idaho Code, and is not required to make findings as provided in section 42-203A or 42-203C, Idaho Code. The director may, however, give notice of an application as he determines appropriate and may grant a temporary approval upon completion of the application form, payment of the filing fee, a determination by the director that the temporary approval can be properly administered, a

determination that other sources of water are not available, a determination that approval is in the public interest and a determination that the temporary approval will not injure public values associated with the water source or any other water right. If the temporary approval is within a water district, the director shall seek and consider the recommendations of the watermaster before granting a temporary approval. The director may issue a temporary approval with the conditions determined by the director to be necessary to protect other water rights and the public interest.

(4) The recipient of any temporary approval issued pursuant to the provisions of this act shall assume all risk that the diversion and use of the water may injure other water rights, or otherwise not comply with the criteria described in section 42-203A(5), Idaho Code. Any applicant for a temporary approval who is aggrieved by a denial of the director of a temporary approval pursuant to this act may file an application to appropriate water as provided in section 42-202, Idaho Code.

(5) A temporary approval shall only be granted for a use not intended to become an established water right and for a use which will not exceed a total diverted volume of five (5) acre feet for the duration of the approval, which shall not exceed one (1) year. Approvals issued under the provisions of this section constitute a waiver of the mandatory permit requirements of section 42-201(2), Idaho Code, and do not create a continuing right to use water. Temporary approvals shall not be issued as an interim water supply for a use which requires a continuing water supply.

(6) The provisions of this section do not require a temporary approval before diverting and using water to extinguish or prevent the spread of an existing wildfire on private or public lands, facilities or equipment, including the use of water by personnel engaged in fighting an existing wildfire.

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 29, 1993.

CHAPTER 256

(S.B. No. 1079, As Amended)

AN ACT

RELATING TO CEMETERIES; AMENDING SECTION 27-116, IDAHO CODE, TO AUTHORIZE CEMETERY MAINTENANCE DISTRICTS TO ACQUIRE CEMETERIES FROM COUNTIES AND TO DELETE AN ARCHAIC TERM; AMENDING SECTION 31-808, IDAHO CODE, TO AUTHORIZE COUNTIES TO DISPOSE OF REAL PROPERTY TO CEMETERY MAINTENANCE DISTRICTS AND TO CORRECT A TYPOGRAPHICAL ERROR; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 27-116, Idaho Code, be, and the same is hereby amended to read as follows:

27-116. CORPORATE POWERS. Each cemetery maintenance district has power:

1. To sue and be sued.
2. To acquire, hold, use, manage, occupy, possess, lease, exchange, sell and convey lands, make such contracts, and acquire, hold, use, manage, occupy, possess, lease, exchange, sell and convey such personal property as may be necessary or convenient for the purposes of this chapter.
3. To levy and apply such taxes for purposes under its exclusive jurisdiction as are authorized by law.
4. To acquire from a city or village county, by gift or purchase, a municipal cemetery and endowment, or other, funds pertaining thereto and to hold, use, manage, occupy, possess, lease, exchange, sell, convey, operate, maintain, improve and beautify such cemetery for the burying of the dead.

SECTION 2. That Section 31-808, Idaho Code, be, and the same is hereby amended to read as follows:

31-808. SALE OF COUNTY PROPERTY -- PROCEDURE -- PROPERTY ACQUIRED THROUGH TAX DEED -- SALES TO UNITED STATES -- SALES TO SCHOOL DISTRICTS OR COMMUNITY COLLEGE DISTRICTS. To sell or offer for sale at public auction, after ten (10) days' previous notice given by publication in a newspaper of the county any property, real or personal, belonging to the county, not necessary for its use, except that such personal property not exceeding one hundred dollars (\$100) in value may be sold at private sale without advertisement and such sale of real property may be made by the board of county commissioners, either for cash or upon such terms as the board of county commissioners may determine, and the same must be sold to the highest bidder. The board of county commissioners may reserve the right to reject all bids. The notice required to be published in a newspaper by the foregoing sentence shall, in the case of a sale of realty contain an accurate description of the realty by legal description and, if the realty be located within a city, description by street address, and if the realty be located outside the limits of a city then such notice shall state the distance and direction of the location of such realty from the nearest city. The proceeds from such sales shall be paid into the county treasury for the use of the county, unless such property has been acquired by tax deed, in which event the proceeds from such sale, after deducting the advertising and selling costs which shall be reimbursed to the county, shall be prorated to the taxing districts in which the property is situated in proportion of each tax for the year of delinquency upon which the tax deed was issued to the county, except that any special assessment listed on the tax roll on that property shall be paid in full for the year of the tax deed and the subsequent two (2) years before the moneys are prorated. If such property is sold on terms the board of county commissioners may contract for the sale of the same for a period of years not exceeding ten (10) years, with an annual rate of interest on all deferred payments not to

exceed the rate of interest specified in section 28-22-104(1), Idaho Code. The title to all property sold on contract shall be retained in the name of the county until full payment has been made by the purchaser. Any property sold by the board of county commissioners under the provisions of this section, either for cash or on contract, shall be assessed by the county assessor in the same manner and upon the same basis of valuation as though the purchaser held the record title to the property so sold. The board of county commissioners shall have authority to cancel any contract of sale if the purchaser shall fail to comply with any of the terms of such contract, and retain all payments paid thereon. The board of county commissioners may by agreement with the purchaser modify or extend any of the terms of any contracts of sale, but the total period of years shall not exceed ten (10) years. Any such sale made by the board of county commissioners of property acquired through tax deed shall, subject to the provisions of this section, vest in the purchaser all of the right, title and interest of the county in the property so sold, including all delinquent taxes which have become a lien on the property since the date of the tax sale certificate upon which any tax deed has been issued, with the exception of any liens for special assessments which are unsatisfied as to present and future principal and interest payments, and any penalties which are due, and such board shall have discretionary authority to reject or accept any bid which may be made for a less amount than the total amount of all delinquent taxes, penalties, and interest which may have accrued against any property so offered for sale, including the amount specified in the tax deed to the county. It shall be the duty of the board of county commissioners in advertising any property for sale, under this act, which has been acquired by tax deed to insert either before or after each description of real estate offered for sale the name of the taxpayer as it appears in the delinquent tax certificate upon which the tax deed held by the county was issued. Whenever a sale or transfer of any real estate acquired by tax deed has been under the provisions of this section, the bidder for any such real estate, whether bidding for himself or for another, must include or add to such bid the additional sum as currently provided in section 31-3205, Idaho Code, which sum shall be a fee for recording the deed conveying such real estate to the purchaser. No deed for any such real estate sold under the provisions of this section shall be delivered to a purchaser or his representative until such deed has been recorded in the county making the sale.

Provided, that any title to real property heretofore and/or hereafter acquired by any county under a tax deed, which in the judgment of the board of county commissioners is suitable for the production of trees and/or as a watershed, may be granted and conveyed by deed, to the United States of America by the county tax collector upon the order of the board of county commissioners. The said board of county commissioners shall appraise and determine the value of such real property immediately prior to the execution of the deed conveying the same to the United States of America. And the board of county commissioners shall accept from the United States of America for and on behalf of the county, as full compensation for each tract and parcel of such real property conveyed, title to stumpage having an approximate value equal to the appraised value of the real property described

in the deed or conveyance. All stumpage acquired by the county under the provisions of this paragraph shall be sold by the board of county commissioners for a price which shall not be less than its approximate value at the time it was received by the county from the United States of America, and the proceeds of such sale of such stumpage shall be deposited in the county treasury for the use of the county. The execution by the county tax collector of the deed of conveyance to the United States of America conveying any tract or parcel of such real property shall operate to discharge and cancel all levies and/or liens for taxes made or created for the benefit of the state, county, school district or any taxing unit or district, and to cancel all titles or claims of title, including claims for redemption, to such real property, asserted or existing at the time of such execution. No public notice of the intention to convey title to any of the real property defined by this paragraph shall be necessary.

Provided further, that the board of county commissioners may, in their discretion, whenever they shall determine it is desirable and for the general welfare and benefit of the people of the county, grant and convey by deed to the United States of America or any agency thereof title in fee simple, or any other interest in and to any real estate owned by the county, whether acquired by tax deed or otherwise, which may be required by the United States or such agency for electric transmission or distribution lines or facilities connected therewith. Before making any such conveyance, the board of county commissioners shall enter a resolution declaring the intention of such board to make a conveyance of real property under authority of this act, and shall cause notice thereof to be published in at least two (2) weekly issues of the official newspaper of said county before final action shall be taken, specifying the time and place where objections to such action may be filed and the time when such objections will be considered, provided, that if no newspaper is published in said county, such notice may be given by posting such notice in three (3) public places in the county, one (1) of which shall be at the county courthouse, in the place provided for posting similar notices, for a period of at least ten (10) days immediately preceding the time fixed for hearing of objections. If no objections are filed or objections are overruled, the board may then convey the real property proposed in said resolution to be conveyed, as herein authorized: such conveyance may be for such consideration as may be determined by said board.

Provided further, that when any city desires to acquire lands, for the purpose of constructing and maintaining an aviation field, airport, hangars and other air navigation facilities thereon, as provided in chapter 4, title 21, Idaho Code, and the title to all or any portion of the lands so desired for such purpose not exceeding in area one thousand two hundred and eighty (1,280) acres, is vested in any county under tax deed, said land so owned by the county, may be sold and conveyed to any such city for such purposes by the county owning the same at a price to be fixed by resolution of the board of county commissioners. No public notice of the intention of the county to sell and convey title to any city for such purposes shall be necessary.

Provided further, that the board of county commissioners may, in their discretion, without previous notice by advertisement or otherwise, grant to the state of Idaho, with or without compensation, for

state highway purposes; or may convey, with or without consideration, to any community college district, organized within the county under the provisions of sections 33-2101--33-2118, Idaho Code, or with or without consideration to any local historical society which is incorporated as an Idaho nonprofit corporation which operates primarily in the county or maintains a museum in the county, any real property owned by the county, not necessary for the use of the county, whether acquired by tax deed or otherwise.

Provided further, that the board of county commissioners may, in their discretion and without previous notice by advertisement or otherwise, grant, with or without compensation, to any school district located partially or wholly within the county and created, existing or established pursuant to chapter 3, of title 33, Idaho Code, any real property, or interest in real property, owned by the county but not necessary for the use of the county, whether acquired by tax deed or otherwise.

Provided further, that the board of county commissioners may, subject to notice as required for the sale or other conveyance of property for electric transmission or distribution lines or facilities to the United States of America or any agency thereof, as provided in this section, grant, with or without compensation, to any cemetery maintenance district located partially or wholly within the county and created, existing or established pursuant to chapter 1, title 27, Idaho Code, any real property, owned by the county but not necessary for the use of the county, whether acquired by tax deed or otherwise.

The execution and delivery by the county of the deed conveying such property, right-of-way, or other interest in such property to the United States of America or any agency thereof, the state, city, school district, cemetery maintenance district or community college district or local historical society for such purposes, which shall be specified in the deed, shall operate to discharge and cancel all levies, liens and taxes made or created for the benefit of the state, county, school district and all other taxing units and to cancel all titles or claims of title including claims of redemption to such real property asserted or existing at the time of such conveyance, provided however, that notwithstanding the aforesaid, if any such conveyances are made and the property conveyed is subject to a lien for one or more unsatisfied special assessments the lien of any such unsatisfied special assessment shall continue until such special assessment shall have been paid in full. At no time shall a lien for a special assessment be extinguished prior to such special assessment having been paid in full.

Any real property conveyed to any local historical society by the county shall revert to the county when the property is no longer utilized for the purposes for which it was conveyed.

Except for property acquired by tax deed, should the county be unable to sell at a public auction any real or personal property belonging to the county, not necessary for its use, at the fixed minimum price, it may then sell said real or personal property, without further notice, by public or private sale upon such terms and conditions as it deems necessary to sell said property at the fixed minimum price.

A highway district or single county-wide highway district shall

follow the provisions of this section when selling real or personal property belonging to it, but not necessary for its use. The proceeds from such sale shall be paid to the highway district or single county-wide district for its use.

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 29, 1993.

CHAPTER 257
(S.B. No. 1091)

AN ACT

RELATING TO OUTFITTERS AND GUIDES LICENSING BOARD; AMENDING SECTION 36-2106, IDAHO CODE, TO PROVIDE THE RATE OF COMPENSATION OF MEMBERS OF THE BOARD.

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

SECTION 1. That Section 36-2106, Idaho Code, be, and the same is hereby amended to read as follows:

36-2106. APPOINTMENT AND QUALIFICATION OF MEMBERS -- ORGANIZATION OF BOARD. One (1) member shall be a member of the Idaho fish and game commission, or a person selected by that body. Each appointment made by the fish and game commission shall be for a term of three (3) years. One (1) member shall be selected from the public. Three (3) members of the board shall be qualified and licensed outfitters and guides who have not had less than five (5) years' experience in the business of outfitting and guiding in the state of Idaho. Each appointment shall be for the term of three (3) years and each board member shall hold office for a term of three (3) years. Upon the death, resignation or removal of any but the member representing the fish and game commission the governor shall appoint a member to fill out the unexpired term as provided in this section. Immediately upon one (1) of the positions held by an outfitter or guide, either through expiration of term, death, resignation or removal, the Idaho outfitters and guides association shall submit to the governor the names of two (2) qualified persons for each such vacancy created and the appointment to fill such vacancy shall be made by the governor from the names submitted within thirty (30) days after the receipt by the governor of the names submitted. All appointments to the board made after July 1, 1986, shall be subject to the advice and consent of the senate. Appointments to fill any vacancy other than that created by the expiration of a term shall be made for the unexpired term. A majority of said board shall constitute a quorum. The board shall meet at least four (4) times a year, and at least two (2) meetings shall be held in Boise, Idaho. Each member of the board shall be compensated as provided by section 59-509(gh), Idaho Code. The member representing

the fish and game commission shall be paid by the fish and game commission.

Approved March 29, 1993.

CHAPTER 258
(S.B. No. 1092)

AN ACT

RELATING TO FLOOD CONTROL DISTRICTS; AMENDING SECTION 42-3115, IDAHO CODE, TO INCREASE THE AMOUNT OF A CONTRACT BEFORE THE BOARD MUST ADVERTISE FOR SEALED COMPETITIVE BIDS; AND AMENDING SECTION 42-3116, IDAHO CODE, TO INCREASE THE AMOUNT OF A PROJECT BEFORE ADVERTISEMENT FOR SEALED COMPETITIVE BIDS IS REQUIRED.

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

SECTION 1. 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 three (3) mills for each dollar of assessed valuation, provided however that a higher levy may be approved and ratified by the qualified voters at an election to be held 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 assessed valuation of the real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the flood control district to the board, or boards, of county commissioners on or before September 1 of each year.

Such levies shall be levied and collected in the manner provided by law, and the moneys collected shall be turned over to the treasurer or treasurers, of the county, or counties, in which said district is located.

Said moneys shall be public funds and subject to the provisions of the public depository laws of the state.

2. To employ such personnel as may be necessary to carry out the purposes and objects of this act, with the full power to bind said district for the compensation of such personnel.

3. To sue and be sued in the name of the district; to have a

seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its power and to promulgate, amend and repeal rules and regulations not consistent with the provisions of this act.

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 five fifteen thousand dollars (\$15,000), without first advertising for sealed competitive bids as herein provided. However, where it is determined by order of the board that there is an existing emergency, or where it is determined that the district is in a flood fight resulting from unanticipated conditions, the requirement for sealed competitive bids shall not apply.

6. To prescribe the duties of officers, agents and employees as may be required.

7. To establish the fiscal year of the district and to keep records of all business transactions of the district.

8. To prepare a statement of the financial condition of the district at the end of each fiscal year, in a form to be prescribed by the director or by the legislative auditor, 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 auditor on or before February 2 of each year.

9. To have an audit, by an independent public accounting firm, of the financial affairs of the district. The audit shall be made at intervals of not more than two (2) years for districts having an annual expense of more than three thousand dollars (\$3,000) and shall be made at intervals of not more than three (3) years for districts having an annual expense of three thousand dollars (\$3,000) or less. A certified copy of said audit shall be filed with the director and with the legislative auditor 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 act; to lease any of its property or interest therein in furtherance of the purposes and provisions of this act, 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 act.

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 act, 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 for that purpose, according to the provisions of this act.

16. To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided herein.

17. To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of this act, any flood control project within or without the boundaries of the district undertaken in cooperation with the United States or any of its agencies, or with the state of Idaho or any of its agencies, or any combinations thereof.

18. To accept donations, gifts and contributions in money, services, or materials, or otherwise, from the United States or any of its agencies, or the state of Idaho or any of its agencies or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations.

19. To exercise all other powers necessary, convenient or incidental to carrying out the purposes and provisions of the act.

SECTION 2. That Section 42-3116, Idaho Code, be, and the same is hereby amended to read as follows:

- 42-3116. SEALED BIDS -- WHEN REQUIRED -- PUBLICATION OF NOTICE.
1. A district shall advertise for sealed competitive bids if it is:
 - (a) to construct, operate, and maintain water control structures, whether within or without the boundaries of the district, and the project involves an expenditure in excess of five fifteen thousand dollars (\$15,000), advertise for sealed competitive bids;
 - (b) to contract for the acquisition, purchase or repair of personal property or equipment involving an expenditure in excess of one thousand dollars (\$1,000);
 - (c) to convey the estate and interest of the district, in any real or personal property with a value in excess of one thousand dollars (\$1,000).

2. The district shall advertise for bids by notice first being given in a newspaper of general circulation within the district. The notice inviting bids shall set a date, time and place for the opening of sealed competitive bids. The first publication of notice shall be at least twenty-one (21) days before the date of the opening of the bids. Notice shall be published three (3) times, in three (3) separate issues of said newspaper, not less than one (1) week apart.

The board may let the contract to the responsible bidder offering the best price or may reject any bid, or reject all bids, and republish notice for bids in the same manner and for the same time as first bid. If, after republishing, no satisfactory bid is presented, the board may proceed under its own direction, subject to the approval of the director.

The notice shall set forth the project to be done and shall incorporate by reference plans and specifications for such project, or shall set forth the property to be purchased and shall incorporate by reference the specifications of such personal property, equipment or the repair thereof, or shall set forth the property being sold.

Approved March 29, 1993.

CHAPTER 259
(S.B. No. 1093)

AN ACT

RELATING TO CONTRACTS BETWEEN IRRIGATION DISTRICTS AND CITIES, IN LIEU OF CHARGES, LEVIES AND ASSESSMENTS; AMENDING SECTION 43-730, IDAHO CODE, TO DELETE ARCHAIC TERMS, TO ALLOW IRRIGATION DISTRICTS TO CONTRACT WITH IRRIGATION LATERAL DISTRICTS, TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 43-730, Idaho Code, be, and the same is hereby amended to read as follows:

43-730. CONTRACTS WITH CITIES, TOWNS AND VILLAGES IRRIGATION LATERAL DISTRICTS IN LIEU OF CHARGES, LEVIES AND ASSESSMENTS. The board of directors of an irrigation district shall have the power to enter

into a contract in writing with any city, ~~town~~ or ~~village~~ irrigation lateral district, situated within the boundaries of any irrigation district where water has been purchased, or is being furnished, or shall be furnished, for lands, property or use within the boundaries of such city, ~~town~~ or ~~village~~ irrigation lateral district by an irrigation district, whereby such city, ~~town~~ or ~~village~~ irrigation lateral district shall become obligated to pay charges, levies and assessments now provided to be made pursuant to chapter 7, title 43, sections 43-701 to through 43-729 inclusive, Idaho Code, and amendments thereto in lieu of the officers of the irrigation district making said charges, levies and assessments.

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 29, 1993.

CHAPTER 260

(S.B. No. 1096, As Amended)

AN ACT

RELATING TO OUTFITTERS AND GUIDES; AMENDING CHAPTER 21, TITLE 36, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 36-2120, IDAHO CODE, TO PROVIDE FOR RECIPROCITY FOR IDAHO LICENSED OUTFITTERS AND GUIDES AND OREGON AND WASHINGTON LICENSED GUIDES CONDUCTING GUIDED FISHING ACTIVITIES ON THE WATERS OF THE SNAKE RIVER BETWEEN IDAHO, OREGON AND WASHINGTON, TO PROVIDE PURPOSE AND LIMITATION, AND TO PROVIDE A SUNSET CLAUSE.

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

SECTION 1. That Chapter 21, 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 36-2120, Idaho Code, and to read as follows:

36-2120. IDAHO, OREGON AND WASHINGTON BOUNDARY WATERS -- SNAKE RIVER -- RECIPROCITY. (1) Idaho, Oregon and Washington Boundary Waters. The right of outfitters and guides to conduct guided fishing activities on the waters of the Snake River where the river forms the boundary line between the state of Idaho and the states of Oregon and Washington by the holder of a valid Idaho outfitter and guide license or a valid Oregon or Washington guide license in accordance with the outfitting and guiding laws of each respective state is hereby recognized and made lawful.

(2) Purpose and Limitation. The purpose of this act is to avoid the conflict, confusion and difficulty of an attempt to find the exact locations of the state boundary in or on the waters of the Snake River. Reciprocity under this section is contingent upon passage of comparable legislation by the legislatures of both Oregon and Washing-

ton, addressing the establishment of minimum guide licensing requirements in the areas of first aid training and liability insurance coverage and providing for limiting the number of licenses to be issued by the respective states to minimize the impact on the fisheries resource caused by commercial outfitting or guiding.

SECTION 2. This act shall be null, void and of no force and effect on and after July 1, 1995.

Approved March 29, 1993.

CHAPTER 261
(S.B. No. 1102)

AN ACT

RELATING TO IRRIGATION DISTRICTS; AMENDING CHAPTER 9, TITLE 43, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 43-330A, 43-330B, 43-330C, 43-330D, 43-330E, 43-330F AND 43-330G, IDAHO CODE, TO PROVIDE FOR CONTRACTS WITH LANDOWNERS FOR CONSTRUCTION OF IMPROVEMENTS; TO PRESCRIBE CERTAIN CONTRACT PROVISIONS; TO DESCRIBE WHEN COMPLIANCE WITH CHAPTER 9, TITLE 43, IDAHO CODE, IS REQUIRED; TO REQUIRE RECORDING OF CONTRACTS; TO PROVIDE FOR OWNERSHIP OF DISTRIBUTION SYSTEMS; TO PROVIDE FOR OPERATION AND MAINTENANCE OF PRESSURIZED DISTRIBUTION SYSTEMS; TO PROVIDE FOR JOINT CONTRACTS FOR DISTRIBUTION SYSTEMS FOR LAND IN MORE THAN ONE IRRIGATION DISTRICT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 3, Title 43, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 43-330A, 43-330B, 43-330C, 43-330D, 43-330E, 43-330F and 43-330G, Idaho Code, and to read as follows:

43-330A. CONTRACTS WITH LANDOWNERS FOR CONSTRUCTION OF IMPROVEMENTS. When a parcel of land lying within an irrigation district has been subdivided into tracts of five (5) acres or less and the owner or owners of the entire parcel propose to develop that parcel or any of the tracts therein for residential, commercial, industrial or municipal use, the board of directors of the district may enter into a contract with the owner or owners of the entire parcel, or of any tract therein, for the construction of a pressurized system for the proper distribution of irrigation water to the parcel or to the designated tracts within the parcel.

43-330B. CONTRACT PROVISIONS. Any contract entered into under the authority of section 43-330A, Idaho Code, shall include the following provisions:

(1) An apportionment of the cost of the construction of the distribution system against the parcel or against the tract or tracts which are included in the contract;

(2) The cost of construction of the distribution system shall constitute a lien against the parcel, tract or tracts included in the contract, to secure payment of any portion of the cost of construction that is not paid upon completion of construction by the owner or owners, or by a third party on their behalf, and securing payment of interest on any deferred installments of the construction costs;

(3) A schedule of annual installment payments, with accrued interest, for the portion, if any, of the construction costs that are not paid upon completion of construction;

(4) The annual installment payment against the parcel or against the tract or tracts included in the contract shall be included in the annual assessments levied by the district against the parcel, tract or tracts and any such assessment and its levy and collection shall be, as nearly as practicable, in accordance with the assessment, levy and collection of other assessments levied upon lands in the district;

(5) The deferred annual installment payments of principal and accrued interest may be prepaid in whole or in part at any time without penalty, but any prepayment of principal shall not be less than one-half (1/2) the amount of the annual installment payment of principal next coming due, but the prepayment privilege authorized in this subsection shall not be applicable where the construction costs have been financed through a local improvement district;

(6) If the district has constructed or proposes to construct a pumping station and pipeline to serve the parcel, tract or tracts included in the contract and other lands, the cost of the pumping station and pipeline shall be apportioned by the board to all lands which are planned to be served by the pumping station, so that each acre of irrigable land to be served by the pumping station shall be assessed and required to pay the same amount;

(7) A grant of an easement to the district for the installation, operation, maintenance, repair and replacement of the portion of the distribution system located on the parcel, tract or tracts included in the contract. The easement shall be of sufficient width to allow construction, installation, operation, maintenance, repair and replacement by the use of ordinary mechanized equipment designed to perform those functions.

43-330C. COMPLIANCE. If the contract provides for construction of any portion of the distribution system by the owner or owners, chapter 9, title 43, Idaho Code, shall not be applicable to that portion of the construction. If any portion of the distribution system is to be constructed by the district, the district shall comply with the provisions of chapter 9, title 43, Idaho Code, insofar as applicable to the construction to be performed by the district or by a contractor under a separate contract with the district, unless the owner or owners furnish a written waiver of such compliance.

43-330D. CONTRACT TO BE RECORDED. Any contract entered into by an irrigation district under the authority of section 43-330A, Idaho Code, shall be recorded in the office of the county recorder of each county in which any portion of the land covered by the contract is located, and the owner or owners named in the contract shall remain personally liable, jointly and severally, for the cost of construction

until the contract has been properly recorded.

43-330E. DISTRICT TO OWN DISTRIBUTION SYSTEM. Any pressurized distribution system constructed under the authority of section 43-330A, Idaho Code, shall be the property of, and shall be owned by, the district.

43-330F. OPERATION AND MAINTENANCE OF PRESSURIZED DISTRIBUTION SYSTEMS. Any pressurized distribution system constructed under the authority of section 43-330A, Idaho Code, shall be operated, maintained, repaired and replaced by the district, and the district may levy and collect an assessment against each tract of land served by the distribution system to defray the cost and expense of such operation, maintenance, repair or replacement. The board shall apportion to each tract of land included in the contract a portion of the cost of operation, maintenance, repair and replacement of the distribution system, on the same basis as the cost of construction of the distribution system is apportioned.

43-330G. DISTRIBUTION SYSTEMS FOR LAND IN MORE THAN ONE IRRIGATION DISTRICT -- JOINT CONTRACT -- DIVISION OF MANAGEMENT -- ASSESSMENTS. Where the interests of two (2) or more irrigation districts and the interests of the contracting landowners will be served thereby, lands in two (2) or more irrigation districts may be included in a contract entered into by the districts and the landowners under the authority of section 43-330A, Idaho Code, and the contract shall specify how the ownership, management, operation, maintenance, repair and replacement of the distribution system shall be divided between or among the districts, and shall provide that all assessments for construction costs and for costs of operation, maintenance, repair and replacement against any tract of land included in the contract shall be levied and collected by the district in which that tract is located.

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 29, 1993.

CHAPTER 262
(S.B. No. 1104)

AN ACT
RELATING TO IRRIGATION DISTRICTS; AMENDING SECTION 43-1102, IDAHO CODE, TO LIMIT GROUNDS FOR EXCLUSION BASED ON NONAGRICULTURAL CHARACTER WHEN LOCAL DISTRIBUTION SYSTEMS ARE PROPOSED OR CONSTRUCTED; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 43-1102, Idaho Code, be, and the same is hereby amended to read as follows:

43-1102. GROUNDS FOR EXCLUSION, CERTAIN LANDS MAY REMAIN IN THE DISTRICT FOR DRAINAGE PURPOSES. (a) The grounds and reasons for exclusion of lands from an irrigation district are listed as follows:

1. The lands are too high to be watered without pumping by the owners of the lands from water owned or controlled by the irrigation district;
2. The owners of the lands have installed a good and sufficient water system independent of the water system of such irrigation district for the irrigation of the lands because the district does not own a sufficient water right to furnish an adequate water supply for those lands;
3. The lands in their present condition are not agricultural lands and the irrigation district has not:

(i) Adopted a resolution to construct a distribution system for the lands pursuant to section 43-333, Idaho Code; or

(ii) Called an election on the question of constructing a distribution system for the lands under the provisions of section 43-329, Idaho Code; or

(iii) Independently or in cooperation with a city or county established a local improvement district to construct a distribution system for the lands; or

(iv) Constructed a distribution system for the lands; or

4. Prior to acquisition of the land by the petitioning owner, and without his knowledge or consent, the ditch or other transmission facility extending from the delivery point of the district to the lands has been rendered permanently incapable of carrying water to the lands, but this ground for exclusion shall only apply to parcels less than five (5) acres in size.

(b) If the lands sought to be excluded from an irrigation district under this section or under sections 43-1110 through 43-1117, Idaho Code, are benefited by surface drainage facilities of the irrigation district pursuant to sections 43-306 to 43-312, Idaho Code, but otherwise would qualify for exclusion, the lands shall be excluded for purposes of irrigation but shall remain a part of the district for purposes of drainage and shall continue to be assessable for drainage, but shall not be assessed for irrigation water.

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 29, 1993.

CHAPTER 263
(S.B. No. 1113)

AN ACT
RELATING TO MALE RAPE; AMENDING SECTION 18-6108, IDAHO CODE, TO PRO-

VIDE PROPER PUNCTUATION; AMENDING CHAPTER 61, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-6109, IDAHO CODE, TO PROVIDE FOR A PUNISHMENT FOR MALE RAPE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-6108, Idaho Code, be, and the same is hereby amended to read as follows:

18-6108. MALE RAPE. Male rape is defined as the penetration, however, slight, of the oral or anal opening of another male, with the perpetrator's penis, for the purpose of sexual arousal, gratification or abuse, under any of the following circumstances:

1. Where the victim is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving consent.

2. Where the victim resists but his resistance is overcome by force or violence.

3. Where the victim is prevented from resistance by threats of immediate and great bodily harm, accompanied by apparent power of execution.

4. Where the victim is prevented from resistance by the use of any intoxicating, narcotic, or anaesthetic substance administered by or with the privity of the accused.

5. Where the victim is at the time unconscious of the nature of the act, and this is known to the accused.

SECTION 2. That Chapter 61, 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 18-6109, Idaho Code, and to read as follows:

18-6109. PUNISHMENT FOR MALE RAPE. Male rape is punishable by imprisonment in the state prison for not less than one (1) year, and the imprisonment may be extended to life.

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 29, 1993.

CHAPTER 264
(S.B. No. 1114)

RELATING TO THE USE OF FIREARM OR DEADLY WEAPON; AMENDING SECTION 19-2520, IDAHO CODE; TO AN ACT EXPAND THE APPLICATION OF THE CRIME TO

TRAFFICKING, AND TO DELIVERY, MANUFACTURE OR POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER AND TO EXPAND THE APPLICATION OF THE CRIME TO INCLUDE ATTEMPTING TO COMMIT ALL THE LISTED CRIMES AS PROVIDED IN THE SECTION.

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

SECTION 1. That Section 19-2520, Idaho Code, be, and the same is hereby amended to read as follows:

19-2520. EXTENDED SENTENCE FOR USE OF FIREARM OR DEADLY WEAPON. Any person convicted of a violation of sections 18-905 (aggravated assault defined), 18-907 (aggravated battery defined), 18-909 (assault with intent to commit a serious felony defined), 18-911 (battery with intent to commit a serious felony defined), 18-1401 (burglary defined), 18-1508(3), 18-1508(4), 18-1508(5), 18-1508(6) (lewd conduct with minor or child under sixteen), 18-2501 (rescuing prisoners), 18-2505 (escape by one charged with or convicted of a felony), 18-2506 (escape by one charged with or convicted of a misdemeanor), 18-4003 (degrees of murder), 18-4006 (manslaughter), 18-4015 (assault with intent to murder), 18-4501 (kidnapping defined), 18-5001 (mayhem defined), 18-6101 (rape defined), or 18-6501 (robbery defined), 37-2732(a) (delivery, manufacture or possession of a controlled substance with intent to deliver) or 37-2732B (trafficking), Idaho Code, who displayed, used, threatened, or attempted to use a firearm or other deadly weapon while committing or attempting to commit the crime, shall be sentenced to an extended term of imprisonment. The extended term of imprisonment authorized in this section shall be computed by increasing the maximum sentence authorized for the crime for which the person was convicted by fifteen (15) years.

For the purposes of this section, "firearm" means any deadly weapon capable of ejecting or propelling one or more projectiles by the action of any explosive or combustible propellant, and includes unloaded firearms and firearms which are inoperable but which can readily be rendered operable.

The additional terms provided in this section shall not be imposed unless the fact of displaying, using, threatening, or attempting to use a firearm or other deadly weapon while committing the crime is separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at the trial of the substantive crime; provided, however, that the prosecutor shall give notice to the defendant of intent to seek an enhanced penalty at or before the preliminary hearing or before a waiver of the preliminary hearing, if any.

This section shall apply even in those cases where the use of a firearm is an element of the offense.

Approved March 29, 1993.

CHAPTER 265
(S.B. No. 1116, As Amended)

AN ACT
RELATING TO COMMENCEMENT OF COURT PROCEEDINGS AND INABILITY TO PAY COSTS; AMENDING SECTION 19-4902, IDAHO CODE, TO PROVIDE A ONE YEAR PERIOD TO FILE APPLICATION; AND AMENDING SECTION 19-4904, IDAHO CODE, TO PROVIDE THAT A COURT-APPOINTED ATTORNEY MAY BE MADE AVAILABLE TO AN APPLICANT UNABLE TO PAY COSTS AND EXPENSES ON ORDER OF THE DISTRICT COUNTY COURT.

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

SECTION 1. That Section 19-4902, Idaho Code, be, and the same is hereby amended to read as follows:

19-4902. COMMENCEMENT OF PROCEEDINGS -- VERIFICATION -- FILING -- SERVICE. A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction took place. An application containing claims relating to the treatment of an applicant at any correctional facility located within Idaho may only be filed within the county in which such facility is located. An application may be filed at any time within five (5) years ~~one (1) year~~ from the expiration of the time for appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The Supreme Court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the prosecuting attorney.

SECTION 2. That Section 19-4904, Idaho Code, be, and the same is hereby amended to read as follows:

19-4904. INABILITY TO PAY COSTS. If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, witness fees and expenses, and legal services, these costs and expenses, and a court-appointed attorney ~~shall~~ may be made available to the applicant in the preparation of the application, in the trial court, and on appeal, and paid, on order of the district court, by the county in which the application is filed.

Approved March 29, 1993.

CHAPTER 266
(S.B. No. 1126, As Amended)

AN ACT
RELATING TO MISCELLANEOUS PROVISIONS OF TAX LAW; AMENDING SECTION 63-2202, IDAHO CODE, TO CLARIFY THE AUTHORITY OF THE BOARD OF

COUNTY COMMISSIONERS OF EACH COUNTY TO ADOPT A PROCEDURE GOVERNING THE REIMBURSEMENT OF EXCESS PROPERTY TAX PAID PLUS PAYMENT OF PENALTY AND INTEREST.

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

SECTION 1. That Section 63-2202, Idaho Code, be, and the same is hereby amended to read as follows:

63-2202. CANCELLATION AND REFUND OF UNLAWFUL TAX AND REFUND OF PAYMENT MADE AT VOID SALE. (1) The board of county commissioners may, at any time when in session, cancel taxes which for any lawful reason should not be collected, and may refund to any tax payer any money to which he may be entitled by reason of a double payment of taxes on any property for the same year, or the double assessment or erroneous assessment of property through error, and may refund to the purchaser of any property erroneously sold when it has been determined by the board of county commissioners that such sale is void on account of any irregularity of the taxing officers or that the property purchased has been erroneously sold or the sale thereof invalid, the amount paid by such purchaser to the county on the sale of any such property, with interest thereon from the date of such payment at the rate of six per cent (6%) per annum.

All proceedings of the said board in the cancellation or refund of taxes or refund of payments made at such void sale must be recorded in the minute book provided for in section 31-709, Idaho Code, and all such refund of taxes or payments must be paid upon warrants drawn on the county current expense fund by the county auditor upon order of the board of county commissioners, and the auditor shall apportion the amount so cancelled as a credit to the officer charged with the collection and charge the various funds and taxing districts, and in all cases where refund is paid by warrant as provided herein, the auditor shall apportion the amount and charge the various funds and taxing districts their proportionate share and credit current expense.

(2) Notwithstanding any other provisions of law, in any case in which the board finds that, due to error or otherwise by fault of the county, an excess amount of tax was paid, the board may refund the excess amount so collected plus pay the same penalty and interest on that amount which the county would regularly require of a taxpayer who is delinquent, and the board may adopt an ordinance or resolution to establish such payments.

Approved March 29, 1993.

CHAPTER 267
(S.B. No. 1155)

AN ACT

RELATING TO AIR QUALITY; AMENDING SECTION 39-103, IDAHO CODE, AS ADDED BY SECTION 4, CHAPTER 305, LAWS OF 1992, TO DEFINE "EMISSION" AND "MEDICAL WASTE COMBUSTOR"; PROVIDING SEVERABILITY; DECLARING AN

EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 39-103, Idaho Code, as added by Section 4, Chapter 305, Laws of 1992, be, and the same is hereby amended to read as follows:

39-103. DEFINITIONS. Whenever used or referred to in this act, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

1. "Board" means the board of health and welfare.
2. "Department" means the department of health and welfare.
3. "Director" means the director of the department of health and welfare.

4. "State" means the state of Idaho.

5. "Air contaminant" or "air contamination" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas or other gaseous fluid or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.

6. "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.

7. "Emission" means a 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.

8. "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.

9. "Waters" mean all the 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.

10. "Solid waste" means garbage, refuse, 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.

11. "Solid waste disposal" means the collection, storage, treatment, utilization, processing or final disposal of solid waste.

12. "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, air or other substances.

13. "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.

14. "Public swimming pool" means an artificial structure, and its appurtenances, which contains water more than two (2) feet deep which is used or intended to be used for swimming or recreational bathing, and which is for the use of any segment of the public pursuant to a general invitation but not an invitation to a specific occasion or occasions.

15. "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 of health and welfare declares to have potential health significance.

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.

17. "Nutrient" means any one (1) of the natural elements including, but not limited to, carbon, hydrogen, oxygen, nitrogen, potassium, phosphorus, magnesium, sulfur, calcium, sodium, iron, manganese, copper, zinc, molybdenum, vanadium, boron, chlorine, cobalt and silicon, that are essential to plant and animal growth.

18. "Medical waste combuster" 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.

SECTION 2. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, all sections of this act shall be in full force and effect upon approval and retroactively to March 1, 1993.

Approved March 29, 1993.

CHAPTER 268
(S.B. No. 1162)

AN ACT

RELATING TO THE STATE BOARD OF EDUCATION OPTIONAL RETIREMENT PROGRAM; AMENDING SECTION 33-107A, IDAHO CODE, TO PROVIDE THAT THE PROGRAM IS LIMITED TO TEACHING STAFF AND OFFICERS OF THE RESPECTIVE INSTITUTIONS AND STATE BOARD OF EDUCATION, TO PROVIDE FOR A ONE-TIME IRREVOCABLE ELECTION BY NEWLY HIRED TEACHING STAFF AND OFFICERS WHO ARE VESTED MEMBERS OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO OF EITHER THE OPTIONAL RETIREMENT PROGRAM OR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM PLAN, AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 33-107A, Idaho Code, be, and the same is hereby amended to read as follows:

33-107A. BOARD MAY ESTABLISH AN OPTIONAL RETIREMENT PROGRAM. (1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the faculty teaching staff and ~~nonclassified--staff~~ officers of the university of Idaho, Idaho state university, Boise state university, Lewis Clark state college and the ~~office--of-the~~ state board of education who are hired on or after July 1, 1990~~3~~; provided, however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employees retirement system of Idaho. The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

- (a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;
- (b) The relation of such rights and benefits to the amount of

contributions to be made;

(c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and

(d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

(a) Eligible employees are:

(i) Those faculty and nonclassified staff initially appointed or hired on--or--after between July 1, 1990, but shall exclude employees who are active members of the public employees retirement system of Idaho immediately prior to appointment to the faculty or nonclassified staff for an appointment which occurs after July 1, 1990. At time of entry into service an eligible employee shall participate in the optional retirement program and June 30, 1993; and

(ii) Those teaching staff and officers initially appointed or hired on or after July 1, 1993.

All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Active faculty and nonclassified staff employed on--July--1, 1990; Vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to participate in the optional remain a member of that retirement program system. The election of active faculty or nonclassified staff members of the public employees retirement system of Idaho shall be made in writing, within ninety sixty (960) days after July 1, 1990, and of the date of initial hire or appointment or the effective date of this act, whichever occurs later. It shall be filed with the administrative officer of the employing institution to be effective as of July 1, 1990. Such election by an active member of the public employees retirement system of Idaho shall be treated as a separation from service for benefits under chapter 13, title 59, Idaho Code.

(c) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(4) (a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to the employer's "normal cost" under the public employees retirement system as defined in section 59-133022, Idaho Code, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits, but in no event less than five per cent (5%) of each participant's salary; and

(ii) To the public employees retirement system, an amount equal to three and three one-hundredths per cent (3.03%) of salaries of members who are participants in the optional

retirement program. This amount shall be paid until July 1, 2015, and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code.

(b) Each participant shall contribute an amount equal to the member contribution under the public employees retirement system as required in section 59-1304, Idaho Code. Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.

(c) Payment of contributions authorized or required under this subsection shall be made by the financial officer of the employing institution to the designated company or companies for the benefits of each participant.

(5) Any person ~~electing to participate in~~ the optional retirement program shall be ineligible for membership in the public employees retirement system of Idaho so long as he remains continuously employed in any ~~faculty or nonclassified teaching staff~~ position by or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

Approved March 29, 1993.

CHAPTER 269
(S.B. No. 1179)

AN ACT

RELATING TO THE GOVERNANCE OF PUBLIC SCHOOLS; AMENDING SECTION 33-512, IDAHO CODE, TO PROVIDE THAT THE BOARD OF TRUSTEES OF EACH SCHOOL DISTRICT SHALL PROVIDE ON EACH VETERANS DAY THAT EACH SCHOOL IN SESSION SHALL CONDUCT AND OBSERVE AN APPROPRIATE PROGRAM OF AT LEAST ONE CLASS PERIOD REMEMBERING AND HONORING AMERICAN VETERANS, AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-512, Idaho Code, be, and the same is hereby amended to read as follows:

33-512. GOVERNANCE OF SCHOOLS. The board of trustees of each school district shall have the following powers and duties:

1. To fix the days of the year and the hours of the day when schools shall be in session. However:

(a) Each school district shall annually adopt and implement a school calendar which provides its students at each grade level with the following minimum number of instructional hours:

Grades	Hours
9-12	990
4-8	900
1-3	810
K	450

(b) School assemblies, testing and other instructionally related activities involving students directly may be included in the required instructional hours.

(c) When approved by a local school board, annual instructional hour requirements stated in paragraph (a) may be reduced as follows:

(i) Up to a total of twenty-two (22) hours to accommodate staff development activities.

(ii) Up to a total of eleven (11) hours of emergency school closures due to adverse weather conditions and facility failures.

However, transportation to and from school, passing times between classes, noninstructional recess and lunch periods shall not be included.

(d) Student and staff activities related to the opening and closing of the school year, grade reporting, program planning, staff meetings, and other classroom and building management activities shall not be counted as instructional time or in the reductions provided in paragraph (c)(1).

(e) For multiple shift programs, this rule applies to each shift (i.e., each student must have access to the minimum annual required hours of instructions).

(f) The instructional time requirement for grade 12 students may be reduced by action of a local school board for an amount of time not to exceed eleven (11) hours of instructional time.

(g) The state superintendent of public instruction may grant an exemption from the provisions of this section for an individual building within a district, when the closure of that building, for unforeseen circumstances, does not affect the attendance of other buildings within the district.

2. To adopt and carry on, and provide for the financing of, a total educational program for the district. Such programs in other than elementary school districts may include education programs for out-of-school youth and adults; and such districts may provide classes in kindergarten;

3. To provide, or require pupils to be provided with, suitable textbooks and supplies, and for advice on textbook selections may appoint a textbook adoption committee as provided in section 33-512A, Idaho Code;

4. To protect the morals and health of the pupils;

5. To exclude from school, children not of school age;

6. To prescribe rules for the disciplining of unruly or insubordinate pupils, such rules to be included in a district discipline code adopted by the board of trustees and a summarized version thereof to be provided in writing at the beginning of each school year to the teachers and students in the district in a manner consistent with the student's age, grade and level of academic achievement;

7. To exclude from school, pupils with contagious or infectious

diseases who are diagnosed or suspected as having a contagious or infectious disease or those who are not immune and have been exposed to a contagious or infectious disease; and to close school on order of the state board of health or local health authorities;

8. To equip and maintain a suitable library or libraries in the school or schools and to exclude therefrom, and from the schools, all books, tracts, papers, and catechisms of sectarian nature;

9. To determine school holidays. Any listing of school holidays shall include not less than the following: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. Other days listed in section 73-108, Idaho Code, if the same shall fall on a school day, shall be observed with appropriate ceremonies; and any days the state board of education may designate, following the proclamation by the governor, shall be school holidays;

10. To erect and maintain on each schoolhouse or school grounds a suitable flagstaff or flagpole, and display thereon the flag of the United States of America on all days, except during the inclement weather, when the school is in session; and for each Veterans Day, each school in session shall conduct and observe an appropriate program of at least one (1) class period remembering and honoring American veterans;

11. To prohibit entrance to each schoolhouse or school grounds, to prohibit loitering in schoolhouses or on school grounds and to provide for the removal from each schoolhouse or school grounds of any individual or individuals who disrupt the educational processes or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils. A person who disrupts the educational process or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils or who loiters in schoolhouses or on school grounds, is guilty of a misdemeanor.

12. To supervise and regulate, including by contract with established entities, those extra-curricular activities which are by definition outside of or in addition to the regular academic courses or curriculum of a public school, and which extra-curricular activities shall not be considered to be a property, liberty or contract right of any student, and such extra-curricular activities shall not be deemed a necessary element of a public school education, but shall be considered to be a privilege.

Approved March 29, 1993.

CHAPTER 270
(S.B. No. 1185)

AN ACT

RELATING TO PROPERTY TAXATION; AMENDING SECTION 63-3905, IDAHO CODE, TO PROVIDE THAT THE PROPERTY TAX EXEMPTION EXTENDED PURSUANT TO SECTION 63-105DD, IDAHO CODE, SHALL BE EXTENDED TO NEWLY CONSTRUCTED AND OCCUPIED RESIDENTIAL PROPERTY IN THE MANNER PROVIDED; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3905, Idaho Code, be, and the same is hereby amended to read as follows:

63-3905. REPORTING. The owner of any newly constructed improvement, except additions to existing improvements, of real property upon which no occupancy tax has yet been paid shall, on or before the date of first occupancy, report to the county assessor of the county in which the property is located, or to such other county officer as may be designated by the board of county commissioners, the fact that the improvement has been occupied. As soon as practical after receiving such a report, the county assessor shall cause the improvement to be appraised and shall determine the market value of the improvement for the purpose of determining the amount of the occupancy tax. Upon the completion of the appraisal, the county assessor shall notify the owner of the appraisal, and shall further notify the owner of the right of the owner to apply for the exemption provided in section 63-105DD, Idaho Code. If the owner applies for the exemption provided in section 63-105DD, Idaho Code, within thirty (30) days of the notification by the county assessor, in the manner provided in section 63-105DD, Idaho Code, and meets the requirements of section 63-105DD(2) (a) and (b), Idaho Code, the exemption shall be extended to the newly constructed and occupied residential structure as to any other residential structure, notwithstanding limitations imposed in section 63-105DD, Idaho Code, requiring occupancy as of January 1 of the tax year, and shall be used in determining the value of the newly constructed and occupied residential property for purposes of determining the amount of the occupancy tax.

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, 1993.

Approved March 29, 1993.

CHAPTER 271
(S.B. No. 1195)

AN ACT

RELATING TO THE LICENSURE OF PHYSICIANS; AMENDING SECTION 54-1804, IDAHO CODE, TO PROVIDE THAT A PERSON WHO ADMINISTERS TREATMENT OR PROVIDES ADVICE REGARDING THE HUMAN BODY AND ITS FUNCTIONS THAT USES CERTAIN SPECIFIED FORMS OF TREATMENT IN SUCH PRACTICE NEED NOT SECURE LICENSURE FROM THE BOARD OF MEDICINE.

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

SECTION 1. That Section 54-1804, Idaho Code, be, and the same is hereby amended to read as follows:

54-1804. UNLICENSED PRACTICE -- PENALTIES AND REMEDIES RELATING TO UNLICENSED PRACTICE. (1) Under the circumstances described and subject in each case to limitations stated, the following persons, though not holding a license to practice medicine in this state, may engage in activities included in the practice of medicine:

- (a) A medical officer of the armed forces of the United States, of the United States public health service, or of the veteran's administration, while engaged in the performance of his official duties;
- (b) A person residing in another state or country and authorized to practice medicine there, who is called in consultation by a person licensed in this state to practice medicine, or who for the purpose of furthering medical education is invited into this state to conduct a lecture, clinic, or demonstration, while engaged in activities in connection with the consultation, lecture, clinic, or demonstration, so long as he does not open an office or appoint a place to meet patients or receive calls in this state;
- (c) A person authorized to practice medicine in another state or country while rendering medical care in a time of disaster or while caring for an ill or injured person at the scene of an emergency and while continuing to care for such person;
- (d) An extern, intern, resident or physician's assistant who is registered with the board as provided in this chapter and while engaged in programs authorized pursuant to rules and regulations of the board;
- (e) A person authorized or licensed by this state to engage in activities which may involve the practice of medicine;
- (f) A person engaged in good faith in the practice of the religious tenets of any church or religious beliefs;
- (g) A person administering a remedy, diagnostic procedure or advice as specifically directed by a physician;
- (h) A person rendering aid in an emergency, where no fee for the service is contemplated, charged or received;
- (i) A person administering a family remedy to a member of the family;
- (j) A person who administers treatment or provides advice regarding the human body and its functions that:
 - (i) Does not use legend drugs or prescription drugs in such practice;
 - (ii) Uses natural elements such as air, heat, water and light;
 - (iii) Only uses class I or class II nonprescription, approved, medical devices as defined in section 513 of the federal food, drug and cosmetic act;
 - (iv) Only uses vitamins, minerals, herbs, natural food products and their extracts, and nutritional supplements; and who
 - (v) Does not perform surgery;
 - (vi) Requires each person receiving services to sign a declaration of informed consent which includes an overview of the health care provider's education which states that the health care provider is not an "M.D." or "D.O.", and is not licensed under the provisions of this chapter.

(2) Except as provided in subsection (1) of this section, it

shall constitute a felony for any person to practice medicine in this state without a license and upon conviction thereof shall be imprisoned in the state prison for a period not to exceed five (5) years, or shall be fined not more than ten thousand dollars (\$10,000), or shall be punished by both such fine and imprisonment.

(3) Except as provided in subsections (1)(a), (1)(b), and (1)(c) above, it is unlawful for any person to assume or use the title or designation "medical doctor," "medical physician," "osteopathic doctor," "osteopathic physician," "M.D." or "D.O." or any other title, designation, words, letters, abbreviation, sign, card, or device to indicate to the public that such person is licensed to practice medicine pursuant to this chapter unless such person is so licensed, and upon conviction thereof, such person shall be imprisoned not to exceed one (1) year, or shall be fined not more than three thousand dollars (\$3,000), or shall be punished by both fine and imprisonment.

(4) When a person has been the recipient of services constituting the unlawful practice of medicine, whether or not he knew the rendition of the services was unlawful, proof of the rendition of such unlawful services by the recipient or his personal representative in an action against the provider of such services for damages allegedly caused by the services constitutes prima facie evidence of negligence shifting the burden of proof to such provider of unlawful services. The following damages in addition to any other remedies provided by law may be recovered in such an action:

(a) The amount of any fees paid for the unlawful services.

(b) Reasonable attorney fees and court costs.

(5) The board shall refer all violations of this section made known to it to appropriate prosecuting attorneys. The board may render assistance to a prosecuting attorney in the prosecution of a case pursuant to this section.

Approved March 29, 1993.

CHAPTER 272
(S.B. No. 1226)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTION 18-8005, IDAHO CODE, TO PROVIDE PENALTIES FOR PERSONS DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR A COMBINATION OF THEM, TO PROVIDE PENALTIES FOR PERSONS FOUND CONVICTED OR FOUND GUILTY OF MANSLAUGHTER COMMITTED WHILE DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR BOTH AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 18-8005, Idaho Code, be, and the same is hereby amended to read as follows:

18-8005. PENALTIES. (1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a)

or (5), Idaho Code, for the first time is guilty of a misdemeanor; and

(a) May be sentenced to jail for not to exceed six (6) months;
(b) May be fined an amount not to exceed one thousand dollars (\$1,000);

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney; and

(d) Shall have his driving privileges suspended by the court for a period of thirty (30) days which shall not be reduced and during which thirty (30) day period absolutely no driving privileges of any kind may be granted. After the thirty (30) day period of absolute suspension of driving privileges has passed, the defendant shall have driving privileges suspended by the court for an additional period of at least sixty (60) days, not to exceed one hundred fifty (150) days during which the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment or for family health needs.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(b), Idaho Code, for the first time is guilty of a misdemeanor and subject to:

(a) The provisions of section 18-8005(1), Idaho Code; and
(b) The provisions of section 49-335, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(c), Idaho Code, for the first time, is guilty of a misdemeanor and is subject to:

(a) The provisions of section 18-8005(1), Idaho Code; and
(b) The provisions of section 49-335, Idaho Code.

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004, Idaho Code, 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

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days the first forty-eight (48) hours of which must be consecutive, and may be sentenced to not more than one (1) year;

(b) May be fined an amount not to exceed two thousand dollars (\$2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after

release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(f) If the person has pled guilty or was found guilty for the second time within five (5) years of a violation of the provisions of section 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335, Idaho Code, shall apply.

(5) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004, Idaho Code, or any substantially conforming foreign criminal violation, or any combination thereof, within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony; and

(a) Shall be sentenced to the custody of the state board of correction for not to exceed five (5) years; provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days; and further provided that notwithstanding the provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars (\$5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind.

(6) For the purpose of computation of the enhancement period in subsections (4), (5) and (7) of this section, the time that elapses between the date of commission of the offense and the date the defendant pleads guilty or is found guilty for the pending offense shall be excluded. If the determination of guilt against the defendant is reversed upon appeal, the time that elapsed between the date of the commission of the offense and the date the defendant pleads guilty or is found guilty following the appeal shall also be excluded.

(7) Notwithstanding the provisions of subsections (4) and (5) of this section, any person who has pled guilty or has been found guilty of a felony violation of the provisions of section 18-8004, Idaho Code, or a violation of the provisions of section 18-8006, Idaho Code, or a violation of the provisions of section 18-4006 3. (b), Idaho Code, and within ten (10) years pleads guilty or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (5) of this section.

(8) For the purpose of subsections (4) and (5) of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or

town ordinance of another state substantially conforming to the provisions of section 18-8006⁴, Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(9) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 or 18-8006, Idaho Code, shall undergo, at his own expense, (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code,) and prior to the sentencing date, an alcohol evaluation by an alcohol evaluation facility approved by the Idaho department of health and welfare. In the event the alcohol evaluation indicates the need for alcohol treatment, the evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment program, together with the estimated cost thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that alcohol treatment is required unless the defendant makes a showing by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for indigent defendants.

(10) At the time of sentencing, the court shall be provided with the following information:

- (a) The results, if administered, of any evidentiary test for alcohol and/or drugs;
- (b) A computer or teletype or other acceptable copy of the person's driving record;
- (c) Information as to whether the defendant has pled guilty to or been found guilty of violation of the provisions of section 18-8004 or 18-8006, Idaho Code, or a similar offense within the past five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s); and
- (d) The alcohol evaluation required in subsection (59) of this section, if any.

(11) A minor may be prosecuted for a violation of the provisions of section 18-8004, Idaho Code, under title 16, Idaho Code. In addition to any other penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, Idaho Code, he shall have his driving privileges suspended or denied for an

additional one (1) year following the end of any period of suspension or revocation existing at the time of the violation, or until he reaches the age of eighteen (18) years, whichever period is greater. During the period of additional suspension or denial, absolutely no driving privileges shall be allowed.

(12) In the event that the alcohol evaluation required in subsection (79) of this section recommends alcohol treatment, the court shall order the person to complete a treatment program in addition to any other sentence which may be imposed, unless the court determines that alcohol treatment would be inappropriate or undesirable, in which event, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation, or a comparable program. Such treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event that funding is provided for or on behalf of the defendant by an entity of state government, restitution shall be ordered to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code. Nothing contained herein shall be construed as requiring a court to order that a governmental entity shall provide alcohol treatment at government expense unless otherwise required by law.

(13) Any person who is disqualified shall not be granted restricted driving privileges to operate a commercial motor vehicle.

Approved March 29, 1993.

CHAPTER 273
(S.B. No. 1231)

AN ACT

RELATING TO MOTOR VEHICLE OPERATING AND USE FEES; AMENDING SECTION 49-434, IDAHO CODE, TO EXTEND THE USE FEE SCHEDULE APPLICABLE TO COMMERCIAL VEHICLES WEIGHING IN EXCESS OF SIXTY THOUSAND POUNDS, TO PROVIDE A USE FEE SCHEDULE APPLICABLE TO FARM VEHICLES AND VEHICLES HAULING CERTAIN COMMODITIES WEIGHING IN EXCESS OF SIXTY THOUSAND POUNDS AND TO PROVIDE FOR MAINTENANCE OF RECORDS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-436, IDAHO CODE, TO PROVIDE FOR MAINTENANCE OF RECORDS BY OWNERS OPERATING VEHICLES WEIGHING IN EXCESS OF SIXTY THOUSAND POUNDS, TO PROVIDE FOR AUDITING OF THOSE RECORDS, TO PROVIDE ADDITIONAL FEES BASED ON ACCRUAL OF OVERWEIGHT CITATIONS, TO PROVIDE A PENALTY FOR FAILURE TO MAINTAIN ADEQUATE RECORDS AND TO REDUCE THE PENALTY FOR UNREPORTED MILES; AMENDING SECTION 49-438, IDAHO CODE, TO PROVIDE A PENALTY FOR EXCEEDING REGISTERED GROSS WEIGHT; AND AMENDING SECTION 49-1001, IDAHO CODE, TO ESTABLISH A MAXIMUM BY WHICH THE AUTHORIZED WEIGHT OF AN AXLE OR GROUP OF AXLES MAY BE EXCEEDED AND TO

MAKE TECHNICAL CORRECTIONS.

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

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

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

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

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

In addition, an annual registration fee shall be required for each trailer or semitrailer in a combination of vehicles in the amount of fifteen dollars (\$15.00). An annual registration fee of eight dollars (\$8.00) shall be required for each rental utility trailer having a maximum laden or gross weight of up to two thousand (2,000) pounds, or fifteen dollars (\$15.00) for each rental utility trailer having a maximum laden or gross weight in excess of two thousand (2,000) pounds. For a fee of fifteen dollars (\$15.00) per year for each trailer or semitrailer, or a fee of eight dollars (\$8.00) or fifteen dollars (\$15.00) per year, as applicable, for each rental utility trailer, the department may issue a trailer, rental utility trailer or semitrailer license plate that shall remain valid for a period of five (5) years. The license plate shall become void if the owner's interest in the trailer, rental utility trailer or semitrailer changes during the five (5) year period. If the owner fails to enter the licensed trailer, rental utility trailer or semitrailer on the annual renewal application during the five (5) year period, the registration record shall be purged. Any unexpired, unexpired plate shall be returned to the department if it is not entered on the renewal application.

(3) An administrative fee of four dollars (\$4.00) shall be paid on all registrations completed by the department under this section.

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

visions of ~~subsection (7)~~ of this section.

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

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

(5) In addition to the registration and license fees of this section, there shall be paid on all farm vehicles, and any commercial vehicle exclusively engaged in the transportation of logs, pulp wood, stull, poles, piling, rough lumber, ores, ore concentrates, sand and gravel aggregates in bulk, livestock and vehicles used for the sole purpose of transporting milk from the farm to processing plant, having a maximum gross weight in excess of sixty thousand (60,000) pounds, a use fee of ~~22.45 mills per mile~~ in accordance with the following schedule. The use fees shall be calculated by multiplying the mills per mile, determined from the mills per mile schedule table, times the reported mileage for the vehicle, subject to the provisions of this section.

Maximum Gross Weight of Vehicle (Pounds)	Mills per Mile
60,001-62,000	22.45
62,001-64,000	22.45
64,001-66,000	22.45
66,001-68,000	22.45
68,001-70,000	22.45
70,001-72,000	22.45
72,001-74,000	22.45
74,001-76,000	22.45

<u>76,001-78,000</u>	<u>22.45</u>
<u>78,001-80,000</u>	<u>22.45</u>
<u>80,001-82,000</u>	<u>24.55</u>
<u>82,001-84,000</u>	<u>26.65</u>
<u>84,001-86,000</u>	<u>28.75</u>
<u>86,001-88,000</u>	<u>30.85</u>
<u>88,001-90,000</u>	<u>32.95</u>
<u>90,001-92,000</u>	<u>35.05</u>
<u>92,001-94,000</u>	<u>37.15</u>
<u>94,001-96,000</u>	<u>39.25</u>
<u>96,001-98,000</u>	<u>41.35</u>
<u>98,001-100,000</u>	<u>43.45</u>
<u>100,001-102,000</u>	<u>45.55</u>
<u>102,001-104,000</u>	<u>47.65</u>
<u>104,001-106,000</u>	<u>49.75</u>

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

(6) If any motor vehicle, ~~trailer or semitrailer~~, or combinations thereof, ~~which hauls reducible loads is authorized under the provisions of chapter 10, title 49, Idaho Code, to~~ of vehicles move on the highways of the state, and the vehicle or combination exceeds the its registered maximum gross weight of ~~eighty thousand (80,000) pounds~~, ~~then and in that event there shall be paid for that vehicle, in addition to the other fees required in this section, an additional use fee of 2.1 mills per mile for each two thousand (2,000) pounds or fraction thereof of the maximum registered gross weight of the vehicle~~ the fees provided for in either subsection (4) or (5) of this section, as applicable, for the actual gross weight of the vehicle or combination of vehicles for the miles traveled at the heavier weight.

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

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

(89) An applicant for registration of a commercial vehicle, a noncommercial vehicle or a farm vehicle shall set forth the maximum gross weight of the vehicle or combination of vehicles and the applicant shall pay any annual registration fees and any annual license fees on trailers and semitrailers required at the time he makes application for registration subject to the provisions of subsections (1) and (2) of this section. No part of the registration or license fees shall be subject to refund. The use fee payment required shall be computed according to the schedule in either subsection (4) or (5) of this section on the mileage operated over the highways of the state of Idaho and the owner of any vehicle against which a use fee is assessed, shall at the time of making his next quarterly report pay the use fee, if any, for the three (3) calendar months immediately prior. In determining the mileage subject to the use fee, there shall be deducted the miles traveled on roadways maintained with private funds by agreement with the public agency or agencies having jurisdiction over them. In no event shall the total money credited to the owner for the mileage exceed the actual cost of maintenance expended by him.

SECTION 2. That Section 49-436, Idaho Code, be, and the same is hereby amended to read as follows:

49-436. QUARTERLY REPORTS -- MAINTAINING RECORDS -- PENALTIES -- DEPOSIT OR BOND TO SECURE PAYMENT OF FEES -- APPEAL. (1) Not later than the last day of April, and on the last day of each third calendar month thereafter, each owner of a commercial or farm vehicle having a maximum combined gross weight in excess of sixty thousand (60,000) pounds, shall file with the department a statement of the gross miles each vehicle has traveled over the highways of the state of Idaho for the preceding calendar months of the year for which that report is made. Each report shall be cumulative of all miles traveled during all calendar months in that year for which the report is made.

(2) Every owner whose fees are computed as specified in section 49-434, Idaho Code, shall maintain records ~~and purchase documents and permit the department to inspect the records upon request to substantiate and justify the use of such schedule and if the owner is reporting the use fee at multiple weights, the records shall include the configuration of the combination of vehicles for all miles traveled, and shall permit the department to inspect the same upon demand~~ the following:

(a) The actual miles traveled over Idaho highways.

(b) Identification of the commodities hauled if using the schedule in section 49-434(5), Idaho Code.

(c) Reporting at multiple weights pursuant to section 49-434, Idaho Code.

(d) If an owner registers a vehicle or combination of vehicles at a weight in excess of sixty thousand (60,000) pounds and the registered maximum gross weight is less than the weight allowable under the provisions of section 49-1001, Idaho Code, for that vehicle or combination of vehicles, then the owner must maintain and provide to the department on demand records of the vehicle or combination of vehicles actual gross weight and the configuration

of the combination of vehicles for all miles traveled. If the owner fails to maintain and produce such records then all miles for the vehicle or combination of vehicles will be assessed at the highest weight the vehicle or combination of vehicles could legally operate pursuant to section 49-1001, Idaho Code. If an owner registers a vehicle or combination of vehicles at a weight in excess of sixty thousand (60,000) pounds and the registered maximum gross weight is equal to or exceeds the weight allowable under the provisions of section 49-1001, Idaho Code, for that vehicle or combination of vehicles then the owner is not required to maintain actual gross weight records of the vehicle or combination of vehicles. Owners may voluntarily report quarterly the weight hauled in excess of registered maximum gross weight and may pay use fees for such voluntarily reported weight without penalty.

(e) Overweight travel authorization fees as set forth in section 49-1001, Idaho Code, and use fees accrued through overweight citations as provided in this section shall be remitted quarterly.

(3) When the records are maintained outside this state by owners engaged in transportation in this state, the owner shall reimburse the department for reasonable expenses incurred by the department in making audits of those records and accounts at the out-of-state location. The owner or the department may request that the records be presented at a place within the state designated by the department. The records must be presented by a representative of the owner familiar with the records and who is responsible for the safekeeping of the records. Every owner is required to maintain records for four (4) years from the due date of the quarterly report unless the department and the owner agree in writing to shorten or lengthen the time period. The amount of fees imposed in this chapter shall be assessed within four (4) years after the due date of the quarterly report unless the department and owner agree in writing to lengthen the time period. If an assessment has been made, such fees may be collected by a proceeding in court within a period of three (3) years after the assessment or a final order entered pursuant to subsection (910) of this section.

(34) Owners of commercial and farm vehicles using the registration fee schedules in section 49-434(1), Idaho Code, are subject to audit to determine if the proper schedule is being used. If the weight classification being used is found to be understated, the difference between the registration fees paid and the registration fees due will become due and payable. If the vehicles are found to be operating in excess of sixty thousand (60,000) pounds gross weight, the difference between the registration fees paid under section 49-434(1), Idaho Code, and the amount that would have been due under the use fee schedule in section 49-434(4) or (5), Idaho Code, will be determined and the balance due, if any, will be collected. If an owner registers a vehicle or combination of vehicles at a weight less than the weight allowable under the provisions of section 49-1001, Idaho Code, for that vehicle or combination of vehicles then the owner must maintain vehicle gross weight records in addition to the mileage records and allow the department to inspect the vehicle gross weight and mileage records.

(5) Owners using the use fee schedules in section 49-434(4) and (5), Idaho Code, are subject to audit to determine if the proper use

fee schedule and weight classification is being used and if all miles traveled on Idaho highways have been reported. If the operating weight, as determined from citations issued for exceeding weight limitations specified in title 49, Idaho Code, exceeds the registered maximum gross weight, the additional use fees for the miles traveled at the heavier weight, if not already paid, shall become due and payable.

(46) An owner who willfully fails to maintain records and purchase documents to substantiate and justify the mileage reported, the registration fee schedule used, or the configuration of the vehicle combination if reporting at multiple weights, shall as required by the provisions of this section may have the registration of all vehicles registered under sections 49-434 and 49-435, Idaho Code, suspended until such time as adequate records as required by the provisions of this section are provided. In the event that the owner does not produce records, the department may make an assessment of fees due based on an estimate of the operation. The department shall promulgate rules specifying the methodology used to determine an assessment based on an estimate of the operation. There shall be added to every such estimated assessment a penalty of two percent (2%) per month or fraction thereof after the report was required to be filed or the fee became due up to a maximum penalty of thirty-six percent (36%) of the fee due. Upon payment of the estimated assessment and all other fees due and owing including the reinstatement fee the owner's registration shall be reinstated.

(57) An owner who fails to file any reports or pay any fees or penalties due is subject to suspension or revocation of their vehicle registrations. An order suspending the vehicle registrations shall be mailed to the owner upon discovery of the deficiency by the department. The suspension shall be lifted if the reports are filed and the payments due are made, along with a reinstatement fee of forty dollars (\$40.00) per carrier within fifteen (15) days after receipt of the suspension order. The owner shall have the right to appeal the suspension by petitioning the department for a hearing within ten (10) days after receipt of the suspension order. If the suspension is set aside the reinstatement fee shall not be due.

(6) -- If the owner fails to file required reports; pay any fees or penalties due; or file an appeal within the time limit specified, the department shall revoke the registrations. -- No further registrations shall be permitted on the owners' vehicles until the owner complies by filing the required reports and paying the fees and penalties due, including the reinstatement fee provided in subsection (5) of this section.

(78) An owner failing to file a mileage report or pay any fee due within the time required as specified in this section, shall in addition to the amount of the fee pay a penalty of fifteen ten percent (150%) of the amount of fee determined to be due, plus the interest of one percent (1%) of the amount of the use fees due for each month or fraction thereof after the report was required to be filed or the fee became due, but the department may remit all or any part of the penalty if satisfied that the delay was excusable up to a maximum of twenty-four percent (24%). The department shall promulgate rules specifying when the penalty may be held in abeyance or forgiven.

(89) (a) If the department finds it necessary in order to ensure

the collection of any fees or penalties imposed upon an owner, it may at the time and as a condition of granting a registration or to reinstate a registration require an owner to deposit and keep on deposit with the department a sum equal to the estimated fees computed under the schedule in section 49-434, Idaho Code, for a period of not to exceed three (3) months. In determining the necessity for an applicant or owner to maintain a deposit the department shall consider the applicant or owner's financial capability and responsibility and prior experience, if any, in collecting fees or penalties from the applicant, owner or any person having a substantial interest or control, directly or indirectly, in or over the operations conducted or to be conducted under the registration.

(b) The department may accept in lieu of a deposit a bond to secure payment of sums payable by the owner. The total amount of the deposit or bond shall be determined by the department in a manner as it shall deem proper, taking into account the nature and scope of the owner's operations. The amount may be increased or reduced at any time.

(c) If an owner ceases to be registered under the provisions of this chapter, the department, upon receipt of all payments due, shall refund to the owner all deposits remaining to the owner's credit and shall release the surety on any bond given under this section.

(d) Any applicant or owner required to make a deposit to secure the payment of fees or penalties may by proper petition demand a hearing on the necessity of the deposit or the reasonableness of the amount required. A hearing shall be granted and held within ten (10) days after the demand. The decision of the director shall become final ten (10) days after service of the order upon the applicant or owner concerned. Notice shall be served personally or by certified mail addressed to the applicant or owner at his address as it appears in the records of the department. An appeal may be taken from any decision of the department as from the decision of the magistrate's division to the district court.

(910) An owner wishing to contest an assessment made by the department may within thirty (30) days from receipt of the assessment file an appeal with the department. Upon receipt of an appeal the director or his authorized representative shall schedule an informal conference between the owner and a representative of the department. The informal conference must be conducted within twenty (20) days from the date of receipt of notice of intent to appeal from the owner. The owner and the representative of the department shall reduce all conclusions, agreements and decisions to writing, if an informal conference is held, but attendance at and participation in the informal conference is at the option of the owner. If an informal conference is held, the written report of the results of that conference shall be provided to the director within ten (10) days. If the results of the informal conference are not satisfactory to the owner, he may continue with the appeal by informing the director in writing, and the director or his authorized representative shall appoint a hearing officer to conduct a contested case hearing in accordance with chapter 52, title 67, Idaho Code. The hearing officer may subpoena witnesses and evi-

dence and administer oaths. The hearing officer shall prepare written findings of fact and conclusions of law for the director or his authorized representative. Upon receipt of findings of fact and conclusions of law the director or his authorized representative shall issue a final order affirming, modifying or reversing the original assessment. All final orders rendered by the director or his authorized representative shall be appealable in accordance with section-67-5215 chapter 52, title 67, Idaho Code.

SECTION 3. That Section 49-438, Idaho Code, be, and the same is hereby amended to read as follows:

49-438. PENALTIES FOR EXCEEDING MAXIMUM REGISTERED GROSS WEIGHT. ~~Any person who shall operate or cause, permit, or suffer to be operated upon any highway of this state a vehicle with a maximum gross weight in excess of the maximum gross weight for which the vehicle has been registered shall be deemed to have set a new maximum gross weight and shall, in addition to any penalties specified in this title, be required to pay the additional fees for the new maximum gross weight.~~ Any person who shall operate, cause, permit, or suffer to be operated upon any highway any vehicle or combination of vehicles with a maximum gross weight in excess of the maximum registered gross weight of the vehicle specified in this title, without having paid the additional registration and use fees required, shall have committed an infraction.

SECTION 4. That Section 49-1001, Idaho Code, be, and the same is hereby amended to read as follows:

49-1001. ALLOWABLE GROSS LOADS. The gross load imposed on the highway by any vehicle or combination of vehicles shall not exceed the limits in this section. The maximum single axle gross weight shall be twenty thousand (20,000) pounds, the maximum single wheel gross weight shall be ten thousand (10,000) pounds and the maximum gross vehicle or combination weight shall be one hundred five thousand five hundred (105,500) pounds, provided that maximum gross vehicle or combination weight on United States federal interstate and defense highways of this state shall not exceed eighty thousand (80,000) pounds, except as permitted under the provisions of section 49-1004, Idaho Code.

(1) The total gross weight imposed on the highway by any group of consecutive axles shall be determined by the following formula:

$$W=500((LN/N-1)+12N+36)$$

Where W is the maximum weight in pounds (to the nearest 500 pounds) carried on any group of two (2) or more consecutive axles. L is the distance in feet between the extremes of any group of two (2) or more consecutive axles, and N is the number of axles under consideration.

The formula is modified as illustrated in the following table:

Distance in feet
between the
extremes of any
group of 2 or
more consecutive

Maximum load in pounds carried on any group of
2 or more consecutive axles

axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
4	34,000							
5	34,000							
6	34,000							
7	34,000							
8	34,000	42,000						
9	39,000	42,500						
10	40,000	43,500						
11		44,000						
12		45,000	50,000					
13		45,500	50,500					
14		46,500	51,500					
15		47,000	52,000					
16		48,000	52,500	58,000				
17		48,500	53,500	58,500				
18		49,500	54,000	59,000				
19		50,000	54,500	60,000				
20		51,000	55,500	60,500	66,000			
21		51,500	56,000	61,000	66,500			
22		52,500	56,500	61,500	67,000			
23		53,000	57,500	62,500	68,000			
24		54,000	58,000	63,000	68,500	74,000		
25		54,500	58,500	64,500	69,000	74,500		
26		55,500	59,500	65,000	69,500	75,000		
27		56,000	60,000	65,000	70,000	75,500		
28		57,000	60,500	65,500	71,500	76,500	82,000	
29		57,500	61,500	66,000	71,500	77,000	82,500	
30		58,500	62,000	66,500	72,000	77,500	83,000	
31		59,000	62,500	67,500	72,500	78,000	83,500	
32		60,000	63,500	68,000	73,000	78,500	84,500	90,000
33			64,000	68,500	74,000	79,000	85,000	90,500
34			64,500	69,000	74,500	80,000	85,500	91,000
35			65,500	70,000	75,000	80,500	86,000	91,500
36			66,000	70,500	75,500	81,000	86,500	92,000
37			66,500	71,000	76,000	81,500	87,000	93,000
38			67,500	72,000	77,000	82,000	87,500	93,500
39			68,000	72,500	77,500	82,500	88,500	94,000
40			68,500	73,000	78,000	83,500	89,000	94,500
41			69,500	73,500	78,500	84,000	89,500	95,000
42			70,000	74,000	79,000	84,500	90,000	95,500
43			70,500	75,000	80,000	85,000	90,500	96,000
44			71,500	75,500	80,500	85,500	91,000	96,500
45			72,000	76,000	81,000	86,000	91,500	97,500
46			72,500	76,500	81,500	87,000	92,500	98,000
47			73,500	77,500	82,000	87,500	93,000	98,500
48			74,000	78,000	83,000	88,000	93,500	99,000
49			74,500	78,500	83,500	88,500	94,000	99,500
50			75,500	79,000	84,000	89,000	94,500	100,000
51			76,000	80,000	84,500	89,500	95,000	100,500
52			76,500	80,500	85,000	90,500	95,500	101,000
53			77,500	81,000	86,000	91,000	96,500	102,000
54			78,000	81,500	86,500	91,500	97,000	102,500

WHEN NO ALLOWABLE WEIGHT IS
LISTED FOR ANY AXLE SPACING,
APPLY THE ALLOWABLE WEIGHT AS
LISTED IN THE FIRST COLUMN TO
THE LEFT

55	78,500	82,500	87,000	92,000	97,500	103,000
56	79,500	83,000	87,500	92,500	98,000	103,500
57	80,000	83,500	88,000	93,000	98,500	104,000
58		84,000	89,000	94,000	99,000	104,500
59		85,000	89,500	94,500	99,500	105,000
60		85,500	90,000	95,000	100,500	105,500
61		86,000	90,500	95,500	101,000	
62		87,000	91,000	96,000	101,500	
63		87,500	92,000	96,500	102,000	
64		88,000	92,500	97,500	102,500	
65		88,500	93,000	98,000	103,000	
66		89,500	93,500	98,500	103,500	
67		90,000	94,000	99,000	104,500	
68		90,500	95,000	99,500	105,000	
69		91,000	95,500	100,000	105,500	
70		92,000	96,000	101,000		
71		92,500	96,500	101,500		
72		93,000	97,000	102,000		
73		93,500	98,000	102,500		
74		94,500	98,500	103,000		
75		95,000	99,000	103,500		
76		95,500	99,500	104,500		
77		96,000	100,000	105,000		
78		97,000	101,000	105,500		
79		97,500	101,500			
80		98,000	102,000			
81		98,500	102,500			
82		99,000	103,000			
83		100,000	104,000			
84			104,500			
85			105,000			
86 or more			105,500			

(a) The board may limit the application of the weights authorized in this section as to certain highways which it determines have limited structural capacity of pavements, bridges, or other appurtenances. In designating such highways, it may specify a minimum wheelbase for combinations to be operated thereon. It may also designate specific highways or portions on which operation of a combination of vehicles with seven (7), eight (8) or nine (9) axle vehicles will be subject to specified lesser allowable gross weights.

(b) Notwithstanding the figures shown in the above table, two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more.

(2) The weight limitations set forth in the table above shall not apply to any vehicle, or combination of vehicles when a greater allowed weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state, the following table of allowable weights shall apply

only to vehicles engaged in the transportation of logs, pulp wood, stull, rough lumber, poles or piling; or to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel and aggregates thereof, in bulk; or to any such vehicle engaged in the transportation of agricultural commodities, including livestock:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Allowed Load in Pounds	
	Vehicles with Three or Four axles	Vehicles with Five or more axles
3 through 12	37,800	37,800
13	56,470	56,470
14	57,940	57,940
15	59,400	59,400
16	60,610	60,610
17	61,820	61,820
18	63,140	63,140
19	64,350	64,350
20	65,450	65,450
21	66,000	66,330
22	66,000	67,250
23	66,000	67,880
24	66,000	68,510
25	66,000	69,150
26	66,000	69,770
27	66,000	70,400
28	66,000	70,950
29	66,000	71,500
30	66,000	72,050
31		72,600
32		73,150
33		73,700
34		74,250
35		74,800
36		75,350
37		75,900
38		76,450
39		77,000
40		77,550
41		78,100
42		78,650
43 and over		79,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles exceeds seventy-nine thousand (79,000) pounds.

(3) In determining the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles under subsections (1) or (2) of this section, the total gross weight of the vehicle or combination of vehicles or the gross weight of any two (2) or more consecutive axles shall be the sum of the axle weights.

(4) In applying the weight limitations imposed in this section, a vehicle or combination of vehicles must comply exclusively with the weight limitations in either subsection (1) or (2) of this section.

(5) In applying the weight limitations imposed in this section,

the distance between axles shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

(6) The limitations imposed in this section are in addition and supplemental to all other laws imposing limitations upon the size and weight of vehicles.

(7) Notwithstanding the other provisions of this chapter, no vehicle, motor vehicle, trailer and/or semitrailer, or combination thereof, may be operated on the public highways of the state under loads which would result in the withholding of funds by operation of controlling federal law as provided in the Federal Aid Highway Act of 1956, as amended.

(8) Except as provided herein, no vehicle or combination of vehicles may proceed past the place of weighing at temporary or permanent ports of entry or checking stations when: the weight of a single axle exceeds the maximum limitations set forth herein by two thousand (2,000) pounds or more; the weight of a combination of axles, or gross vehicle weight exceeds the maximum allowable weight as set forth herein by seven percent (7%) or more. Vehicles or combinations of vehicles which exceed the weight limitations set forth herein shall be required to be brought into compliance with applicable weight limitations contained within this subsection at the place of weighing prior to continuing, except those vehicles or combinations of vehicles which are transporting loads which, in the determination of the board or other proper authorities in charge of or having jurisdiction over a highway, are deemed unsafe or impractical to bring into compliance at the place of weighing, and except those vehicles which do not exceed fifteen percent (15%) over maximum axle and axle group weights set forth in this section. Vehicles or combinations of vehicles transporting loads in this latter category shall obtain a travel authorization to the nearest place of safe unloading, load adjustment or other means of legalization.

(a) Neither the state of Idaho or its employees, nor any authority and its employees in charge of or having jurisdiction over a highway, shall be held liable for personal injury or property damage resulting from the requirements of section 49-1001(8), Idaho Code.

(b) The fee for a travel authorization as set forth above shall be fifty dollars (\$50.00) and shall be on a form prescribed by the board or other proper authorities, and shall not be construed as contributing to a reduction in the penalties prescribed in section 49-1013, Idaho Code.

(c) The board or other proper authorities in charge of or having jurisdiction over a highway shall adopt and enforce administrative rules and regulations as may be necessary to carry out the provisions of this section.

CHAPTER 274
(S.B. No. 1233)

AN ACT

RELATING TO THE AERONAUTICS ADVISORY BOARD; AMENDING SECTION 21-135, IDAHO CODE, TO PROVIDE THAT MEMBERS SHALL BE PUBLIC SPIRITED CITIZENS OF GOOD CHARACTER, WELL INFORMED AND INTERESTED IN THE CONSTRUCTION AND MAINTENANCE OF AERONAUTICAL FACILITIES.

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

SECTION 1. That Section 21-135, Idaho Code, be, and the same is hereby amended to read as follows:

21-135. COMPOSITION OF ADVISORY BOARD -- NUMBER -- APPOINTMENT -- QUALIFICATIONS. The advisory board shall be composed of three (3) members to be appointed by the governor. Not more than two (2) members thereof shall at any time belong to the same political party. Provided, however, two (2) members of the advisory board shall be rated pilots. Members shall be successful public spirited men citizens of good character, well informed and interested in the construction and maintenance of aeronautical facilities. Selection and appointment shall be made solely with regard to the best interests of the various functions of the advisory board. Each member at the time of his appointment shall be a citizen and resident taxpayer of the state of Idaho, of the district from which he is appointed for at least three (3) years, and during his tenure of office no member shall hold or occupy any elective or other appointive office, federal, state, county or municipal, or any office in any political party.

Approved March 29, 1993.

CHAPTER 275
(S.B. No. 1236)

AN ACT

RELATING TO AIR QUALITY; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 39-118B, 39-118C AND 39-118D, IDAHO CODE, TO PROVIDE RELATIONSHIP TO FEDERAL LAW, TO PROVIDE LEGISLATIVE FINDINGS AND A DECLARATION OF PURPOSE AND TO CREATE THE IDAHO AIR QUALITY PERMITTING ACCOUNT; AMENDING SECTION 39-105, IDAHO CODE, TO PROVIDE DUTIES OF THE DIRECTOR REGARDING AIR QUALITY PERMITS ISSUED UNDER THE CLEAN AIR ACT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-108, IDAHO CODE, TO PROVIDE FOR ALTERNATIVE FINES FOR AIR VIOLATIONS; AMENDING SECTION 39-115, IDAHO CODE, TO PROVIDE CRITERIA THROUGH RULE MAKING REGARDING CERTAIN POLLUTION SOURCES, TO PROVIDE FOR FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-117, IDAHO CODE, TO REVISE PENALTIES FOR VIOLATIONS; AND AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-118E, IDAHO CODE, TO PROVIDE FOR

SMALL BUSINESS ASSISTANCE.

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

SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-118B, Idaho Code, and to read as follows:

39-118B. RELATIONSHIP TO FEDERAL LAW. The board may promulgate rules and regulations to ensure that the state of Idaho is in compliance with the provisions of the federal clean air act. To the extent that the federal clean air act sets forth or the United States environmental protection agency adopts or has adopted a specific standard, emission limitation or control technology requirement under the clean air act, a more stringent standard, emission limitation or control technology requirement promulgated by the board shall not become effective until specifically approved by statute.

SECTION 2. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-118C, Idaho Code, and to read as follows:

39-118C. LEGISLATIVE FINDINGS AND DECLARATION OF PURPOSE.

(1) The legislature finds that it is an obligation of the state of Idaho under title V of the clean air act to provide for an operating permit program for sources of air pollution within the state.

(2) The purpose of these amendments to the environmental protection and health act is to meet the state's obligation to protect air quality with a cost-effective operating permit program.

(3) The legislature intends that the department's regulation under title V of the clean air act shall take advantage of the flexibility authorized by the federal clean air act to establish reasonable and cost-effective requirements. Such requirements shall include, but not be limited to:

(a) Operating flexibility provisions;

(b) Provisions allowing off-permit changes;

(c) Provisions that limit federally enforceable hazardous air pollutant requirements to that group of pollutants listed under section 112 of the federal clean air act (to the extent that the operating permits address hazardous air pollutants);

(d) Provisions for operating permits to be issued for fixed terms of five (5) years; provided that, in order to facilitate the implementation of the title V operating permit program, the director may issue operating permits with terms of from three (3) to five (5) years during the first three (3) years following environmental protection agency approval of Idaho's title V operating permit program so long as those permits with fixed terms of less than five (5) years are renewed with terms of five (5) years thereafter; and provided further that if the maximum operating permit term under the federal clean air act should be extended

beyond five (5) years, the director shall similarly extend the term of operating permits issued under the Idaho program; and provided further, that shorter terms are allowable when mutually agreed upon by the department and the applicant;

(e) Provisions for adequate, streamlined and reasonable procedures for processing modifications, including establishing criteria to determine insignificant changes that shall not require a permit modification, and establishing classes of modifications based on significance which shall include a minor modification class for which modifications may be processed in group as authorized by 40 CFR 70.7(e)(3) as may be amended; and

(f) Provisions allowing an existing source to make changes that reduce emissions without applying for a permit to construct or an amendment to an operating permit; provided, however, that an existing source that makes such changes may seek and obtain an operating permit modification if it chooses.

SECTION 3. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-118D, Idaho Code, and to read as follows:

39-118D. IDAHO AIR QUALITY PERMITTING ACCOUNT. (1) All moneys received from fees collected from the pollution sources requiring permitting under title V of the federal clean air act amendments of 1990 shall be forwarded to the division of environmental quality of the department of health and welfare and shall be paid into the Idaho air quality permitting account which is hereby created in the office of the state treasurer.

(2) Such moneys and all interest earned thereon shall be kept in the Idaho air quality permitting account and shall be expended for the technical, legal and administrative support necessary for implementing the operating permit program required under title V of the federal clean air act amendments of 1990.

(3) All salaries, costs and expenses incurred by the division of environmental quality in performing the duties and the exercise of its powers in carrying out the operating permit program required under title V of the federal clean air act amendments of 1990 shall be paid out of the air quality permitting account.

SECTION 4. That Section 39-105, Idaho Code, be, and the same is hereby amended to read as follows:

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

1. All of the powers and duties of the department of public health, the department of health, the board of health, and the air pollution control commission, are hereby transferred to the director of the department of health and welfare, provided, however, that rule making and hearing functions relating to environmental protection, public health and licensure and certification standards shall be vested in the board of health and welfare. The director shall have all such powers and duties as may have been or could have been exercised

by his predecessors in law, including the authority to adopt, promulgate, and enforce rules and regulations in those circumstances when the authority to adopt, promulgate, and enforce such rules and regulations is not vested in the board of health and welfare, and shall be the successor in law to all contractual obligations entered into by his predecessor in law. All rule making proceedings and hearings of the director shall be governed by the provisions of chapter 52, title 67, Idaho Code.

2. The director shall, pursuant and subject to the provisions of the Idaho Code, and the provisions of this act, formulate and recommend to the board, rules, regulations, codes and standards, as may be necessary to deal with problems related to personal health, water pollution, air pollution, visual pollution, noise abatement, solid waste disposal, and licensure and certification requirements pertinent thereto, which shall, upon adoption by the board, have the force of law relating to any purpose which may be necessary and feasible for enforcing the provisions of this act, including, but not limited to the prevention, control or abatement of environmental pollution or degradation and the maintenance and protection of personal health. Any such regulation or standard may be of general application throughout the state or may be limited as to times, places, circumstances or conditions in order to make due allowance for variations therein.

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

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

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

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

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

e. The enforcement of standards, rules and regulations, relating to public water supplies.

f. The supervision and administration of the various schools,

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

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

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

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

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

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

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

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

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

ii. Provide review and comment regarding the design of solid waste disposal facilities in accordance with the provisions of chapter 74, title 39, Idaho Code.

iii. Approving ground water monitoring methods and implementation associated with development and operation of solid waste disposal sites pursuant to chapter 74, title 39, Idaho Code.

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

v. The authority granted to the director pursuant to provisions of this subsection shall not be effective unless and until the state of Idaho has obtained approved state status from the United States environmental protection agency (USEPA). Prior to said approval, or in the event of revocation of approved state status, the provisions of the solid waste facilities act shall be null and void.

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

vii. When reviewing the phases of solid waste disposal site development referred to herein the following standards shall apply to the review process:

A. For site certification the director shall accept applicant representations if accompanied by certification from a licensed professional engineer or licensed geologist, as appropriate, with respect to the particular aspect of compliance certified. Absent substantial evidence of errors in the professional certification submitted by the owner, a site certificate shall be issued.

B. For design review of a solid waste disposal facility the director shall review the design documents submitted by the owner's licensed professional engineer or licensed geologist, as appropriate, and return comments to the owner within the specified period established in chapter 74, title 39, Idaho Code. The director's authority shall be limited to review and comment in the design phase of disposal site development, unless the director finds, upon substantial evidence, that construction of the submitted design would imperil public health or the environment. In such circumstance, the director is empowered to issue a fourteen (14) day administrative stay prohibiting construction of the proposed solid waste disposal site and to initiate equitable legal action in the district court in the county wherein the facility is located to prohibit construction until the potential peril is remedied.

C. For review of plans of a ground water quality monitoring system the director shall approve the proposed ground water monitoring system if a preponderance of the evidence supports the conclusion that it will meet the monitoring requirements established by the USEPA and chapter 74, title 39, Idaho Code. Only by the presence of substantial evidence that the ground water quality monitoring system will not function appropriately, which evidence shall be affirmatively identified by the director, shall a ground water quality monitoring system be disapproved. The director shall set forth in any such notice of disapproval the steps an applicant can take to obtain approval.

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

o. The formulation and adoption of a comprehensive state nutrient management plan for the surface waters of the state of Idaho in consultation with the appropriate state or federal agencies, local

units of government, and with public involvement as provided for under the administrative procedure act. The director shall recommend by March 1, 1990, to the board for adoption, rules and regulations setting forth procedures for development of the plan, including mechanisms to keep the public informed and encourage public participation in plan development.

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

p. The formulation of a water quality management plan for Priest lake in conjunction with a planning team from the Priest lake area whose membership shall be appointed by the board and consist of a fair representation of the various land managers, and user and interest groups of the lake and its Idaho watershed. The stated goal of the plan shall be to maintain the existing water quality of Priest lake while continuing existing nonpoint source activities in the watershed and providing for project specific best management practices when necessary. The plan shall include comprehensive characterization of lake water quality through completion of a baseline monitoring program to be conducted by the department and shall consider existing economics and nonpoint source activity dependent industries of the Priest lake area. The planning team shall conduct public hearings and encourage public participation in plan development including opportunity for public review and input. Technical assistance to the planning team, with state nonpoint source management programs in forest practices, road construction and maintenance, agriculture and mining shall be provided by the department. Technical assistance to the planning team on area planning, zoning and sanitary regulations shall be provided by the clean lakes council. The plan shall be submitted to the board for its approval at the end of a three (3) year plan

development period. Upon review and acceptance by the board, the plan shall be submitted to the legislature for amendment, adoption or rejection. If adopted by the legislature, the plan shall be enacted by passage of a statute at the regular legislative session when it receives the plan and shall have the force and effect of law. Existing forest practices, agricultural and mining nonpoint source management programs are considered to be adequate to protect water quality during the plan development period.

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

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

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

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

SECTION 5. That Section 39-108, Idaho Code, be, and the same is hereby amended to read as follows:

39-108. INVESTIGATION -- INSPECTION -- RIGHT OF ENTRY -- VIOLATION -- ENFORCEMENT -- PENALTY -- INJUNCTIONS. 1. The director shall cause investigations to be made upon the request of the board or upon receipt of information concerning an alleged violation of this act or of any rule, regulation, permit or order promulgated thereunder, and may cause to be made such other investigations as the director shall deem advisable.

2. For the purpose of enforcing any provision of this chapter or any rule or regulation authorized in this chapter, the director or the director's designee shall have the authority to:

a. Conduct a program of continuing surveillance and of regular or periodic inspection of actual or potential health hazards, air contamination sources, water pollution sources, noise sources, and of solid waste disposal sites;

b. Enter at all reasonable times upon any private or public property, upon presentation of appropriate credentials, for the purpose of inspecting or investigating to ascertain possible violations of this act or of rules, regulations, permits or orders adopted and promulgated by the director or the board;

c. All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and ~~article I~~, section 17, article I, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or occupier or exigent circumstances such as a public health or environmental emergency;

d. Any district court in and for the county in which the subject property is located is authorized to issue a search warrant to the director upon a showing of (i) probable cause to suspect a violation, or (ii) the existence of a reasonable program of inspection. Any search warrant issued under the authority of this chapter shall be limited in scope to the specific purposes for which it is issued and shall state with specificity the manner and the scope of the search authorized.

3. Whenever the director determines that any person is in violation of any provision of this act or any rule, regulation, permit or order issued or promulgated pursuant to this act, the director may commence either of the following:

a. Administrative Enforcement Action

i. Notice. The director may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the act, rule, regulation, permit or order which has been violated, and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed.

ii. Scheduling compliance conference. If a recipient of a notice of violation contacts the department within fifteen (15) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the date of receipt of the notice, unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in paragraph b. of this subsection.

iii. Compliance conference. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance.

iv. Consent order. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a con-

sent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty.

v. Effect of consent order. A consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain, in any appropriate district court, specific performance of the consent order and such other relief as authorized in this chapter.

vi. Failure to reach consent order. If the parties cannot reach agreement on a consent order within sixty (60) days after the receipt of the notice of violation or if the recipient does not request a compliance conference as per subsection a.(ii) of this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection b. of this section.

b. Civil enforcement action. The director may initiate a civil enforcement action through the attorney general as provided in section 39-109, Idaho Code. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this act or any rule, regulation, permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any rule, regulation, permit or order promulgated hereunder and for any relief or remedies authorized in this act. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

4. No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, regulation, permit or order issued or promulgated pursuant to this chapter, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

5. Any person determined in a civil enforcement action to have violated any provision of this act or any rule, regulation, permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation, whichever is greater or ten thousand dollars (\$10,000) for each separate air violation and day of continuing air violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this act shall be paid into the general fund of the state. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

6. In addition to such civil penalties, any person who has been determined to have violated the provisions of this act or the rules, regulations, permits or orders promulgated thereunder, shall be liable for any expense incurred by the state in enforcing the act, or in

enforcing or terminating any nuisance, source of environmental degradation, cause of sickness, or health hazard.

7. No action taken pursuant to the provisions of this act or of any other environmental protection or health law shall relieve any person from any civil action and damages that may exist for injury or damage resulting from any violation of this act or of the rules, regulations, permits and orders promulgated thereunder.

8. In addition to, and notwithstanding other provisions of this act, in circumstances of emergency creating conditions of imminent and substantial danger to the public health or environment, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any discharge, emission or other activity in violation of provisions of this act or rules, regulations, permits and orders promulgated thereunder. In such action the court may issue an ex parte restraining order.

SECTION 6. That Section 39-115, Idaho Code, be, and the same is hereby amended to read as follows:

39-115. POLLUTION SOURCE PERMITS.

(1) (a) The director shall have the authority to issue pollution source permits in compliance with the regulations established by the board of health and welfare.

(b) The board shall develop criteria through rule making by November 15, 1993, to determine insignificant activities and such sources or modification with emissions at or below the deminimis level which shall not require either a permit to construct or a permit to operate; provided however, that a registration of the activities or sources may be required.

(2) The director shall have the authority to sue in competent courts to enjoin any threatened or continuing:

(a) Violations of pollution source permits or conditions thereof without the necessity of a prior revocation of the permit; or

(b) Construction of an industrial or commercial air pollution source without a permit required under this chapter or regulations adopted by the board.

(3) The department is authorized to charge and collect a fee for processing applications for industrial or commercial air pollution source permits in accordance with a fee schedule established by the board pursuant to this chapter. For fees charged for operating permits under title V of the federal clean air act amendments of 1990, the department shall not charge a fee on any hazardous air pollutant other than those listed under section 112 of the federal clean air act. The fee schedule shall be structured to provide an incentive for emission reduction.

(34) The director may issue air emission source permits to construct a facility to incinerate any waste or waste item contaminated with polychlorinated biphenyls (PCBs) only if the director finds:

(a) The facility will not be sited in complex valley terrain where the valley floor is less than five (5) miles wide and the valley walls rise more than one thousand (1,000) feet; and

(b) The facility has complied with local planning and zoning requirements;

(c) There has been an opportunity for public participation; and
(d) The facility will employ best available technology and instrumentation.

Subsection (34) of this section shall not apply to incineration activities existing on or before January 1, 1987.

SECTION 7. That Section 39-117, Idaho Code, be, and the same is hereby amended to read as follows:

39-117. CRIMINAL VIOLATION -- PENALTY ----MISDEMEANOR. (1) Any person who wilfully or negligently violates any of the provisions of the non-air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard, rule or regulation issued pursuant thereto, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars (\$10,000) for each separate violation or one thousand dollars (\$1,000) per day for continuing violations, whichever is greater.

(2) Any person who knowingly violates any of the provisions of the air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard or rule shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars (\$10,000) for each separate violation or for each day of a continuing violation. In addition, any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of the federal clean air act 42 USC 7412, or any extremely hazardous substance listed pursuant to 42 USC 11002(a)(2) that is not listed under section 112, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than two hundred fifty thousand dollars (\$250,000) per day, or by imprisonment of not more than fifteen (15) years or both such fine and imprisonment. Any person committing such violation which is an organization, shall, upon conviction under this subsection, be subject to a fine of not more than one million dollars (\$1,000,000) for each violation. For any air pollutant for which the environmental protection agency or the board of health and welfare has set an emissions standard or for any source for which a permit has been issued under title V of the clean air act amendments of 1990, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of the provisions of this subsection.

SECTION 8. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-118E, Idaho Code, and to read as follows:

39-118E. SMALL BUSINESS ASSISTANCE. The department shall implement a small business assistance program as required in 42 U.S.C. 7661A.

Approved March 29, 1993.

CHAPTER 276
(S.B. No. 1252)

AN ACT

APPROPRIATING MONEYS FOR THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND FOR FISCAL YEAR 1994; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCE IN THE GENERAL ACCOUNT; AND SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the State Board of Education for the Idaho School for the Deaf and the Blind the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	\$4,308,600	\$744,000	\$60,000	\$5,112,600
Idaho School for the Deaf and the Blind				
Income Fund		56,100		56,100
Federal Grants Fund	50,000	72,400	5,000	127,400
Miscellaneous Revenue Fund	4,000	20,200	5,000	29,200
TOTAL	\$4,362,600	\$892,700	\$70,000	\$5,325,300

SECTION 2. There is hereby reappropriated to the State Board of Education for the Idaho School for the Deaf and the Blind, subject to the provisions of Section 3 of this act, the unexpended and unencumbered balance of any General Fund appropriation made to the Idaho School for the Deaf and the Blind for the period July 1, 1992, through June 30, 1993, to be used for nonrecurring expenditures only for the period July 1, 1993, through June 30, 1994.

SECTION 3. The reappropriation granted in Section 2 of this act shall be subject to the following conditions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1993, is zero, the reappropriation in Section 2 is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 1993, is greater than zero but less than the total reappropriation authority granted to all state agencies, the amount reappropriated in Section 2 shall be in the proportion that the reappropriation for the Idaho School for the Deaf and the Blind bears to the total reappropriation authority granted to all state agencies.

Approved March 29, 1993.

CHAPTER 277
(S.B. No. 1254)

AN ACT

APPROPRIATING MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 1994.

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, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. COMPENSATION:					
FROM:					
Industrial Administration					
Fund	\$1,379,000	\$ 398,800	\$16,900	\$ 698,900	\$2,493,600
Federal Grant					
Fund	4,000	6,400			10,400
Miscellaneous Revenue					
Fund		42,100			42,100
TOTAL	<u>\$1,383,000</u>	<u>\$ 447,300</u>	<u>\$16,900</u>	<u>\$ 698,900</u>	<u>\$2,546,100</u>
B. REHABILITATION:					
FROM:					
Industrial Administration					
Fund	\$1,992,700	\$ 484,900	\$19,500		\$2,497,100
C. CRIME VICTIMS:					
FROM:					
Crime Victims Compensation					
Fund	\$ 204,300	\$ 52,200	\$ 4,800	\$1,132,400	\$1,393,700
Federal Grant					
Fund				291,000	291,000
TOTAL	<u>\$ 204,300</u>	<u>\$ 52,200</u>	<u>\$ 4,800</u>	<u>\$1,423,400</u>	<u>\$1,684,700</u>
D. ADJUDICATION:					
FROM:					
Industrial Administration					
Fund	\$ 723,300	\$ 312,100	\$ 7,600		\$1,043,000
GRAND					
TOTAL	\$4,303,300	\$1,296,500	\$48,800	\$2,122,300	\$7,770,900

Approved March 29, 1993.

CHAPTER 278
(S.B. No. 1100, As Amended)

AN ACT

RELATING TO COMPENSATION FOR VICTIMS OF CRIME; AMENDING SECTION 72-1025, IDAHO CODE, TO PROVIDE AN INCREASE IN THE CRIME VICTIM'S FINE OR REIMBURSEMENT ORDERED FOR EACH MISDEMEANOR OR FELONY, AND TO PROVIDE A TWO HUNDRED DOLLAR FINE OR REIMBURSEMENT FOR ANY CONVICTION OR FINDING OF GUILT FOR ANY SEX OFFENSE; AMENDING SECTION 72-1016, IDAHO CODE, TO PROVIDE THAT COMPENSATION OTHERWISE PAYABLE TO A CLAIMANT SHALL BE REDUCED BY FIFTY PERCENT IF AT THE TIME OF INJURY CLAIMANT WAS ENGAGED IN A FELONY OR WAS IN VIOLATION OF SECTION 18-8004, IDAHO CODE, AND TO CLARIFY THAT COMPENSATION MAY BE FURTHER REDUCED IF CLAIMANT'S ACTIONS CONTRIBUTED TO THE INJURY; AND AMENDING SECTION 72-1019, IDAHO CODE, TO PROVIDE THAT PAYMENTS FOR MENTAL HEALTH BENEFITS SHALL NOT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS UNLESS EXTENUATING CIRCUMSTANCES ARE PROVED PURSUANT TO REGULATION OF THE INDUSTRIAL COMMISSION.

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

SECTION 1. That Section 72-1025, Idaho Code, be, and the same is hereby amended to read as follows:

72-1025. FINES -- REIMBURSEMENTS -- PRIORITY -- DISPOSITION. (1) In addition to any other fine which may be imposed upon each person found guilty of criminal activity, the court shall impose a fine or reimbursement according to the following schedule, unless the court orders that such fine or reimbursement be waived only when the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court:

- (a) For each conviction or finding of guilt of each felony count, a fine or reimbursement of not less than twenty fifty dollars (\$250.00) per felony count;
- (b) For each conviction or finding of guilt of each misdemeanor count, a fine or reimbursement of ten twenty-five dollars (\$1025.00) per misdemeanor count;
- (c) In addition to any fine or reimbursement ordered under subsection (a) or (b) above, the court shall impose a fine or reimbursement of not less than two hundred dollars (\$200) per count for any conviction or finding of guilt for any sex offense, including, but not limited to, offenses pursuant to sections 18-1506, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108, 18-6605 and 18-6608, Idaho Code.

(2) The fine or reimbursement imposed under the provisions of this section shall have priority over all other judgments of the court, except an order to pay court costs.

(3) Notwithstanding the provisions of section 19-4705, Idaho Code, the fines or reimbursements imposed under the provisions of this section shall be paid into the crime victims compensation account.

SECTION 2. That Section 72-1016, Idaho Code, be, and the same is hereby amended to read as follows:

72-1016. LIMITATIONS ON AWARDS. (1) Compensation may not be awarded unless the claim is filed with the commission within one (1) year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the commission for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice.

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two (72) hours after its occurrence or the commission finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this chapter, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The commission, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this chapter.

(7)(a) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the commission finds to be the victim's contribution to the infliction of death or injury.

(b) Compensation otherwise payable to a claimant shall be reduced by fifty percent (50%) if at the time the injury was incurred claimant was engaged in a felony or was in violation of section 18-8004, Idaho Code, and compensation otherwise payable may be further reduced pursuant to regulation of the industrial commission if claimant's actions contributed to the injury.

SECTION 3. 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 compensa-

tion 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 counseling and care, and such other treatment as may be approved by the commission for the injuries suffered due to criminally injurious conduct.

(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 expenses of the victim, not exceeding two thousand five hundred dollars (\$2,500), shall be paid 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 of criminally injurious conduct 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 commis-

sion. 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) 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 subsection (9)(c) of this section, the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(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) 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.

Approved March 26, 1993.

CHAPTER 279

(S.B. No. 1147, As Amended)

AN ACT

RELATING TO THE IDAHO INSURANCE GUARANTY ASSOCIATION, AMENDING SECTION 41-3608, IDAHO CODE, TO DELETE THE ONE HUNDRED DOLLAR DEDUCTIBLE THAT A CLAIMANT MUST PAY BEFORE THE ASSOCIATION BECOMES OBLIGATED TO COVER CLAIMS MADE AS A RESULT OF AN INSURER'S INSOLVENCY, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 41-3613, IDAHO CODE, TO REQUIRE INSURERS, AS A CONDITION OF COVERAGE BY THE ASSOCIATION, TO MAINTAIN THE CAPITAL FUNDS AND ADDITIONAL SURPLUS SET FORTH IN SECTION 41-313, IDAHO CODE, AND TO PROVIDE ADDITIONAL REQUIREMENTS FOR CERTAIN DOMESTIC RECIPROCAL INSURANCE COMPANIES; AMENDING SECTION 41-313, IDAHO CODE, TO CLARIFY THAT ALL INSURERS ARE REQUIRED

TO MAINTAIN MINIMAL CAPITAL FUNDS AND ADDITIONAL SURPLUS; AMENDING SECTION 41-3603, IDAHO CODE, TO PROVIDE AN EXEMPTION FOR CERTAIN DOMESTIC RECIPROCAL INSURERS; AND AMENDING CHAPTER 3, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-313A, IDAHO CODE, TO PROVIDE CERTAIN REQUIREMENTS FOR DOMESTIC RECIPROCAL INSURERS WITH FEWER THAN SEVEN SUBSCRIBERS WHICH INSURE ONLY WORKER'S COMPENSATION RISKS.

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

SECTION 1. That Section 41-3608, Idaho Code, be, and the same is hereby amended to read as follows:

41-3608. OBLIGATIONS AND POWERS OF ASSOCIATION. (1) The association shall:

(a) Be obligated to pay covered claims existing prior to the determination of insolvency arising within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than thirty (30) days after the determination of insolvency, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination. Such obligation shall be satisfied by paying ~~only that amount of each covered claim which is in excess of one hundred dollars~~ ~~(\$100)~~ and is less than three hundred thousand dollars (\$300,000), ~~except that~~ and the association shall pay the full amount of any covered claim arising out of a workmen's worker's compensation policy. With regard to a covered claim for the return of unearned premiums, the association shall not pay an amount exceeding ten thousand dollars (\$10,000) per policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Allocate claims paid and expenses incurred among the three (3) accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty (30) days before

it is due. No member insurer may be assessed in any one (1) year on any account an amount greater than one per cent (1%) of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one (1) year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it deems reasonable, including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(e) Notify such persons as the director directs under section 41-3610(2)(a), Idaho Code.

(f) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the director, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act.

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation.

- (c) Sue or be sued.
- (d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act.
- (e) Perform such other acts as are necessary or proper to effectuate the purpose of this act.
- (f) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

SECTION 2. That Section 41-3613, Idaho Code, be, and the same is hereby amended to read as follows:

41-3613. PREVENTION OF INSOLVENCIES. To aid in the detection and prevention of insurer insolvencies:

- (1) The board of directors shall, upon majority vote:
 - (a) Make recommendations to the director for the detection and prevention of insurer insolvencies; and
 - (b) Respond to requests by the director to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public. Such recommendations shall not be considered public documents.
- (2) The board of directors shall, at the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association and submit such report to the director.

(3) All domestic insurance companies subject to the coverage of this chapter must maintain the paid-up capital stock or basic surplus and the additional surplus set forth in section 41-313, Idaho Code.

(4) Domestic reciprocal insurance companies issuing only fully assessable worker's compensation policies are not subject to coverage of this chapter but must meet the requirements of section 41-313A, Idaho Code.

SECTION 3. That Section 41-313, Idaho Code, be, and the same is hereby amended to read as follows:

41-313. CAPITAL FUNDS REQUIRED -- FOREIGN INSURERS AND NEW DOMESTIC INSURERS. (1) To qualify for and maintain authority to transact any one (1) kind of insurance (as defined in chapter 5) or combination of kinds of insurance as shown below, a foreign insurer, or a domestic insurer ~~applying for its original certificate of authority in this state; or any insurer reapplying for a certificate of authority in this state after having withdrawn from this state for any cause;~~ shall possess and thereafter maintain unimpaired paid-up capital stock (if a stock insurer) or unimpaired basic surplus (if a mutual insurer or reciprocal insurer), and shall possess and thereafter maintain additional funds in surplus as follows:

Kind or kinds of insurance	Paid-up capital stock or basic surplus	Additional surplus
Life	\$400,000	\$400,000
Disability	400,000	400,000
Life and disability	500,000	500,000
Property	400,000	400,000
General casualty	500,000	500,000
Marine and transportation	450,000	450,000
Vehicle	400,000	400,000
Surety	500,000	500,000
Any two of the following kinds of insurance: Property, marine and transportation, general casualty, vehicle, surety, disability	550,000	550,000
Title	100,000	100,000
Multiple lines (all insurance except life and title insurance)	650,000	650,000

(2) An insurer holding a valid certificate of authority to transact insurance in this state ~~immediately prior to the effective date of this act~~, shall have ~~a period of two (2) years from and after such effective date within which to~~ comply with ~~any (increase in) the paid-up capital stock or basic surplus and additional surplus requirements set forth in subsection (1) of this section.~~ The director shall not grant such an insurer authority to transact any other or additional kinds of insurance unless it then fully complies with the requirements as to paid-up capital stock and additional surplus (if a stock insurer) or basic surplus and additional surplus (if a mutual or foreign reciprocal insurer) as applied to all the kinds of insurance which it then proposes to transact.

(3) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in any and all areas in which it operates or proposes to operate, whether or not only a portion of such kinds are to be transacted in this state.

(4) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers ~~hereafter-formed~~ are also subject to chapter 28 of this code and domestic reciprocal insurers ~~hereafter-formed~~ are also subject to chapter 29.

SECTION 4. That Section 41-3603, Idaho Code, be, and the same is hereby amended to read as follows:

41-3603. APPLICATION OF ACT. This act shall apply to all kinds of direct insurance, but shall not be applicable to the following:

- (1) Life, annuity, health or disability insurance;
- (2) Residual value, mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the

interests of a creditor arising out of a creditor-debtor transaction;

(5) Insurance of warranties or service contracts;

(6) Title insurance;

(7) Ocean marine insurance;

(8) Any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk;

(9) Any insurance provided by or guaranteed by government including, but not limited to the state insurance fund, created pursuant to chapter 9, title 72, Idaho Code, and the Idaho petroleum clean water trust fund, created pursuant to chapter 49, title 41, Idaho Code;

(10) Any insurance provided by or through any reciprocal insurer which exclusively insures members who are governmental entities; or

(11) Insurance written on a retroactive basis to cover known losses for which a claim has already been made and the claim is known to the insurer at the time the insurance is bound; or

(12) Domestic reciprocal insurers with fewer than seven (7) subscribers which insure only worker's compensation risks and which only issue fully assessable policies.

SECTION 5. That Chapter 3, 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 41-313A, Idaho Code, and to read as follows:

41-313A. DOMESTIC RECIPROCAL INSURERS WITH FEWER THAN SEVEN SUBSCRIBERS. Domestic reciprocal insurers with fewer than seven (7) subscribers which insure only worker's compensation risks and which only issue fully assessable policies are required, in lieu of the paid-up capital stock or basic surplus and additional surplus requirements of section 41-313, Idaho Code, to meet the security for payment of compensation standards set forth in section 72-301, Idaho Code; provided however, the securities required pursuant to this section shall be deposited with the director of the department of insurance as opposed to the industrial commission; provided further, all other rules, regulations or statutory requirements applicable to domestic reciprocal insurers administered by the director of the department of insurance remain applicable to reciprocal insurers meeting the requirements of this section.

Approved March 29, 1993.

CHAPTER 280
(H.B. No. 236)

AN ACT

RELATING TO APPOINTMENT OF RECEIVERS; AMENDING CHAPTER 6, TITLE 8, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 8-601A, IDAHO CODE, TO PROVIDE ADDITIONAL GROUNDS FOR APPOINTMENT OF RECEIVERS.

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

SECTION 1. That Chapter 6, Title 8, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 8-601A, Idaho Code, and to read as follows:

8-601A. ADDITIONAL GROUNDS FOR APPOINTMENT OF RECEIVERS. (1) At any time after the filing for record of a notice of default and election to sell real property under a power of sale contained in a deed of trust, in accordance with the provisions of section 45-1505(3), Idaho Code, the trustee or beneficiary of the deed of trust may apply to the district court for the county in which the property or any part of the property is located for the appointment of a receiver of such property and of any personal property subject to the deed of trust or to related security documents.

(2) A receiver may be appointed, pursuant to the provisions of subsection (1) of this section, or of section 8-601, Idaho Code, where it appears that personal property subject to the deed of trust or mortgage, or to related security documents, is in danger of being lost, removed, concealed, materially injured or destroyed, that real property subject to the deed of trust or mortgage is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures.

Approved March 31, 1993.

CHAPTER 281
(H.B. No. 237)

AN ACT

RELATING TO PROCEEDINGS IN FORECLOSURE; AMENDING SECTION 6-101, IDAHO CODE, TO PROVIDE GUIDELINES FOR CONSTRUING THE LAW REGARDING FORECLOSURE PROCEEDINGS, AND DEFINING THE TERM "ACTION"; AND AMENDING SECTION 45-1503, IDAHO CODE, TO PROVIDE FOR EXCLUDED ACTIONS, AND TO CORRECT A CODIFIER'S ERROR.

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

SECTION 1. That Section 6-101, Idaho Code, be, and the same is hereby amended to read as follows:

6-101. PROCEEDINGS IN FORECLOSURE -- CONSTRUCTION OF SECTION -- MEANING OF "ACTION" -- EFFECT OF FORECLOSURE ON HOLDER OF UNRECORDED LIEN. (1) There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the incumbered property (or so much thereof as may be necessary) and the application of the proceeds of the sale to the payment of the

costs of the court and the expenses of the sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in the case of sales under execution; (and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt), and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued.

(2) The provisions of this section must be construed in order to permit a secured creditor to realize upon collateral for a debt or other obligation agreed upon by the debtor and creditor.

(3) As used in this section, an "action" does not include any of the following acts or proceedings:

(a) To appoint a receiver for, or obtain possession of, any real or personal property collateral for the debt or other obligation;

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property;

(c) To enforce a mortgage or other lien upon any real or personal property collateral located outside of the state which is security for the same debt or other obligation;

(d) To secure a judgment outside of this state on a debt or other obligation secured by real property in this state and by real or personal property collateral located outside this state;

(e) For the exercise, pursuant to section 45-1505, Idaho Code, of a power of sale conferred pursuant to section 45-1503, Idaho Code;

(f) For the exercise of any right or remedy authorized by:

(i) The Idaho uniform commercial code, title 28, Idaho Code, except the securing of a judgment on the secured debt, including a deficiency judgment, in a court in Idaho; or

(ii) The uniform commercial code as enacted in any other state;

(g) For claim and delivery of personal property pursuant to chapter 3, title 8, Idaho Code;

(h) For the exercise of any right to set off a deposit account, or to enforce a pledge in a deposit account pursuant to a written agreement or pledge or to enforce a banker's lien;

(i) To draw under a letter of credit;

(j) To collect any debt, or enforce any obligation or right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other obligation or right secured by a senior mortgage or other senior lien on the property;

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt or other obligation;

(l) For filing a claim pursuant to the Idaho uniform probate code, title 15, Idaho Code, or to enforce such a claim which has been disallowed;

(m) Which does not include the collection of the debt or enforcement of the obligation or realization of the collateral securing

the debt or other obligation;

(n) Which is exempted from the provisions of this section by specific statute;

(o) To recover costs of suit, costs and expenses of sale, attorney fees and other incidental relief in connection with any action authorized in this subsection.

(4) No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

SECTION 2. That Section 45-1503, Idaho Code, be, and the same is hereby amended to read as follows:

45-1503. TRANSFERS IN TRUST TO SECURE OBLIGATION -- FORECLOSURE.

(1) Transfers in trust of any estate in real property as defined in section 45-1502(5), Idaho Code, may hereafter be made to secure the performance of an obligation of the grantor or any other person named in the deed to a beneficiary. Where any transfer in trust of any estate in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security, and a deed of trust executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of beneficiary, by foreclosure as provided by law for the foreclosure of mortgages on real property. If any obligation secured by a trust deed is breached, the beneficiary may not institute a judicial action against the grantor or his successor in interest to enforce an obligation owed by the grantor or his successor in interest unless:

(a) The trust deed has been foreclosed by advertisement and sale in the manner provided in this chapter and the judicial action is brought pursuant to section 45-1512, Idaho Code; or

(b) The action is one for foreclosure as provided by law for the foreclosure ~~or of~~ mortgages on real property; or

(c) The beneficiary's interest in the property covered by the trust deed is substantially valueless as defined in subsection (2) of this section, in which case the beneficiary may bring an action against the grantor or his successor in interest to enforce the obligation owed by grantor or his successor in interest without first resorting to the security; or

(d) The action is one excluded from the meaning of "action" under the provisions of section 6-101(3), Idaho Code.

(2) As used in this section, "substantially valueless" means that the beneficiary's interest in the property covered by the trust deed has become valueless through no fault of the beneficiary, or that the beneficiary's interest in such property has little or no practical value to the beneficiary after taking into account factors such as the nature and extent of the estate in real property which was transferred in trust; the existence of senior liens against the property; the cost

to the beneficiary of satisfying or making current payments on senior liens; the time and expense of marketing the property covered by the deed of trust; the existence of liabilities in connection with the property for clean up of hazardous substances, pollutants or contaminants; and such other factors as the court may deem relevant in determining the practical value to the beneficiary of the beneficiary's interest in the real property covered by the trust deed.

(3) The beneficiary may bring an action to enforce an obligation owed by grantor or his successor in interest alleging that the beneficiary's interest in the property covered by the trust deed is substantially valueless without affecting the priority of the lien of the trust deed and without waiving his right to require the trust deed to be foreclosed by advertisement and sale and the beneficiary may, but shall not be required to, plead an alternative claim for foreclosure of the trust deed as a mortgage in the same action. If the court finds that the property is not substantially valueless, the beneficiary may seek judicial foreclosure of the trust deed, or he may dismiss the action and foreclose the trust deed by advertisement and sale in the manner provided in this chapter. If the court finds that the beneficiary's interest in the property covered by the trust deed is substantially valueless and enters a judgment upon the obligation, when that judgment becomes final the beneficiary shall execute a written request to the trustee to reconvey to the grantor or his successor in interest the estate in real property described in the trust deed. If the beneficiary obtains judgment on an obligation secured by a trust deed pursuant to subsection (1)(c) of this section, the lien of the judgment shall not relate back to the date of the lien of the trust deed.

Approved March 31, 1993.

CHAPTER 282
(H.B. No. 248)

AN ACT

RELATING TO THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT; AMENDING TITLE 53, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 7, TITLE 53, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR SUPPLEMENTARY GENERAL PRINCIPLES OF LAW AND EQUITY, TO PROVIDE FOR TERRITORIAL APPLICATION, TO PROVIDE THAT A NONPROFIT ASSOCIATION MAY ACQUIRE, HOLD, ENCUMBER OR TRANSFER AN ESTATE OR INTEREST IN REAL OR PERSONAL PROPERTY AND MAY BE A LEGATEE, DEVISEE OR BENEFICIARY OF A TRUST OR CONTRACT, TO PROVIDE FOR A STATEMENT OF AUTHORITY TO TRANSFER AN ESTATE OR INTEREST IN REAL PROPERTY IN THE NAME OF THE NONPROFIT ASSOCIATION, TO SPECIFY THE LIABILITY OF A NONPROFIT ASSOCIATION IN CONTRACT AND TORT, TO PROVIDE FOR A NONPROFIT ASSOCIATION'S CAPACITY TO ASSERT AND DEFEND CLAIMS, TO PROVIDE THE EFFECT OF A JUDGMENT OR ORDER AGAINST A NONPROFIT ASSOCIATION, TO PROVIDE FOR DISPOSITION OF THE PERSONAL PROPERTY OF AN INACTIVE NONPROFIT ASSOCIATION, TO PROVIDE FOR THE APPOINTMENT OF AN AGENT TO RECEIVE SERVICE OF PROCESS, TO PROVIDE THAT A

CLAIM AGAINST A NONPROFIT ASSOCIATION IS NOT ABATED BY A CHANGE OF MEMBERS OR OFFICERS, TO PROVIDE FOR VENUE, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION OF THE CHAPTER, TO PROVIDE A SHORT TITLE, TO PROVIDE FOR THE EFFECT OF THE CHAPTER UPON OTHER LAWS, TO PROVIDE FOR TRANSITION CONCERNING REAL AND PERSONAL PROPERTY, AND TO PROVIDE A SAVINGS CLAUSE.

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

SECTION 1. That Title 53, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 7, Title 53, Idaho Code, and to read as follows:

CHAPTER 7
UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

53-701. DEFINITIONS. (1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization consisting of two (2) or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

53-702. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW AND EQUITY. Principles of law and equity supplement this chapter unless displaced by a particular provision of it.

53-703. TERRITORIAL APPLICATION. Real and personal property in this state may be acquired, held, encumbered and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

53-704. REAL AND PERSONAL PROPERTY -- NONPROFIT ASSOCIATION AS LEGATEE, DEVISEE OR BENEFICIARY. (1) A nonprofit association in its name may acquire, hold, encumber or transfer an estate or interest in real or personal property.

(2) A nonprofit association may be a legatee, devisee or beneficiary of a trust or contract.

53-705. STATEMENT OF AUTHORITY AS TO REAL PROPERTY. (1) A nonprofit association may execute and record a statement of authority to

transfer an estate or interest in real property in the name of the nonprofit association.

(2) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office in the county in which a transfer of the property would be recorded.

(3) A statement of authority must set forth:

(a) The name of the nonprofit association;

(b) The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state;

(c) The name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association; and

(d) The action, procedure or vote of the nonprofit association which authorizes the person to transfer the real property of the nonprofit association and which authorizes the person to execute the statement of authority.

(4) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(5) The county recorder may collect a fee for recording the statement of authority in the amount authorized for recording a transfer of real property.

(6) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless cancelled earlier, a recorded statement of authority or its most recent amendment is cancelled by operation of law five (5) years after the date of the most recent recording.

(7) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.

53-706. LIABILITY IN CONTRACT AND TORT. (1) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

(2) A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(3) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(4) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person

merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(5) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

53-707. CAPACITY TO ASSERT AND DEFEND -- STANDING. (1) A nonprofit association, in its name, may institute, defend, intervene or participate in a judicial, administrative or other governmental proceeding or in an arbitration, mediation or any other form of alternative dispute resolution.

(2) A nonprofit association may assert a claim in its name on behalf of its members if one (1) or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes and neither the claim asserted nor the relief requested requires the participation of a member.

53-708. EFFECT OF JUDGMENT OR ORDER. A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered to be a member by the nonprofit association.

53-709. DISPOSITION OF PERSONAL PROPERTY OF INACTIVE NONPROFIT ASSOCIATION. If a nonprofit association has been inactive for three (3) years or longer, a person in possession or control of personal property of the nonprofit association may transfer the property:

(1) If a document of the nonprofit association specifies a person to whom transfer is to be made under those circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes or to a government, governmental subdivision, agency, or instrumentality.

53-710. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS. (1) A nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(2) A statement appointing an agent must set forth:

(a) The name of the nonprofit association;

(b) The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(c) The name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(3) A statement appointing an agent must be signed by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed by the person appointed agent, who

thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association.

(4) The secretary of state may collect a fee for filing a statement appointing an agent to receive service of process, an amendment or a resignation in the amount charged for filing similar documents.

(5) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

53-711. CLAIM NOT ABATED BY CHANGE OF MEMBERS OR OFFICERS. A claim for relief against a nonprofit association does not abate merely because of a change in its members, persons authorized to manage the affairs of the nonprofit association, or a person considered by the nonprofit association to be a member.

53-712. VENUE. For purposes of venue, a nonprofit association is a resident of a county in which it has an office.

53-713. UNIFORMITY OF APPLICATION AND CONSTRUCTION. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

53-714. SHORT TITLE. This chapter may be known and cited as the "Uniform Unincorporated Nonprofit Association Act."

53-715. EFFECT OF CHAPTER UPON OTHER LAWS. This chapter replaces existing law with respect to matters covered in this chapter but does not affect other law respecting nonprofit associations.

53-716. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY. (1) If, before the effective date of this chapter, an estate or interest in real or personal property was purportedly transferred to a nonprofit association, on the effective date of this chapter the estate or interest vests in the nonprofit association, unless the parties had treated the transfer as ineffective.

(2) If, before the effective date of this chapter, the transfer vested the estate or interest in another person to hold the estate or interest as a fiduciary for the benefit of the nonprofit association, its members, or both, on or after the effective date of this chapter the fiduciary may transfer the estate or interest to the nonprofit association in its name or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name.

53-717. SAVINGS CLAUSE. This chapter does not affect any right accrued before this chapter takes effect or any action or proceeding then pending.

Approved March 31, 1993.

CHAPTER 283
(H.B. No. 294)

AN ACT

RELATING TO MOTOR VEHICLE TITLES; AMENDING SECTION 49-510, IDAHO CODE, TO EXEMPT REGULATED LENDERS AND LICENSED MOTOR VEHICLE DEALERS FROM THE NOTARIZATION REQUIREMENT ON A TRANSACTION TO CREATE OR PERFECT A LIEN ON ANY VEHICLE REGISTERED UNDER THE LAWS OF THE STATE OF IDAHO; SAVING CERTAIN NONNOTARIZED OR IMPROPERLY NOTARIZED TRANSACTIONS INVOLVING SUCH LENDERS OR DEALERS WHICH MAY HAVE OCCURRED UNDER THE PRIOR LAW; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 49-510, Idaho Code, be, and the same is hereby amended to read as follows:

49-510. LIENS AND ENCUMBRANCES -- FILING -- FEE -- NOTATION ON CERTIFICATE -- CONSTRUCTIVE NOTICE. (1) No lien or encumbrance on any vehicle registered under the laws of this state created subsequent to December 31, 1986, irrespective of whether such registration was effected prior or subsequent to the creation of the lien or encumbrance, shall be perfected as against creditors or subsequent purchasers or encumbrancers without notice until the holder of the lien or encumbrance, or his successor or assignee, has complied with the requirements of section 49-504, Idaho Code, and has filed the properly completed title application and all required supporting documents with the department or an agent of the department.

When the holder of a lien or encumbrance, his successor or assignee, has filed with the department or agent of the department a properly completed title application and supporting documents as required by section 49-504, Idaho Code, it shall be the duty of the department or agent of the department to file the same, indorsing on the title application the date and hour of the creation of the lien or encumbrance. A lien is perfected as of the time of its creation if the transaction is notarized and if the filing is completed with the department or an agent of the department within thirty (30) calendar days thereafter; otherwise, as of the date of the filing with the department or an agent of the department. If the title application is incomplete or if the supporting documents are incomplete or missing, the title application and supporting documents as submitted will be returned to the lien holder or his successor or assignee for correction and, if the application is not resubmitted in a complete form, including completed supporting documents, to the department or to the agent of the department within twenty (20) days of their having been returned to the lien holder or his successor or assignee, the original date and hour of receipt by the department or agent of the department shall be void.

When the department is satisfied as to the genuineness and regularity of the documents submitted, it shall issue a new certificate of title which shall contain the name of the owner of the vehicle, the name and address of each holder of a lien or encumbrance, and a state-

ment of all liens or encumbrances which have been filed with the department, together with the date of each lien or encumbrance and the date and hour received by the department or agent of the department. The filing of a lien or encumbrance and the notation of it upon the certificate of title shall be a condition of perfection and shall constitute constructive notice of the lien or encumbrance and its contents to creditors and subsequent purchasers and encumbrancers. All liens or encumbrances so filed with the department and noted upon the certificate of title shall be perfected and take priority according to the order of time in which the same are noted upon the certificate of title by the department.

(2) The notarization requirement set out in the second paragraph of subsection (1) of this section shall not apply to transactions involving a lien in favor of a regulated lender, as defined in section 28-41-301(37), Idaho Code, or a motor vehicle dealer licensed by the Idaho transportation department.

SECTION 2. It is hereby declared that the Idaho Legislature intends not only to exempt regulated lenders and licensed motor vehicle dealers from the the "notarization" requirement for transactions occurring on and after the effective date of this act, but also to save and validate any transactions involving such lenders and dealers which occurred on and after July 1, 1992, up to and including the effective date of this act, to the extent that such transactions might be deemed to have failed the "notarization" requirement. It is hereby declared that the perfection of liens, and the timing of such perfection, in all such transactions involving such lenders and dealers is and was not affected by the fact that any such transaction may have been improperly notarized, or not notarized at all.

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, 1993.

CHAPTER 284
(H.B. No. 404)

AN ACT

RELATING TO CORPORATE INCOME TAX; AMENDING SECTION 63-3002, IDAHO CODE, TO CLARIFY THAT THE INTENT OF THE CHAPTER TO CONFORM IDAHO'S INCOME TAX LAWS TO THE FEDERAL INTERNAL REVENUE CODE IS SUBJECT TO MODIFICATIONS IN IDAHO LAW INCLUDING THOSE APPLICABLE TO UNITARY GROUPS OF CORPORATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE STATUTORY REFERENCES; AMENDING SECTION 63-3027, IDAHO CODE, TO PROVIDE FOR COMBINED REPORTING OF TAXABLE INCOME OF UNITARY GROUPS OF CORPORATIONS, TO PROVIDE FOR THE DETERMINATION OF INCOME OF A CORPORATION TO BE INCLUDED IN A COMBINED REPORT AND TO PROVIDE FOR THE DETERMINATION OF TAXABLE INCOME OR LOSS OF A CORPORATION, INCLUDING A WORLDWIDE

GROUP OF CORPORATIONS CONSIDERED TO BE A SINGLE CORPORATION UNDER THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3027B, IDAHO CODE, TO PROVIDE THAT A TAXPAYER WHO MAKES A WATER'S-EDGE ELECTION SHALL TAKE INTO ACCOUNT THE INCOME AND APPORTIONMENT FACTORS OF ONLY CERTAIN AFFILIATED CORPORATIONS IN A UNITARY RELATIONSHIP WITH THE TAXPAYER AND WHICH EITHER FILE A FEDERAL INCOME TAX RETURN UNDER THE INTERNAL REVENUE CODE OR ARE ELIGIBLE TO BE INCLUDED IN A FEDERAL CONSOLIDATED RETURN, TO STRIKE INAPPLICABLE LANGUAGE AND TO PROVIDE THAT ANY COMBINED RETURN SHALL INCLUDE ONLY CORPORATIONS THE VOTING STOCK OF WHICH IS MORE THAN FIFTY PERCENT OWNED DIRECTLY OR INDIRECTLY BY A COMMON OWNER OR OWNERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3027C, IDAHO CODE, TO CONFORM THE SECTION WITH THE AMENDMENTS TO SECTION 63-3027B, IDAHO CODE, AND TO CORRECT A CODIFIER'S ERROR; AMENDING SECTION 63-3027E, IDAHO CODE, TO PROVIDE THE CONDITIONS UNDER WHICH A TAXPAYER MAY FOREGO FILING A SPREADSHEET; DECLARING AN EMERGENCY, PROVIDING A RETROACTIVE APPLICATION DATE, AND TO PROVIDE FOR A TAXPAYER ELECTION TO APPLY SECTIONS 1 THROUGH 3 OF THIS ACT TO TAX YEARS PRIOR TO JANUARY 1, 1993, AS TO WHICH THE PERIOD OF LIMITATIONS FOR ASSESSMENT AND COLLECTION OF TAX HAS NOT EXPIRED.

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

SECTION 1. That Section 63-3002, Idaho Code, be, and the same is hereby amended to read as follows:

63-3002. DECLARATION OF INTENT. It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in a final amount called "taxable income" in the Internal Revenue Code; to impose a tax on residents of this state measured by taxable income wherever derived and on the income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

SECTION 2. That Section 63-3022, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022. TAXABLE INCOME. The term "taxable income" means "taxable income" as defined in section 63 of the Internal Revenue Code,

adjusted as provided in this chapter, including adjustments under and subject to the provisions of subsections (s) and (u) of section 63-3027, Idaho Code, and sections 63-3027B through 63-3027E, Idaho Code:

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

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

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

(b) Add any state taxes, measured by net income, paid or accrued during the taxable year adjusted for state tax refunds used in arriving at taxable income as defined in section 63 of the Internal Revenue Code.

(c) Add the net operating loss deduction used in arriving at taxable income as defined in section 63 of the Internal Revenue Code.

(d) (1) A net operating loss for any taxable year commencing on or after January 1, 1983, but prior to January 1, 1990, shall be a net operating loss carryover to each of the ten (10) taxable years following the taxable year of such loss; provided, however, such net operating loss shall be subtracted in each succeeding year in order but the total subtracted in the succeeding taxable years shall not exceed the total of such net operating loss; provided, further, that a net operating loss not to exceed one hundred thousand dollars (\$100,000) arising in a taxable year commencing on or

after January 1, 1983, but prior to January 1, 1990, may, at the election of the taxpayer, be carried back to the three (3) immediately preceding taxable years, and if such loss is not entirely absorbed by the income of those years, the amount of loss not exhausted may be subtracted from taxable income arising in the next ten (10) years succeeding the taxable year in which the loss arises in order until exhausted. A net operating loss for any taxable year commencing on and after January 1, 1990, shall be a net operating loss carryback not to exceed one hundred thousand dollars (\$100,000) to the three (3) immediately preceding taxable years, and any loss not entirely absorbed by the income of those years may be subtracted from taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in the order until exhausted. At the election of the taxpayer, the three (3) year carryback may be foregone and the loss subtracted from taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3)(c) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the regulations of the state tax commission and once made is irrevocable for the year in which it is made. In the event that the taxpayer elects to carryback any loss arising in a year commencing on or after January 1, 1983, but prior to January 1, 1990, any loss not exhausted may be subtracted from taxable income arising in the next succeeding ten (10) taxable years in order until exhausted.

(2) Net operating losses incurred by a corporation during a year in which such corporation had no Idaho business situs may not be subtracted. Net operating losses incurred by a person, other than a corporation, in business activities not taxable by Idaho may not be subtracted.

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

(f) In the case of a corporation, subtract an amount equal to the percentage determined under section 246(b)(3) of the Internal Revenue Code of the amount received during the taxable year as dividends, as limited by the rules of section 246(b)(1) of the Internal Revenue Code, from any corporation which has shown to the satisfaction of the state tax commission that more than fifty per cent (50%) of its taxable income for the taxable year immediately preceding the declaration of such dividends was taxable by the state of Idaho under the provisions of this act.

(g) Subtract the amount of any income received or accrued during the taxable year which is exempt from taxation by this state, under the provisions of any other law of this state or a law of the United States, if not previously subtracted in arriving at taxable income, as defined by section 63 of the Internal Revenue Code.

(h) In the case of a corporation with more than fifty per cent (50%) of its income taxable within this state, the salary, fee or other compensation of its nonresident officers or directors shall be treated as income from sources within the state. Whether or not any

personal services have been performed by such nonresident officers or directors in this state, they shall be deemed to have a business situs in this state. If such salary, fee or other compensation is not reported to this state as income, such corporation shall not deduct as part of its expenses for the taxable year any part of such salary, fee or other compensation in computing taxable income. When the salary, fee or other compensation paid to such nonresident officer is reported to this state as income by such nonresident officer, it shall be apportioned by applying to the total of such income the apportionment factor of the corporation paying the salary, fee or other compensation, as such factor is reported on the corporation's income tax return computed pursuant to section 63-3027, Idaho Code, or as subsequently modified. Provided, however, reasonable compensation paid to such nonresident officers or directors for personal services actually performed outside the state of Idaho shall not be included as income earned from Idaho sources.

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

(j) In the case of an individual who is on active duty as a full-time officer, enlistee or draftee, with the armed forces of the United States, which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid for services performed outside this state by the armed forces of the United States, only to the extent such income is included in "taxable income," as defined in section 63 of the Internal Revenue Code, and provided that appropriate adjustments shall be made in his standard deduction amount and exemptions as described in section 63-3027A, Idaho Code.

(k) In the case of a corporation, add any capital loss deducted which loss was incurred during any year in which such corporation had no Idaho business situs. In the case of persons, other than corporations, add any capital loss deducted which was incurred in business activities not taxable by Idaho at the time such loss was incurred. In the case of a corporation having income from Idaho sources and having elected to file federal income tax returns thereon pursuant to Subchapter-S of the Internal Revenue Code, or a partnership having income from Idaho sources, salaries, wages, fees, and other compensation paid to nonresident shareholders or partners, and the items of income, loss, deduction, and credit allocated to each nonresident shareholder or partner shall be treated as having sources within the state. Whether or not any personal services have been performed in this state by such nonresident shareholders or partners, they shall be deemed to have a business situs in this state. When the salaries, wages, fees, and other compensations paid to such nonresident shareholders or partners or items of income, loss, deduction, and credit,

or allocated to such shareholders or partners is reported to this state as taxable income pursuant to this subsection, such income shall be apportioned by applying to the total of such income the apportionment factor of the corporation or partnership. The apportionment factor of the corporation or partnership shall be computed pursuant to the provisions of section 63-3027, Idaho Code. If such items of income, loss, deduction, or credit, salaries, wages, fees or other compensation are not reported to this state by the nonresident shareholders or partners, such corporation or partnership shall report the same to this state and be taxable thereon at the corporate rate. Provided, however, reasonable compensation paid to such nonresident shareholders or partners for personal services actually performed outside the state of Idaho shall not be included as income earned from Idaho sources. In computing the income taxable to the corporation or partnership under this subsection, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (d) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(1) In the case of natural persons, there shall be allowed as deductions from gross income either (1) or (2) at the option of the taxpayer:

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

- (2) a. Itemized deductions as defined in section 63 of the Internal Revenue Code except state income taxes as specified in section 164 of the Internal Revenue Code, plus
- b. Contributions made to the state of Idaho for credit to the medical assistance account, if such contributions were not previously subtracted in arriving at taxable income, plus
- c. Itemized expenditures of not to exceed one thousand dollars (\$1,000) per cared for member incurred in providing personal care services to or for an immediate member of the taxpayer's family; such services may be provided either in the taxpayer's home or the family member's home; personal care services shall be as defined in chapter 56, title 39, Idaho Code, but the cared for member need not be medicaid

eligible for the purposes of this section only, if he substantially meets all of the other requirements of chapter 56, title 39, Idaho Code; in order for the deduction under this paragraph c. to be allowed, the expenditures claimed must not have been reimbursed by medicare, medicaid or private insurance, and such expenditures must not have been previously subtracted in arriving at taxable income.

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

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

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

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

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

SECTION 3. That Section 63-3027, Idaho Code, be, and the same is hereby amended to read as follows:

63-3027. COMPUTING TAXABLE INCOME OF CORPORATIONS. The Idaho taxable income of any corporation with a business situs in this state shall be computed and taxed in accordance with the rules set forth in this section:

(a) As used in this section, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's¹ trade or business and includes income from the acquisition, management, or disposition of tangible and intangible property when such acquisition, management, or disposition constitute integral or necessary parts of the taxpayer's¹ trade or business operations. Gains or losses and dividend and interest income from stock and securities of any foreign or domestic corporation shall be presumed to be income from intangible property, the acquisition, management, or disposition of which constitute an integral part of the taxpayer's¹ trade or business; such presumption may only be overcome by clear and convincing evidence to the contrary.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) "Nonbusiness income" means all income other than business income.

(5) "Sales" means all gross receipts of the taxpayer not allo-

cated under subsections (d) through (h) of this section.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) Any taxpayer having income from business activity which is taxable both within and without this state shall allocate and apportion such net income as provided in this section.

(c) For purposes of allocation and apportionment of income under this section, a taxpayer is taxable in another state if:

(1) In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(d) Rents and royalties from real or tangible personal property, capital gains interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (e) through (h) of this section.

(e) (1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state, or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(f) (1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale, or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial

domicile is in this state, unless such gains and losses constitute business income as defined in this section.

(g) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state unless such interest or dividends constitute business income as defined in this section.

(h) (1) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state, or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patent product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(i) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

(j) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(k) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(l) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the state tax commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(m) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(n) Compensation is paid in this state if:

(1) The individual's service is performed entirely within the

state; or

(2) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(3) Some of the service is performed in the state and

- (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or
- (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(o) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(p) Sales of tangible personal property are in this state if:

(1) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale, or

(2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and

- (i) the purchaser is the United States government or
- (ii) the taxpayer is not taxable in the state of the purchaser.

(q) Sales, other than sales of tangible property, are in this state, if:

(1) The income-producing activity is performed in this state; or

(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(r) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the state tax commission may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting, provided that only that portion of general expenses clearly identifiable with Idaho business operations shall be allowed as a deduction;

(2) The exclusion of any one (1) or more of the factors;

(3) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(s) For purposes of this section chapter two (2) or more corporations, wherever incorporated, the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners may, when necessary to accurately reflect income, be considered a single corporation, in which event:

(1) The "taxable income" of any corporation subject to taxation in this state shall be determined by use of a combined report

which includes the income, determined under subparagraph (2) of this subsection, of all corporations which are members of a unitary business, allocated and apportioned using apportionment factors for all corporations included in the combined report and methods set out in this section.

(2) The income of a corporation to be included in a combined report shall be determined as follows:

(i) for a corporation incorporated in the United States, the income to be included in the combined report shall be the taxable income for the corporation as defined in section 63-3022, Idaho Code;

(ii) for a corporation incorporated outside the United States, the income to be included in the combined report shall be the net income before income taxes of such corporation stated on the profit and loss statements of such corporation which are included within the consolidated profit and loss statement prepared for the group of related corporations of which the corporation is a member, which statement is prepared for filing with the United States securities and exchange commission. If the group of related companies is not required to file such profit and loss statement with the United States securities and exchange commission, the profit and loss statement prepared for reporting to shareholders and subject to review by an independent auditor may be used to obtain net income before income taxes. In the alternative, and subject to reasonable substantiation and consistent application by the group of related companies, adjustments may be made to the profit and loss statements of the corporation incorporated outside the United States, if necessary, to conform such statements to tax accounting standards as required by the Internal Revenue Code as if such corporation were incorporated in the United States and required to file a federal income tax return, subject to appropriate adjustments under the provisions of section 63-3022, Idaho Code; and

(iii) if the income computation for a group under paragraphs (i) and (ii) of this subsection results in a loss, such loss shall be taken into account in other years, subject to the provisions of subsections (c) and (d) of section 63-3022, Idaho Code.

(t) If compensation is paid in the form of a reasonable cash fee for the performance of management services directly for the United States government at the Idaho national engineering laboratory, separate accounting for that part of the business activity without regard to other activity of the taxpayer in the state of Idaho or elsewhere shall be required; provided that only that portion of general expenses clearly identifiable with Idaho business operations of that activity shall be allowed as a deduction.

(u) In the case of a corporation subject to this section, including a group of corporations considered to be a single corporation under the provisions of subsection (s) of this section, taxable income or loss shall be determined as follows:

(1) From the amount of taxable income otherwise determined under this section for such corporation, subtract nonbusiness income, or

add nonbusiness loss, whichever is applicable.

(2) Multiply the amounts determined under paragraph (1) of this subsection by the Idaho apportionment percentage defined in subsection (i) of this section, taking into account, where applicable, the property, payroll and sales of all corporations, wherever incorporated, which are included in a combined report. The resulting product shall be the apportioned business income or loss.

(3) To the amount determined as apportioned business income or loss under paragraph (2) of this subsection, add nonbusiness income allocable entirely to Idaho under the provisions of this section or subtract nonbusiness loss allocable entirely to Idaho under this section. The resulting figure is the taxable income or loss for a corporation subject to the provisions of this section.

SECTION 4. That Section 63-3027B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3027B. WATER'S-EDGE ELECTION. (a) Notwithstanding the provisions of subsections (r) and (s) of section 63-3027, Idaho Code, a qualified taxpayer, as defined in paragraph (3) of subsection (b) of this section whose income is subject to the tax imposed under this chapter, may elect to determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this chapter, as modified by sections 63-3027B through 63-3027E, Idaho Code. A taxpayer who makes a water's-edge election shall take into account the income and apportionment factors of the following entities only:

~~(1) Any affiliated corporations incorporated in the United States in a unitary relationship with the taxpayer other than corporations filing elections under section 936 of the Internal Revenue Code and which either file a federal income tax return under the Internal Revenue Code or are eligible to be included in a federal consolidated return; except for corporations included in such consolidated return with eighty per cent (80%) or more of the average of their payroll and property assignable to a location outside the fifty (50) states and District of Columbia, as described in sections 1501 through 1505 of the Internal Revenue Code, as modified by paragraph (1) of subsection (b) of this section;~~

~~(2) Domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code;~~

~~(3) Export trade corporations, as described in sections 970 through 972 of the Internal Revenue Code;~~

~~(4) Foreign corporations deriving gain or loss from a disposition of a United States real property interest to the extent provided by section 897 of the Internal Revenue Code;~~

~~(5) Any affiliated corporation with activities in or located in a tax haven country, as defined in paragraph (2) of subsection (b) of this section, if:~~

~~(A) Fifty percent (50%) or more of either of its sales, purchases, income, or expenses, exclusive of payments for intangible property, or eighty per cent (80%) of all expenses, are~~

~~made or incurred directly or indirectly to or with respect to one or more members of the water's-edge combined group; or (B) The corporation performs no significant economic activity. However, the corporation shall not be included under this paragraph if the taxpayer shows that no significant business or economic interdependence exists between the corporation and the water's-edge combined group.~~

~~(6) Any corporation incorporated outside the United States if over fifty per cent (50%) of its voting stock is owned directly or indirectly by the taxpayer and if more than twenty per cent (20%) of the average of its payroll and property is assignable to a location within the United States.~~

(b) For purposes of this section:

(1) The phrase "over fifty per cent (50%) of the voting stock directly or indirectly owned or controlled" shall be substituted for the phrase "at least 80 eighty per cent (80%)" each place it appears in section 1504 of the Internal Revenue Code.

(2) ~~A "tax haven" is any country, including territories or possessions of the United States, if it either does not impose a tax measured by income or if its maximum statutory income tax rate is less than sixty five per cent (65%) of the maximum United States corporate income tax rate. Any combined return shall include only corporations the voting stock of which is more than fifty per cent (50%) owned directly or indirectly by a common owner or owners.~~

(3) A "qualified taxpayer" is a corporation which files, with the state income tax return on which the water's-edge election is made, a consent to the reasonable production of documents within the taxing jurisdiction. The consent shall remain in effect so long as the water's-edge election is in effect.

(4) "water's-edge combined group" shall mean all corporations or entities included properly includable in the election of a taxpayer in subsection (a) of this section.

(5) ~~An "affiliated corporation" is one, more than fifty per cent (50%) of the voting stock of which is owned directly or indirectly by another corporate member of the water's-edge combined group. The only income of a foreign sales corporation to be taken into account shall be the income subject to federal taxation, taking into account the provisions of section 921 of the Internal Revenue Code.~~

~~(6) For purposes of paragraphs (1) and (6) of subsection (a) of this section, the location of payroll and property is to be determined under the individual state's law and regulations which set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, the rules provided in section 63-3027, Idaho Code, shall apply.~~

(c) A water's-edge election may be disregarded, and the income of the taxpayer determined without regard to the provisions of this section pursuant to those conditions which may be required by the state tax commission under subsection (b) of section 63-3027C, Idaho Code, if any corporation fails to comply with:

(1) The domestic disclosure spreadsheet filing requirements defined in section 63-3027E, Idaho Code; or

(2) This state's legal and procedural requirements.

SECTION 5. That Section 63-3027C, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

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

(c) For purposes of this section:

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

(2) The net income of corporations ~~excluded in paragraph (1) of subsection (a) of section 63-3027B, Idaho Code, and possession corporations described in~~ filing elections under sections 931 through 936, of the Internal Revenue Code shall be deemed dividends received from payors incorporated outside the fifty (50) states and District of Columbia.

(3) Eighty-five per cent (85%) of all such dividends shall be excluded from income subject to apportionment.

(4) The dividends subject to tax apportionment shall be in lieu of any expenses attributable to such dividend income.

(d) Any dividend from any payor required to be combined under the water's-edge election shall be eliminated from the calculation of apportionable income.

(e) For purposes of this section:

(1) Amounts included in income by reference to subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code shall constitute dividends from payors outside the fifty (50) states and District of Columbia; and

(2) Deemed distributions defined by Section 78 of the Internal Revenue Code shall be excluded from the income of the water's-edge combined group.

SECTION 6. That Section 63-3027E, Idaho Code, be, and the same is hereby amended to read as follows:

63-3027E. OPERATIVE DATES. (a) Sections 63-3027B through 63-3027E, Idaho Code, shall be operative for the computation of taxes for the earlier of either of the following:

(1) Taxable years beginning on or after January 1, 1988.

(2) Taxable years beginning on or after January 1 of the year after the year in which the board of examiners, upon advice of the attorney general, certifies to the tax commission that action has been taken by the United States, whether by statute, regulation, executive order, or any other means as may be appropriate, to comply substantially with the following:

(A) A requirement that any corporation required to file a United States tax return or which could be included in a consolidated federal tax return be required to file with the Internal Revenue Service a domestic disclosure spreadsheet if its payroll, property, or sales in a foreign country exceeds one million dollars (\$1,000,000). The spreadsheet shall provide for full disclosure as to the income reported to each state, the state tax liability, and the method used for apportioning or allocating income to the states, and any other information as provided for by regulations as may be necessary to determine properly the amount of taxes due to each state and to identify the water's-edge corporate group and those of its affiliates of which more than twenty per cent (20%) of the voting stock is directly or indirectly owned or controlled by a common owner or owners.

(B) That the information filed pursuant to paragraph (2)(A) of this subsection will be available to qualified states. A "qualified state" is any state that does not require the use of the worldwide unitary method of taxation except in circumstances substantially similar to those authorized in subsection (c) of section 63-3027B, Idaho Code.

(C) That qualified states are authorized access to all material developed by the Internal Revenue Service in its examination of multinational operations.

(b) If sections 63-3027B through 63-3027E, Idaho Code, become operative pursuant to paragraph (1) of subsection (a) of this section, the tax commission may require, and taxpayers described in this subsection must file with the Idaho income tax return, a spreadsheet to provide full disclosure as to the income reported to each state for the year, the tax liability for each state, and the method used for allocating or apportioning income to the states, and to identify the water's-edge corporate group and those of its affiliates of which more than twenty per cent (20%) of the voting stock is directly or indirectly owned or controlled by a common owner or owners. The provisions of this subsection shall apply only to corporations which both make a water's-edge election and have during the taxable year, payroll, property or sales in a foreign country which exceeds one million dollars (\$1,000,000). Notwithstanding the requirement to file a spreadsheet in any tax year, a taxpayer may forego filing such a spreadsheet by submitting to the state tax commission a written declaration of its intention to forego filing such spreadsheet for such year. In the event such declaration is filed in any tax year, no spreadsheet shall be required of such taxpayer and the percentage to

be applied under section 63-3027C(c)(2) for such year shall be eighty per cent (80%) rather than eighty-five per cent (85%).

SECTION 7. 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, 1993; provided however, that by written election filed by a taxpayer with the state tax commission, Sections 1 through 3 of this act shall apply to such taxpayer for all tax years beginning prior to January 1, 1993, as to which the period of limitations for assessment and collection of tax has not expired.

Approved March 31, 1993.

CHAPTER 285

(H.B. No. 226, As Amended, As Amended in the Senate)

AN ACT

RELATING TO RECREATION DISTRICTS; AMENDING CHAPTER 43, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-4318A, IDAHO CODE, TO PROVIDE FOR THE IMPOSITION OF A FEE IN LIEU OF THE TAX AUTHORIZED IN SECTION 31-4318, IDAHO CODE.

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

SECTION 1. That Chapter 43, 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 31-4318A, Idaho Code, and to read as follows:

31-4318A. FEE IN LIEU OF TAXES. (1) The board is empowered to impose and provide for the collection of a uniform fee from the residents of the district to provide funds for the uses and purposes of the district which would otherwise be derived from the tax levy authorized in section 31-4318, Idaho Code. Any fee imposed pursuant to this section shall be in lieu of and not in addition to the tax levy provided for in section 31-4318, Idaho Code.

(2) The fee shall be certified and collected in the same manner as the tax provided for in section 31-4318, Idaho Code, would be certified and collected.

Approved March 29, 1993.

CHAPTER 286

(S.B. No. 1024)

AN ACT

RELATING TO REGISTRATION OF RECREATIONAL VEHICLES, DISPOSITION OF RECREATIONAL VEHICLE LICENSE FEES, AND THE PERCENTAGE OF RECREATIONAL

VEHICLE ACCOUNT FUNDS THAT CAN BE USED FOR PROGRAM ADMINISTRATION; AMENDING SECTION 49-445, IDAHO CODE, TO REQUIRE THAT THE RECREATIONAL VEHICLE LICENSE BE PLACED ON THE REAR OF THE RECREATIONAL VEHICLE, AND DELETING REPETITIVE LANGUAGE; AMENDING SECTION 49-448, IDAHO CODE, TO REAPPORTION RECREATIONAL VEHICLE FUNDS FROM THE COUNTIES TO THE RECREATIONAL VEHICLE ACCOUNT; AMENDING SECTION 67-4223, IDAHO CODE, TO REDUCE THE PERCENTAGE OF RECREATIONAL VEHICLE ACCOUNT FUNDS THAT CAN BE USED FOR PROGRAM ADMINISTRATION, AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-445, Idaho Code, be, and the same is hereby amended to read as follows:

49-445. RECREATIONAL VEHICLE ANNUAL LICENSE. (1) There is levied and there shall be collected an annual license fee on each motor-home and recreational vehicle in Idaho, except motor-homes-and recreational vehicles in possession of a manufacturer or dealer and offered for sale or resale. If the motor-home-or recreational vehicle is registered as a motor vehicle under the provisions of this chapter, the annual license fee imposed in this section shall be in addition to and not in lieu of the motor vehicle registration fees.

(2) The annual license fee imposed upon each motor-home-or recreational vehicle shall be eight dollars and fifty cents (\$8.50) for a market value of one thousand dollars (\$1,000) or less, and an additional five dollars (\$5.00) for each additional one thousand dollars (\$1,000) or portion of it, of market value.

(3) Payment of the annual license fee shall license the motor home--or recreational vehicle for a calendar year, irrespective of the month in which it is registered, change of ownership of the vehicle, or change of county of residence of the owner. The motor-home-or recreational vehicle annual license shall expire midnight December 31 of each year.

(4) The license sticker shall be placed on the rear of the recreational vehicle in a manner that is completely visible and shall be kept in a legible condition at all times.

SECTION 2. That Section 49-448, Idaho Code, be, and the same is hereby amended to read as follows:

49-448. DISPOSITION OF FEES. The revenues received from the annual license fees imposed by section 49-445, Idaho Code, for recreational vehicle registration shall be paid over monthly to the county treasurer, to be distributed as follows:

(1) ~~One-dollar-and-fifty-cents-(\$1.50)~~ Two dollars (\$2.00) from each recreational vehicle license sold shall be apportioned to the county current expense fund, which shall be deemed necessary costs of collection and administration;

(2) ~~Three--dollars-and-fifty-cents-(\$3.50)-from-each-recreational-vehicle-license-sold-shall-be-transmitted-to-the-state-treasurer--for-deposit--in--an--account--known--as--the--"state--recreational-vehicle~~

account," which is established in the dedicated fund of the state treasury;

(3) From the balance remaining, one-half (1/2) shall be placed in the county road fund to be apportioned as provided in section 40-709, Idaho Code, and one-half (1/2) shall be distributed as follows: ninety-nine percent (99%) of the one-half (1/2) shall be distributed to the state recreational vehicle account transmitted to the state treasurer for deposit in an account known as the "state recreational vehicle account," which is established in the dedicated fund of the state treasury, and one percent (1%) of the one-half (1/2) shall be distributed to the search and rescue account created in section 67-2903, Idaho Code.

SECTION 3. 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 and regulations 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.

(b) Make expenditures for the acquisition, 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 sanitation and other facilities and services designed to promote the health, safety and enjoyment of recreational vehicle users. Up to twenty fifteen percent (2015%) 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, 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 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.

(h) Prepare, maintain and keep up-to-date a comprehensive plan for the development of the outdoor recreational resources of the state; to develop, operate and maintain 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 in 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 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 con-

gress 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 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.

(1) 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.

SECTION 4. This act shall be in full force and effect on and after January 1, 1994.

Approved March 31, 1993.

CHAPTER 287
(S.B. No. 1221)

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS AND THE UNIFORM COMMERCIAL CODE; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 12, TITLE 28, IDAHO CODE, TO PROVIDE FOR ANY TRANSACTION THAT CREATES A LEASE OF PERSONAL PROPERTY; AMENDING SECTION 28-1-105, IDAHO CODE, TO PROVIDE FOR APPLICABILITY OF CHAPTER 12, TITLE 28, IDAHO CODE; AMENDING SECTION 28-1-201, IDAHO CODE, TO REDEFINE SECURITY INTEREST, AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 28-9-113, IDAHO CODE, TO PROVIDE FOR SECURITY INTERESTS ARISING UNDER CHAPTER ON SALES OR UNDER CHAPTER ON LEASES.

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

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

amended by the addition thereto of a **NEW CHAPTER**, to be known and designated as Chapter 12, Title 28, Idaho Code, and to read as follows:

CHAPTER 12
UNIFORM COMMERCIAL CODE-LEASES

PART 1. GENERAL PROVISIONS

28-12-101. **SHORT TITLE.** This chapter shall be known and may be cited as "Uniform Commercial Code-Leases."

28-12-102. **SCOPE.** This chapter applies to any transaction, regardless of form, that creates a lease.

28-12-103. **DEFINITIONS AND INDEX OF DEFINITIONS.** (1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars (\$25,000).

(f) "Fault" means wrongful act, omission, breach or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

a. Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

b. That the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

c. That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" mean all things that are movable at the time of identification to the lease contract, or are fixtures (section 28-12-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the

lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

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

"Accessions." Section 28-12-310(1).

"Construction mortgage." Section 28-12-309(1)(d).

"Encumbrance." Section 28-12-309(1)(e).

"Fixtures." Section 28-12-309(1)(a).

"Fixture filing." Section 28-12-309(1)(b).

"Purchase money lease." Section 28-12-309(1)(c).

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

"Account." Section 28-9-106.

"Between merchants." Section 28-2-104(3).

"Buyer." Section 28-2-103(1)(a).

"Chattel paper." Section 28-9-105(1)(b).

"Consumer goods." Section 28-9-109(1).

"Document." Section 28-9-105(1)(f).

"Entrusting." Section 28-2-403(3).

"General intangibles." Section 28-9-106.

"Good faith." Section 28-1-201(19).

"Instrument." Section 28-9-105(1)(i).

"Merchant." Section 28-2-104(1).

"Mortgage." Section 28-9-105(1)(j).

"Pursuant to commitment." Section 28-9-105(1)(k).

"Receipt." Section 28-2-103(1)(c).

"Sale." Section 28-2-106(1).

"Sale on approval." Section 28-2-326.

"Sale or return." Section 28-2-326.

"Seller." Section 28-2-103(1)(d).

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

28-12-104. LEASES SUBJECT TO OTHER LAW. (1) A lease, although subject to this chapter, is also subject to any applicable:

(a) Certificate of title statute of this state; or

(b) Certificate of title statute of another jurisdiction (section 28-12-105); or

(c) Provision of the Idaho credit code.

(2) In case of conflict between this chapter, other than sections 28-12-105, 28-12-304(3), and 28-12-305(3), and a statute or decision referred to in subsection (1) of this section, the statute controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

28-12-105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE. Subject to the provisions of sections

28-12-304(3) and 28-12-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of:

- (1) Surrender of the certificate; or
- (2) Four (4) months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

28-12-106. LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM. (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty (30) days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

28-12-107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

28-12-108. UNCONSCIONABILITY. (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract, or any clause of a lease contract, has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2) of this section, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose and effect of the lease contract or clause thereof, or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) If the court finds unconscionability under subsection (1) or (2) of this section, the court shall award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) of this section is not controlling.

28-12-109. OPTION TO ACCELERATE AT WILL. (1) A term providing that one (1) party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) of this section is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

28-12-201. STATUTE OF FRAUDS. (1) A lease contract is not enforceable by way of action or defense unless:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars (\$1,000); or

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies the provisions of subsection (1)(b) of this section, whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under the provisions of subsection (1)(b) of this section beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

- (a) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;
- (b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or
- (c) A reasonable lease term.

28-12-202. FINAL WRITTEN EXPRESSION - PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

- (a) By course of dealing or usage of trade or by course of performance; and
- (b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

28-12-203. SEALS INOPERATIVE. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

28-12-204. FORMATION IN GENERAL. (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one (1) or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

28-12-205. FIRM OFFERS. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three (3) months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

28-12-206. OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT. (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before

acceptance.

28-12-207. COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION. (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of section 28-12-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

28-12-208. MODIFICATION, RESCISSION AND WAIVER. (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

28-12-209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT. (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee under subsection (1) of this section, does not:

(a) Modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise; or

(b) Impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, prior to before the modification or rescission, the supplier has received notice that the lessee has entered into a finance

lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

28-12-210. EXPRESS WARRANTIES. (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warranty" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

28-12-211. WARRANTIES AGAINST INTERFERENCE AND AGAINST INFRINGEMENT -- LESSEE'S OBLIGATION AGAINST INFRINGEMENT. (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease there is, in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind, a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

28-12-212. IMPLIED WARRANTY OF MERCHANTABILITY. (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

- (a) Pass without objection in the trade under the description in the lease agreement;
- (b) In the case of fungible goods, are of fair average quality within the description;
- (c) Are fit for the ordinary purposes for which goods of that type are used;
- (d) Run, within the variation permitted by the lease agreement, of even kind, quality and quantity within each unit and among all units involved;
- (e) Are adequately contained, packaged and labeled as the lease agreement may require; and
- (f) Conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

28-12-213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

28-12-214. EXCLUSION OR MODIFICATION OF WARRANTIES. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of section 28-12-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to the provisions of subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to the provisions of subsection (3) of this section, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

(3) Notwithstanding the provisions of subsection (2) of this section, but subject to the provisions of subsection (4) of this section:

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) If the lessee, before entering into the lease contract, has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (section 28-12-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

28-12-215. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

28-12-216. THIRD-PARTY BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES. A warranty to or for the benefit of a lessee under this chapter, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

28-12-217. IDENTIFICATION. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(1) When the lease contract is made, if the lease contract is for a lease of goods that are existing and identified;

(2) When the goods are shipped, marked or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(3) When the young are conceived, if the lease contract is for a lease of unborn young of animals.

28-12-218. INSURANCE AND PROCEEDS. (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under the provisions of subsections (1) and (2) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one (1) or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

28-12-219. RISK OF LOSS. (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this chapter on the effect of default on risk of loss (section 28-12-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier:

(i) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within the provisions of subparagraph (a) or (b) of this subsection, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

28-12-220. EFFECT OF DEFAULT ON RISK OF LOSS. (1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

28-12-221. CASUALTY TO IDENTIFIED GOODS. If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or section 28-12-219, then:

(1) If the loss is total, the lease contract is avoided; and

(2) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

PART 3. EFFECT OF LEASE CONTRACT

28-12-301. ENFORCEABILITY OF LEASE CONTRACT. Except as otherwise provided in this chapter, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

28-12-302. TITLE TO AND POSSESSION OF GOODS. Except as otherwise provided in this chapter, each provision of this chapter applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

28-12-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OR LESSOR'S RESIDUAL INTEREST IN GOODS -- DELEGATION OF PERFORMANCE -- TRANSFER OF RIGHTS. (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to chapter 9, secured transactions, by reason of section 28-9-102(1)(b).

(2) Except as provided in subsections (3) and (4) of this section, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) of this section unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5) of this section.

(5) Subject to the provisions of subsections (3) and (4) of this section:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 28-12-501(2);

(b) If paragraph (a) of this subsection is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party

to the lease contract.

(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

28-12-304. SUBSEQUENT LEASE OF GOODS BY LESSOR. (1) Subject to section 28-12-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) of this section and section 28-12-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) The lessor's transferor was deceived as to the identity of the lessor;

(b) The delivery was in exchange for a check which is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale"; or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

28-12-305. SALE OR SUBLEASE OF GOODS BY LESSEE. (1) Subject to the provisions of section 28-12-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) of this section and section 28-12-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) The lessor was deceived as to the identity of the lessee;

(b) The delivery was in exchange for a check which is later dishonored; or

(c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

28-12-306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW. If a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

28-12-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS. (1) Except as otherwise provided in section 28-12-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) of this section and in sections 28-12-306 and 28-12-308, a creditor of a lessor takes subject to the lease contract unless:

(a) The creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) The creditor holds a security interest in the goods which was perfected (section 28-9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (section 28-9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five (45) days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five (45) day period.

28-12-308. SPECIAL RIGHTS OF CREDITORS. (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract (i) becomes enforceable, not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security, or the like, and (ii) is made under circumstances which under any statute or rule of law apart from this chapter would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

28-12-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES. (1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 28-9-402(5);

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

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

(2) Under this chapter a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(3) The provisions of this chapter do not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing

before the goods become fixtures or within ten (10) days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding the provisions of subsection (4)(a) of this section but otherwise subject to the provisions of subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter, or (ii) if necessary to enforce his other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who

is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on secured transactions (chapter 9).

28-12-310. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME ACCESSIONS. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When, under the provisions of subsections (2) or (3) and (4) of this section, a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter, or (ii) if necessary to enforce his other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

28-12-311. PRIORITY SUBJECT TO SUBORDINATION. Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

PART 4. PERFORMANCE OF LEASE CONTRACT - REPUDIATED,
SUBSTITUTED AND EXCUSED

28-12-401. INSECURITY -- ADEQUATE ASSURANCE OF PERFORMANCE. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty (30) days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

28-12-402. ANTICIPATORY REPUDIATION. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(1) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(2) Make demand pursuant to section 28-12-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(3) Resort to any right or remedy upon default under the lease contract or this chapter, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 28-12-524).

28-12-403. RETRACTION OF ANTICIPATORY REPUDIATION. (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the

aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 28-12-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

28-12-404. SUBSTITUTED PERFORMANCE. (1) If, without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

28-12-405. EXCUSED PERFORMANCE. Subject to section 28-12-404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with the provisions of subsections (2) and (3) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in subsection (1) of this section affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under the provisions of subsection (2) of this section, of the estimated quota thus made available for the lessee.

28-12-406. PROCEDURE ON EXCUSED PERFORMANCE. (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under the provisions of section 28-12-405, the lessee

may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 28-12-510):

(a) Terminate the lease contract (section 28-12-505(2)); or

(b) Except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under the provisions of section 28-12-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty (30) days, the lease contract lapses with respect to any deliveries affected.

28-12-407. IRREVOCABLE PROMISES -- FINANCE LEASES. (1) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under the provisions of subsection (1) of this section:

(a) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(b) Is not subject to cancellation, termination, modification, repudiation, excuse or substitution without the consent of the party to whom the promise runs.

(3) The provisions of this section do not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

PART 5. DEFAULT

28-12-501. DEFAULT -- PROCEDURE. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with the provisions of this chapter.

(4) Except as otherwise provided in section 28-1-106(1) or this chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and

the goods in accordance with that party's rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

28-12-502. NOTICE AFTER DEFAULT. Except as otherwise provided in this chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

28-12-503. MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES. (1) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.

(2) Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this chapter.

(3) Consequential damages may be liquidated under section 28-12-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

28-12-504. LIQUIDATION OF DAMAGES. (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with the provisions of subsection (1) of this section, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (section 28-12-525 or 28-12-526), the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with the provisions of subsection (1) of this section; or

(b) In the absence of those terms, twenty percent (20%) of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars

(\$500).

(4) A lessee's right to restitution under the provisions of subsection (3) of this section is subject to offset to the extent the lessor establishes:

- (a) A right to recover damages under the provisions of this chapter other than the provisions of subsection (1) of this section; and
- (b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

28-12-505. CANCELLATION AND TERMINATION AND EFFECT OF CANCELLATION, TERMINATION, RESCISSION OR FRAUD ON RIGHTS AND REMEDIES. (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this chapter for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

28-12-506. STATUTE OF LIMITATIONS. (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four (4) years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one (1) year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by the provision of subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) The provisions of this section do not alter the law on tolling of the statute of limitations nor does it apply to causes of

action that have accrued before this chapter becomes effective.

28-12-507. PROOF OF MARKET RENT -- TIME AND PLACE. (1) Damages based on market rent (section 28-12-519 or 28-12-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in sections 28-12-519 and 28-12-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter offered by one (1) party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

28-12-508. LESSEE'S REMEDIES. (1) If a lessor fails to deliver the goods in conformity to the lease contract (section 28-12-509) or repudiates the lease contract (section 28-12-402), or a lessee rightfully rejects the goods (section 28-12-509) or justifiably revokes acceptance of the goods (section 28-12-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 28-12-510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (section 28-12-505(1));

(b) Recover so much of the rent and security as has been paid and is just under the circumstances;

(c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 28-12-518 and 28-12-520), or recover damages for nondelivery (sections 28-12-519 and 28-12-520);

(d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) If the goods have been identified, recover them (section 28-12-522); or

(b) In a proper case, obtain specific performance or replevy the

goods (section 28-12-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in section 28-12-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 28-12-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to section 28-12-527(5).

(6) Subject to the provisions of section 28-12-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

28-12-509. LESSEE'S RIGHTS ON IMPROPER DELIVERY -- RIGHTFUL REJECTION. (1) Subject to the provisions of section 28-12-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

28-12-510. INSTALLMENT LEASE CONTRACTS -- REJECTION AND DEFAULT. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within the provisions of subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one (1) or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

28-12-511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS. (1) Subject to any security interest of a lessee (section 28-12-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with

respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (see subsection (1) of this section) or any other lessee (section 28-12-512) disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent (10%) of the gross proceeds.

(3) In complying with the provisions of this section or section 28-12-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to the provisions of this section or section 28-12-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter.

28-12-512. LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS. (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 28-12-511) and subject to any security interest of a lessee (section 28-12-508(5)):

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 28-12-511; but

(c) The lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to the provisions of subsection (1) of this section is not acceptance or conversion.

28-12-513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY -- REPLACEMENT. (1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

28-12-514. WAIVER OF LESSEE'S OBJECTIONS. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (section 28-12-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

28-12-515. ACCEPTANCE OF GOODS. (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) The lessee fails to make an effective rejection of the goods (section 28-12-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

28-12-516. EFFECT OF ACCEPTANCE OF GOODS -- NOTICE OF DEFAULT -- BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE -- NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER. (1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier if any, or be barred from any remedy against the party not notified;

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 28-12-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both,

written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two (2) litigations, then unless the person notified after reasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 28-12-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable receipt of the demand does turn over control the lessee is so barred.

(5) The provisions of subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 28-12-211).

28-12-517. REVOCATION OF ACCEPTANCE OF GOODS. (1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

28-12-518. COVER -- SUBSTITUTE GOODS. (1) After a default by a lessor under the lease contract of the type described in section 28-12-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-102(3) and

28-12-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under the provisions of subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 28-12-519 governs.

28-12-519. LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-102(3) and 28-12-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 28-12-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 28-12-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

28-12-520. LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES. (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care

and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

- (a) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
- (b) Injury to person or property proximately resulting from any breach of warranty.

28-12-521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

28-12-522. LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY. (1)

Subject to the provisions of subsection (2) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 28-12-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten (10) days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

28-12-523. LESSOR'S REMEDIES. (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 28-12-510), the lessee is in default under the lease contract and the lessor may:

- (a) Cancel the lease contract (section 28-12-505(1));
- (b) Proceed respecting goods not identified to the lease contract (section 28-12-524);
- (c) Withhold delivery of the goods and take possession of goods previously delivered (section 28-12-525);
- (d) Stop delivery of the goods by any bailee (section 28-12-526);
- (e) Dispose of the goods and recover damages (section 28-12-527), or retain the goods and recover damages (section 28-12-528), or in a proper case recover rent (section 28-12-529);

(f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under the provisions of subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section.

28-12-524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT.

(1) After default by the lessee under the lease contract of the type described in section 28-12-523(1) or section 28-12-523(3)(a) or, if agreed, after other default by the lessee, the lessor may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) Dispose of goods (section 28-12-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

28-12-525. LESSOR'S RIGHT TO POSSESSION OF GOODS. (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in section 28-12-523(1) or 28-12-523(3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 28-12-527).

(3) The lessor may proceed under the provisions of subsection (2) of this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

28-12-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under the provisions of subsection (1) of this section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

28-12-527. LESSOR'S RIGHTS TO DISPOSE OF GOODS. (1) After a default by a lessee under the lease contract of the type described in section 28-12-523(1) or 28-12-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (section 28-12-525 or 28-12-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-102(3) and 28-12-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 28-12-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under the provisions of subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 28-12-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under the provisions of this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 28-12-508(5)).

28-12-528. LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-102(3) and 28-12-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 28-12-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 28-12-523(1) or 28-12-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of this subsection, of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 28-12-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 28-12-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

28-12-529. LESSOR'S ACTION FOR THE RENT. (1) After default by the lessee under the lease contract of the type described in section 28-12-523(1) or 28-12-523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with the provisions of subsection (2) of this section, the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 28-12-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then

remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 28-12-530, less expenses saved in consequence of the lessee's default; and

(b) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 28-12-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to the provisions of subsection (1) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by section 28-12-527 or 28-12-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to section 28-12-527 or 28-12-528.

(4) Payment of the judgment for damages obtained pursuant to the provisions of subsection (1) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in section 28-12-523(1) or section 28-12-523(3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under section 28-12-527 or section 28-12-528.

28-12-530. LESSOR'S INCIDENTAL DAMAGES. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

28-12-531. STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (i) the lessor has a right of action against the third party, and (ii) the lessee also has a right of action against the third party if the lessee:

(a) Has a security interest in the goods;

(b) Has an insurable interest in the goods; or

(c) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

28-12-532. LESSOR'S RIGHTS TO RESIDUAL INTEREST. In addition to any other recovery permitted in this chapter or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

SECTION 2. That Section 28-1-105, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

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

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

Bulk transfers subject to the chapter on Bulk Transfers. Section 28-6-102.

Applicability of the chapter on Investment Securities. Section 28-8-106.

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

SECTION 3. That Section 28-1-201, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent chapters of this act which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this act:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a

remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (sections 28-1-205 and 28-2-208). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (section 28-1-103). (Compare "contract.")

(4) "Bank" means any person engaged in the business of banking, including any insured bank, whether chartered by federal or state law, any insured savings and loan association, whether insured by federal or state law, and any insured credit union, whether chartered by federal or state law, offering deposit or other accounts on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others, including demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous." A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this act and any other

applicable rules of law. (Compare "agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be

effective are not determined by this act.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this act.

(30) "Person" includes an individual or an organization (See section 28-1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 28-2-401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to chapter 9. The special property interest of a buyer of goods on identification of such those goods to a contract for sale under section 28-2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with chapter 9. Unless

~~a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event is subject to the provisions on consignment sales (section 28-2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security; and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.~~

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods; or

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods; or

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into; or

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods; or

(c) the lessee has an option to renew the lease or to become the owner of the goods; or

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at

the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

"Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

"Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28-3-303, 28-4-208 and 28-4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

SECTION 4. That Section 28-9-113, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-113. SECURITY INTERESTS ARISING UNDER CHAPTER ON SALES OR

UNDER CHAPTER ON LEASES. A security interest arising solely under the chapter on §sales (chapter 2) or the chapter on leases (chapter 12) is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed (i) by the chapter on §sales (chapter 2) in the case of a security interest arising solely under such chapter or (ii) by the chapter on leases (chapter 12) in the case of a security interest arising solely under such chapter.

Approved March 31, 1993.

CHAPTER 288
(S.B. No. 1222)

AN ACT

RELATING TO THE UNIFORM COMMERCIAL CODE; REPEALING CHAPTER 3, TITLE 28, IDAHO CODE; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 3, TITLE 28, IDAHO CODE, TO PROVIDE FOR NEGOTIABLE INSTRUMENTS; AMENDING SECTIONS 28-4-101, 28-4-102 AND 28-4-103, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO CORRECT TERMINOLOGY; AMENDING SECTION 28-4-104, IDAHO CODE, TO AMEND EXISTING DEFINITIONS, TO PROVIDE NEW DEFINITIONS, TO DELETE OBSOLETE CODE REFERENCES AND TO PROVIDE ADDITIONAL CODE REFERENCES TO CONFORM WITH THE PROVISIONS OF CHAPTER 3, TITLE 28, IDAHO CODE; AMENDING SECTION 28-4-105, IDAHO CODE, TO ADD DEFINITIONS AND TO DELETE DEFINITIONS TO CONFORM WITH THE PROVISIONS OF CHAPTER 3, TITLE 28, IDAHO CODE; AMENDING CHAPTER 4, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-4-106, IDAHO CODE, TO PROVIDE FOR ITEMS PAYABLE THROUGH OR PAYABLE AT A BANK; AMENDING SECTIONS 28-4-106 AND 28-4-107, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-4-108, IDAHO CODE, TO REDESIGNATE THE SECTION, TO MAKE TECHNICAL CORRECTIONS, AND TO PROVIDE FOR DELAYS RELATING TO PAYMENT OF AN ITEM; REPEALING SECTION 28-4-109, IDAHO CODE; AMENDING CHAPTER 4, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-4-110, IDAHO CODE, TO PROVIDE FOR ELECTRONIC PRESENTMENT; AMENDING CHAPTER 4, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-4-111, IDAHO CODE, TO PROVIDE FOR A STATUTE OF LIMITATIONS; AMENDING SECTIONS 28-4-201, 28-4-202, 28-4-203 AND 28-4-204, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO CONFORM THE SECTIONS WITH CHAPTER 3, TITLE 28, IDAHO CODE; AMENDING SECTION 28-4-205, IDAHO CODE, TO SPECIFY WHEN A DEPOSITORY BANK BECOMES A HOLDER IN DUE COURSE OF AN UNINDORSED ITEM AND THE EFFECT THEREOF; AMENDING SECTION 28-4-206, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 28-4-207, IDAHO CODE; AMENDING CHAPTER 4, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-4-207, IDAHO CODE, TO PROVIDE FOR TRANSFER WARRANTIES; AMENDING CHAPTER 4, TITLE 28,

IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-4-208, IDAHO CODE, TO PROVIDE FOR PRESENTMENT WARRANTIES; AMENDING CHAPTER 4, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-4-209, IDAHO CODE, TO PROVIDE FOR ENCODING AND RETENTION WARRANTIES; AMENDING SECTIONS 28-4-208, 28-4-209 AND 28-4-210, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 28-4-211, IDAHO CODE; AMENDING CHAPTER 4, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-4-213, IDAHO CODE, TO PROVIDE FOR MEDIUM AND TIME OF SETTLEMENT BY A BANK; AMENDING SECTION 28-4-212, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR THE LIABILITY OF A COLLECTING BANK IN THE EVENT AN ITEM UPON WHICH IT HAS MADE PROVISIONAL SETTLEMENT IS RETURNED; AMENDING SECTIONS 28-4-213 AND 28-4-214, IDAHO CODE, TO REDESIGNATE THE SECTIONS, TO MAKE TECHNICAL CORRECTIONS AND TO CORRECT TERMINOLOGY TO CONFORM WITH THE PROVISIONS OF CHAPTER 3, TITLE 28, IDAHO CODE; AMENDING SECTION 28-4-301, IDAHO CODE, TO PROVIDE FOR THE RETURN OF ITEMS BY A PAYOR BANK, TO CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-4-302, IDAHO CODE, TO PROVIDE FOR DEFENSES TO THE LIABILITY OF A PAYOR BANK TO PAY AN ITEM; AMENDING SECTION 28-4-303, IDAHO CODE, TO PROVIDE WHEN ITEMS ARE SUBJECT TO A STOP-PAYMENT ORDER, LEGAL PROCESS OR SETOFF; AMENDING SECTION 28-4-401, IDAHO CODE, TO PROVIDE WHEN A BANK MAY CHARGE A CUSTOMER'S ACCOUNT AND THE BANK'S RESPONSIBILITY WITH RESPECT TO A POSTDATED CHECK; AMENDING SECTION 28-4-402, IDAHO CODE, TO PROVIDE FOR THE BANK'S LIABILITY TO A CUSTOMER FOR WRONGFUL DISHONOR AND THE TIME OF DETERMINING THE INSUFFICIENCY OF AN ACCOUNT; AMENDING SECTION 28-4-403, IDAHO CODE, TO PROVIDE FOR THE CUSTOMER'S RIGHT TO STOP PAYMENT OF AN ITEM AND THE TIME FOR WHICH A STOP-PAYMENT ORDER IS EFFECTIVE AND TO PROVIDE FOR DAMAGES FOR DISHONOR OF AN ITEM CONTRARY TO A STOP-PAYMENT ORDER; AMENDING SECTION 28-4-405, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-4-406, IDAHO CODE, TO PROVIDE FOR THE CUSTOMER'S DUTY TO DISCOVER AND REPORT AN UNAUTHORIZED SIGNATURE OR ALTERATION OF AN ITEM, TO PROVIDE THE DUTIES OF THE BANK WITH RESPECT TO STATEMENTS OF ACCOUNT AND TO PROVIDE FOR ALLOCATION OF LOSS BETWEEN THE CUSTOMER AND A BANK FAILING TO EXERCISE ORDINARY CARE IN PAYING AN ITEM; AMENDING SECTIONS 28-4-407, 28-4-501, 28-4-502, 28-4-503 AND 28-4-504, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; REPEALING CHAPTER 6, TITLE 28, IDAHO CODE; AMENDING SECTION 28-1-105, IDAHO CODE, TO DELETE A REFERENCE TO CHAPTER 6, TITLE 28, IDAHO CODE; AMENDING SECTION 28-1-201, IDAHO CODE, TO REDEFINE HOLDER, TO REDEFINE MONEY WITH RESPECT TO INTERNATIONAL MONETARY UNITS OF ACCOUNT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-1-207, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE APPLICATION OF THE SECTION; AMENDING SECTION 28-2-403, IDAHO CODE, TO DELETE A REFERENCE TO CHAPTER 6, TITLE 28, IDAHO CODE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-2-511, IDAHO CODE, TO CORRECT A CODE REFERENCE; REPEALING SECTION 28-9-111, IDAHO CODE; AMENDING SECTION 28-9-203, IDAHO CODE, TO CORRECT A CODE REFERENCE; AND PROVIDING FOR THE ENFORCEABILITY OF RIGHTS AND OBLIGATIONS ARISING UNDER CHAPTER 6, TITLE 28, IDAHO CODE, AND SECTION 28-9-111, IDAHO CODE, BEFORE THEIR REPEAL.

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

SECTION 1. That Chapter 3, Title 28, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 3, Title 28, Idaho Code, and to read as follows:

CHAPTER 3

UNIFORM COMMERCIAL CODE -- NEGOTIABLE INSTRUMENTS

PART 1. GENERAL PROVISIONS AND DEFINITIONS

28-3-101. SHORT TITLE. This chapter may be cited as "Uniform Commercial Code -- Negotiable Instruments."

28-3-102. SUBJECT MATTER. (1) This chapter applies to negotiable instruments. It does not apply to money, to payment orders governed by part 6 of chapter 4, or to securities governed by chapter 8.

(2) If there is conflict between this chapter and chapter 4 or 9, chapters 4 and 9 govern.

(3) Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

28-3-103. DEFINITIONS. (1) In this chapter:

(a) "Acceptor" means a drawee who has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(d) "Good faith" means honesty in fact in the conduct or transaction concerned.

(e) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one (1) or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.

(h) "Party" means a party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 28-1-201(8)).

(k) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

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

"Acceptance"	Section 28-3-409
"Accommodated party"	Section 28-3-419
"Accommodation party"	Section 28-3-419
"Alteration"	Section 28-3-407
"Anomalous indorsement"	Section 28-3-205
"Blank indorsement"	Section 28-3-205
"Cashier's check"	Section 28-3-104
"Certificate of deposit"	Section 28-3-104
"Certified check"	Section 28-3-409
"Check"	Section 28-3-104
"Consideration"	Section 28-3-303
"Draft"	Section 28-3-104
"Holder in due course"	Section 28-3-302
"Incomplete instrument"	Section 28-3-115
"Indorsement"	Section 28-3-204
"Indorser"	Section 28-3-204
"Instrument"	Section 28-3-104
"Issue"	Section 28-3-105
"Issuer"	Section 28-3-105
"Negotiable instrument"	Section 28-3-104
"Negotiation"	Section 28-3-201
"Note"	Section 28-3-104
"Payable at a definite time"	Section 28-3-108
"Payable on demand"	Section 28-3-108
"Payable to bearer"	Section 28-3-109
"Payable to order"	Section 28-3-109
"Payment"	Section 28-3-602
"Person entitled to enforce"	Section 28-3-301
"Presentment"	Section 28-3-501
"Reacquisition"	Section 28-3-207
"Special indorsement"	Section 28-3-205
"Teller's check"	Section 28-3-104
"Transfer of instrument"	Section 28-3-203
"Traveler's check"	Section 28-3-104
"Value"	Section 28-3-303

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

"Bank"	Section 28-4-105
"Banking day"	Section 28-4-104
"Clearing house"	Section 28-4-104
"Collecting bank"	Section 28-4-105
"Depositary bank"	Section 28-4-105

"Documentary draft"	Section 28-4-104
"Intermediary bank"	Section 28-4-105
"Item"	Section 28-4-104
"Payor bank"	Section 28-4-105
"Suspends payments"	Section 28-4-104

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

28-3-104. NEGOTIABLE INSTRUMENT. (1) Except as provided in subsections (3) and (4) of this section, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(a) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(b) Is payable on demand or at a definite time; and

(c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(2) "Instrument" means a negotiable instrument.

(3) An order that meets all of the requirements of subsection (1) of this section, except paragraph (a), and otherwise falls within the definition of "check" in subsection (6) of this section is a negotiable instrument and a check.

(4) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.

(5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(6) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(8) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(9) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(10) "Certificate of deposit" means an instrument containing an

acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

28-3-105. **ISSUE OF INSTRUMENT.** (1) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(2) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(3) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

28-3-106. **UNCONDITIONAL PROMISE OR ORDER.** (1) Except as provided in this section, for the purposes of section 28-3-104(1), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(2) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 28-3-104(1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 28-3-104(1); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

28-3-107. **INSTRUMENT PAYABLE IN FOREIGN MONEY.** Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

28-3-108. **PAYABLE ON DEMAND OR AT DEFINITE TIME.** (1) A promise or

order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(2) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(3) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

28-3-109. PAYABLE TO BEARER OR TO ORDER. (1) A promise or order is payable to bearer if it:

(a) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(b) Does not state a payee; or

(c) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(2) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person, or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to section 28-3-205(1). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to section 28-3-205(2).

28-3-110. IDENTIFICATION OF PERSON TO WHOM INSTRUMENT IS PAYABLE.

(1) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one (1) person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one (1) or more of the signers.

(2) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(3) A person to whom an instrument is payable may be identified

in any way, including by name, identifying number, office or account number. For the purpose of determining the holder of an instrument, the following rules apply:

- (a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.
- (b) If an instrument is payable to:
 - (i) A trust, an estate or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative or a successor of either, whether or not the beneficiary or estate is also named;
 - (ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;
 - (iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or
 - (iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.
- (4) If an instrument is payable to two (2) or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two (2) or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two (2) or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

28-3-111. PLACE OF PAYMENT. Except as otherwise provided for items in chapter 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one (1) place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

28-3-112. INTEREST. (1) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(2) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or

described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

28-3-113. DATE OF INSTRUMENT. (1) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 28-4-401(3), an instrument payable on demand is not payable before the date of the instrument.

(2) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

28-3-114. CONTRADICTORY TERMS OF INSTRUMENT. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

28-3-115. INCOMPLETE INSTRUMENT. (1) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(2) Subject to subsection (3) of this section, if an incomplete instrument is an instrument under section 28-3-104 it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 28-3-104 but, after completion, the requirements of section 28-3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(3) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 28-3-407.

(4) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

28-3-116. JOINT AND SEVERAL LIABILITY -- CONTRIBUTION. (1) Except as otherwise provided in the instrument, two (2) or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in section 28-3-419(5) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(3) Discharge of one (1) party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (2) of this section of a party having the same

joint and several liability to receive contribution from the party discharged.

28-3-117. OTHER AGREEMENTS AFFECTING INSTRUMENT. Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented or nullified by an agreement under this section, the agreement is a defense to the obligation.

28-3-118. STATUTE OF LIMITATIONS. (1) Except as provided in subsection (5) of this section, an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date.

(2) Except as provided in subsection (4) or (5) of this section, if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six (6) years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten (10) years.

(3) Except as provided in subsection (4) of this section, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three (3) years after dishonor of the draft or ten (10) years after the date of the draft, whichever period expires first.

(4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three (3) years after demand for payment is made to the acceptor or issuer, as the case may be.

(5) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six (6) years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six (6) year period begins when a demand for payment is in effect and the due date has passed.

(6) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six (6) years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six (6) years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(7) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty or right arising under this chapter and not governed by this section must be

commenced within three (3) years after the cause of action accrues.

28-3-119. NOTICE OF RIGHT TO DEFEND ACTION. In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or chapter 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two (2) litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend.

PART 2. NEGOTIATION, TRANSFER, AND INDORSEMENT

28-3-201. NEGOTIATION. (1) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(2) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

28-3-202. NEGOTIATION SUBJECT TO RESCISSION. (1) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(2) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

28-3-203. TRANSFER OF INSTRUMENT -- RIGHTS ACQUIRED BY TRANSFER.

(1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(2) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(4) If a transferor purports to transfer less than the entire

instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

28-3-204. **INDORSEMENT.** (1) "Indorsement" means a signature, other than that of a signer as maker, drawer or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(2) "Indorser" means a person who makes an indorsement.

(3) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(4) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

28-3-205. **SPECIAL INDORSEMENT -- BLANK INDORSEMENT -- ANOMALOUS INDORSEMENT.** (1) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in section 28-3-110 apply to special indorsements.

(2) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(3) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(4) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

28-3-206. **RESTRICTIVE INDORSEMENT.** (1) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(2) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to

enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(3) If an instrument bears an indorsement (i) described in section 28-4-201(2), or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(a) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(b) A depository bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(c) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(d) Except as otherwise provided in paragraph (c) of this subsection, a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(4) Except for an indorsement covered in subsection (3) of this section, if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(a) Unless there is notice of breach of fiduciary duty as provided in section 28-3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(b) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (3) of this section or has notice or knowledge of breach of fiduciary duty as stated in subsection (4) of this section.

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

28-3-207. REACQUISITION. Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

PART 3. ENFORCEMENT OF INSTRUMENTS

28-3-301. PERSON ENTITLED TO ENFORCE INSTRUMENT. "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 28-3-309 or 28-3-418(4). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

28-3-302. HOLDER IN DUE COURSE. (1) Subject to subsection (3) of this section and section 28-3-106(4), "holder in due course" means the holder of an instrument if:

(a) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in section 28-3-306, and (vi) without notice that any party has a defense or claim in recoupment described in section 28-3-305(1).

(2) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (1) of this section, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(3) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(4) If, under section 28-3-303(1)(a), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the

instrument equal to the value of the partial performance divided by the value of the promised performance.

(5) If (i) the person entitled to enforce an instrument has only a security interest in the instrument, and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(6) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

28-3-303. VALUE AND CONSIDERATION. (1) An instrument is issued or transferred for value if:

(a) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(b) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(c) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(d) The instrument is issued or transferred in exchange for a negotiable instrument; or

(e) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(2) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (1) of this section, the instrument is also issued for consideration.

28-3-304. OVERDUE INSTRUMENT. (1) An instrument payable on demand becomes overdue at the earliest of the following times:

(a) On the day after the day demand for payment is duly made;

(b) If the instrument is a check, ninety (90) days after its date; or

(c) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(2) With respect to an instrument payable at a definite time the following rules apply:

(a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(3) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

28-3-305. DEFENSES AND CLAIMS IN RECOUPMENT. (1) Except as stated in subsection (2) of this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(a) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(b) A defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(c) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (1)(a) of this section, but is not subject to defenses of the obligor stated in subsection (1)(b) of this section or claims in recoupment stated in subsection (1)(c) of this section against a person other than the holder.

(3) Except as stated in subsection (4) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 28-3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (1) of this section that the accommodated party could assert against the person entitled to enforce the instru-

ment, except the defenses of discharge in insolvency proceedings, infancy and lack of legal capacity.

28-3-306. CLAIMS TO AN INSTRUMENT. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

28-3-307. PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE. (1) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 28-3-402(1).

(2) If the validity of signatures is admitted or proved and there is compliance with subsection (1) of this section, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 28-3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

28-3-308. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT. (1) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument under subsection (1) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, the provisions of this section apply to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be

provided by any reasonable means.

28-3-309. EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH TAKEN. (1) Unless otherwise agreed, if a certified check, cashier's check or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(2) Unless otherwise agreed and except as provided in subsection (1) of this section, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(a) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(b) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(c) Except as provided in subsection (2)(d) of this section, if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(d) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(3) If an instrument other than one described in subsection (1) or (2) of this section is taken for an obligation, the effect is (i) that stated in subsection (1) of this section if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (2) of this section in any other case.

28-3-310. ACCORD AND SATISFACTION BY USE OF INSTRUMENT. (1) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(2) Unless subsection (3) of this section applies, the claim is

discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to subsection (4) of this section, a claim is not discharged under subsection (2) of this section if either of the following applies:

(a) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(b) The claimant, whether or not an organization, proves that within ninety (90) days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (a)(i) of this subsection.

(4) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

28-3-311. LOST, DESTROYED, OR STOLEN CASHIER'S CHECK, TELLER'S CHECK OR CERTIFIED CHECK. (1) In this section:

(a) "Check" means a cashier's check, teller's check or certified check.

(b) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed or stolen.

(c) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(d) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(2) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the

communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

- (a) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.
- (b) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.
- (c) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.
- (d) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section 28-4-302(1)(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.
- (3) If the obligated bank pays the amount of a check to a claimant under subsection (2)(d) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.
- (4) If a claimant has the right to assert a claim under subsection (2) of this section and is also a person entitled to enforce a cashier's check, teller's check or certified check which is lost, destroyed or stolen, the claimant may assert rights with respect to the check either under this section or section 28-3-309.

PART 4. LIABILITY OF PARTIES

28-3-401. SIGNATURE. (1) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 28-3-402.

(2) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark or symbol executed or adopted by a person with present intention to authenticate a writing.

28-3-402. SIGNATURE BY REPRESENTATIVE. (1) If a person acting, or purporting to act, as a representative signs an instrument by signing

either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(2) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(a) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(b) Subject to subsection (3) of this section, if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity, or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(3) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

28-3-403. UNAUTHORIZED SIGNATURE. (1) Unless otherwise provided in this chapter or chapter 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

(2) If the signature of more than one (1) person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one (1) of the required signatures is lacking.

(3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter which makes the unauthorized signature effective for the purposes of this chapter.

28-3-404. IMPOSTORS -- FICTITIOUS PAYEES. (1) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(2) If (i) a person whose intent determines to whom an instrument is payable (section 28-3-110(1) or (2)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(a) Any person in possession of the instrument is its holder.

(b) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(3) Under subsection (1) or (2) of this section, an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee, or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(4) With respect to an instrument to which subsection (1) or (2) of this section applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

28-3-405. EMPLOYER'S RESPONSIBILITY FOR FRAUDULENT INDORSEMENT BY EMPLOYEE. (1) In this section:

(a) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(b) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(c) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(2) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of

the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(3) Under subsection (2) of this section, an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person, or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

28-3-406. NEGLIGENCE CONTRIBUTING TO FORGED SIGNATURE OR ALTERATION OF INSTRUMENT. (1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(2) Under subsection (1) of this section, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(3) Under subsection (1) of this section, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (2) of this section, the burden of proving failure to exercise ordinary care is on the person precluded.

28-3-407. ALTERATION. (1) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(2) Except as provided in subsection (3) of this section, an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(3) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

28-3-408. DRAWEE NOT LIABLE ON UNACCEPTED DRAFT. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not

liable on the instrument until the drawee accepts it.

28-3-409. ACCEPTANCE OF DRAFT -- CERTIFIED CHECK. (1) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(2) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(3) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(4) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (1) of this section or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

28-3-410. ACCEPTANCE VARYING DRAFT. (1) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(2) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(3) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

28-3-411. REFUSAL TO PAY CASHIER'S CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS. (1) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(2) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(3) Expenses or consequential damages under subsection (2) of this section are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

28-3-412. OBLIGATION OF ISSUER OF NOTE OR CASHIER'S CHECK. The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 28-3-115 and 28-3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under section 28-3-415.

28-3-413. OBLIGATION OF ACCEPTOR. (1) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 28-3-115 and 28-3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under section 28-3-414 or 28-3-415.

(2) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

28-3-414. OBLIGATION OF DRAWER. (1) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(2) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 28-3-115 and 28-3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under section 28-3-415.

(3) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under section 28-3-415(1) and (3).

(5) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (2) of this section to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (2) of this section is not effective if the draft is a check.

(6) If (i) a check is not presented for payment or given to a depository bank for collection within thirty (30) days after its date, (ii) the drawee suspends payments after expiration of the thirty (30)

day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

28-3-415. OBLIGATION OF INDORSER. (1) Subject to subsections (2), (3) and (4) of this section and to section 28-3-419(4), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 28-3-115 and 28-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(2) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (1) of this section to pay the instrument.

(3) If notice of dishonor of an instrument is required by section 28-3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (1) of this section is discharged.

(4) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (1) of this section is discharged.

(5) If an indorser of a check is liable under subsection (1) of this section and the check is not presented for payment, or given to a depository bank for collection, within thirty (30) days after the day the indorsement was made, the liability of the indorser under subsection (1) of this section is discharged.

28-3-416. TRANSFER WARRANTIES. (1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(a) The warrantor is a person entitled to enforce the instrument;

(b) All signatures on the instrument are authentic and authorized;

(c) The instrument has not been altered;

(d) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(e) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) A person to whom the warranties under subsection (1) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(3) The warranties stated in subsection (1) of this section cannot be disclaimed with respect to checks. Unless notice of a claim

for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

28-3-417. PRESENTMENT WARRANTIES. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered; and

(c) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) of this section, based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 28-3-404 or 28-3-405 or the drawer is precluded under section 28-3-406 or 28-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(a) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(b) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) or (4) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

28-3-418. PAYMENT OR ACCEPTANCE BY MISTAKE. (1) Except as provided in subsection (3) of this section, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to section 28-4-403, or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(2) Except as provided in subsection (3) of this section, if an instrument has been paid or accepted by mistake and the case is not covered by subsection (1) of this section, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(3) The remedies provided in subsection (1) or (2) of this section may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided in section 28-3-417 or 28-4-407.

(4) Notwithstanding section 28-4-215 if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (1) or (2) of this section, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

28-3-419. INSTRUMENTS SIGNED FOR ACCOMMODATION. (1) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (4) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 28-3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(5) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

28-3-420. CONVERSION OF INSTRUMENT. (1) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a copayee.

(2) In an action under subsection (1) of this section, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(3) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

PART 5. DISHONOR

28-3-501. PRESENTMENT. (1) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(2) The following rules are subject to chapter 4, agreement of the parties, and clearing-house rules and the like:

(a) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one (1) of two (2) or more makers, acceptors, drawees or other payors.

(b) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(c) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(d) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

28-3-502. DISHONOR. (1) Dishonor of a note is governed by the following rules:

(a) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(c) If the note is not payable on demand and paragraph (b) of this subsection does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(a) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 28-4-301 or 28-4-302 or becomes accountable for the amount of the check under section 28-4-302.

(b) If a draft is payable on demand and paragraph (a) of this subsection does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(c) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(d) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (2)(b), (c) and (d) of this section, except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(4) Dishonor of an accepted draft is governed by the following rules:

(a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 28-3-504 dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

28-3-503. NOTICE OF DISHONOR. (1) The obligation of an indorser stated in section 28-3-415(1) and the obligation of a drawer stated in section 28-3-414(4) may not be enforced unless, (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section, or (ii) notice of dishonor is excused under section 28-3-504(2).

(2) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(3) Subject to section 28-3-504(3) with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within thirty (30) days following the day on which the person receives notice of dishonor.

With respect to any other instrument, notice of dishonor must be given within thirty (30) days following the day on which dishonor occurs.

28-3-504. EXCUSED PRESENTMENT AND NOTICE OF DISHONOR. (1) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(2) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(3) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

28-3-505. EVIDENCE OF DISHONOR. (1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(a) A document regular in form as provided in subsection (2) of this section which purports to be a protest;

(b) A purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(c) A book or record of the drawee, payor bank or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(2) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

PART 6. DISCHARGE AND PAYMENT

28-3-601. DISCHARGE AND EFFECT OF DISCHARGE. (1) The obligation of a party to pay the instrument is discharged as stated in this chapter or by an act or agreement with the party which would discharge an

obligation to pay money under a simple contract.

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

28-3-602. PAYMENT. (1) Subject to subsection (2) of this section, an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 28-3-306 by another person.

(2) The obligation of a party to pay the instrument is not discharged under subsection (1) of this section if:

(a) A claim to the instrument under section 28-3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(b) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

28-3-603. TENDER OF PAYMENT. (1) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(2) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(3) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

28-3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION. (1) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not

to sue or otherwise renouncing rights against the party by a signed writing.

(2) Cancellation or striking out of an indorsement pursuant to subsection (1) of this section does not affect the status and rights of a party derived from the indorsement.

28-3-605. DISCHARGE OF INDORSERS AND ACCOMMODATION PARTIES. (1) In this section, the term "indorser" includes a drawer having the obligation described in section 28-3-414(4).

(2) Discharge, under section 28-3-604 of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(3) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(4) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(5) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(6) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to dis-

charge under subsection (5) of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(7) Under subsection (5) or (6) of this section, impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under chapter 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(8) An accommodation party is not discharged under subsection (3), (4) or (5) of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 28-3-419(3) that the instrument was signed for accommodation.

(9) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

SECTION 3. That Section 28-4-101, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-101. SHORT TITLE. This chapter ~~shall be known and~~ may be cited as Uniform Commercial Code -- Bank Deposits and Collections.

SECTION 4. That Section 28-4-102, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-102. APPLICABILITY. (1) To the extent that items within this chapter are also within ~~the scope of~~ chapters 3 and 8, they are subject to the provisions of those chapters. ~~In the event of~~ If there is conflict, the provisions of this chapter govern those of chapter 3, but the provisions of chapter 8 govern those of this chapter.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

SECTION 5. That Section 28-4-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-103. VARIATION BY AGREEMENT -- MEASURE OF DAMAGES -- CERTAIN ACTION CONSTITUTING ORDINARY CARE. (1) The effect of the provisions of this chapter may be varied by agreement ~~except that no~~ but the parties to the agreement cannot disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care, or can limit the measure of damages for such the lack or failure ~~but~~. How

ever, the parties may determine by agreement determine the standards by which such the bank's responsibility is to be measured if such those standards are not manifestly unreasonable.

(2) Federal reserve regulations and operating letters circulares, clearing-house rules, and the like, have the effect of agreements under subsection (1) of this section, whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to federal reserve regulations or operating letters constitutes circulars is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing-house rules and the like or with a general banking usage not disapproved by this chapter, is prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this chapter does not constitute is not disapproval of other procedures which that may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which that could not have been realized by the use exercise of ordinary care, and where. If there is also bad faith it includes any other damages, if any, suffered by the party suffered as a proximate consequence.

SECTION 6. That Section 28-4-104, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-104. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this chapter, unless the context otherwise requires;

(a) "Account" means any deposit or credit account with a bank and includes, including a checking, time, interest or savings account demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that the part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearing house" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes, including a bank carrying that maintains an account with at another bank;

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the a draft to be presented for acceptance or payment if specified documents, certificated securities (section 28-8-102) or instructions for uncertificated securities (section 28-8-308), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(g) "Draft" means a draft as defined in section 28-3-104 or an item, other than an instrument, that is an order;

(h) "Drawee" means a person ordered in a draft to make payment;
 (gi) "Item" means any instrument for the payment of or a promise or order to pay money even though it is not negotiable but does not include money handled by a bank for collection or payment. The term does not include a payment order governed by part 6 of chapter 4 or a credit or debit card slip;

(hj) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "~~Properly payable~~" includes the ~~availability of funds for payment at the time of decision to pay or dishonor~~;

(jk) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as instructed agreed. A settlement may be either provisional or final;

(kl) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

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

<u>"Agreement for electronic presentment"</u>	Section 28-4-110.
<u>"Bank"</u>	Section 28-4-105.
"Collecting bank"	Section 28-4-105.
"Depositary bank"	Section 28-4-105.
"Intermediary bank"	Section 28-4-105.
"Payor bank"	Section 28-4-105.
"Presenting bank"	Section 28-4-105.
<u>"Presentment notice"</u>	Section 28-4-110.
<u>"Remitting bank"</u>	Section 28-4-105.

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

"Acceptance"	Section 28-3-4109.
<u>"Alteration"</u>	Section 28-3-407.
<u>"Cashier's check"</u>	Section 28-3-104.
"Certificate of deposit"	Section 28-3-104.
<u>"Certification"</u>	Section 28-3-411.
<u>"Certified check"</u>	Section 28-3-409.
"Check"	Section 28-3-104.
"Draft"	Section 28-3-104.
"Good faith"	Section 28-3-103.
"Holder in due course"	Section 28-3-302.
<u>"Instrument"</u>	Section 28-3-104.
"Notice of dishonor"	Section 28-3-5083.
"Order"	Section 28-3-103.
<u>"Ordinary care"</u>	Section 28-3-103.
<u>"Person entitled to enforce"</u>	Section 28-3-301.
"Presentment"	Section 28-3-5041.
"Promise"	Section 28-3-103.
<u>"Protest"</u>	Section 28-3-509.
"Prove"	Section 28-3-103.
<u>"Secondary party"</u>	Section 28-3-102.
<u>"Teller's check"</u>	Section 28-3-104.

"Unauthorized signature"

Section 28-3-403.

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

SECTION 7. That Section 28-4-105, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-105. "BANK" -- "DEPOSITARY BANK" -- "INTERMEDIARY BANK" -- "COLLECTING BANK" -- "PAYOR BANK" -- "PRESENTING BANK,"-----"REMITTING BANK." In this chapter ~~unless the context otherwise requires:~~

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union or trust company;

(a2) "Depository bank" means the first bank to which take an item is transferred for collection even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(b3) "Payor bank" means a bank by which an item is payable as drawn or accepted that is the drawee of a draft;

(c4) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depository or payor bank;

(d5) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e6) "Presenting bank" means any bank presenting an item except a payor bank;

(f7) ~~"Remitting bank" means any payor or intermediary bank remitting for an item.~~

SECTION 8. That Chapter 4, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-4-106, Idaho Code, and to read as follows:

28-4-106. PAYABLE THROUGH OR PAYABLE AT BANK -- COLLECTING BANK.

(1) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(2) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(3) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank.

SECTION 9. That Section 28-4-106, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-1067. SEPARATE OFFICE OF A BANK. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be

taken or notices or orders shall must be given under this chapter and under chapter 3.

SECTION 10. That Section 28-4-107, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-1078. TIME OF RECEIPT OF ITEMS. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of ~~two~~(2) P.M. or later as a cut-off cutoff hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

SECTION 11. That Section 28-4-108, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-1089. DELAYS. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment ~~may, in the case~~ of a specific items drawn on a payor other than a bank and with or without the approval of any person involved, may waive, modify or extend time limits imposed or permitted by this act chapter for a period not in ~~excess of an~~ exceeding two (2) additional banking days without discharge of ~~secondary parties and without drawers or indorsers or~~ liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this act chapter or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank provided it, and (ii) the bank exercises such diligence as the circumstances require.

SECTION 12. That Section 28-4-109, Idaho Code, be, and the same is hereby repealed.

SECTION 13. That Chapter 4, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-4-110, Idaho Code, and to read as follows:

28-4-110. ELECTRONIC PRESENTMENT. (1) "Agreement for electronic presentment" means an agreement, clearing-house rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor and other matters concerning items subject to the agreement.

(2) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(3) If presentment is made by presentment notice, a reference to "item" or "check" in this chapter means the presentment notice unless the context otherwise indicates.

SECTION 14. That Chapter 4, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-4-111, Idaho Code, and to read as follows:

28-4-111. STATUTE OF LIMITATIONS. An action to enforce an obligation, duty or right arising under this chapter must be commenced within three (3) years after the cause of action accrues.

SECTION 15. That Section 28-4-201, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-201. ~~PRESUMPTION-AND-DURATION-OF-AGENCY~~ STATUS OF COLLECTING BANKS AS AGENT AND PROVISIONAL STATUS OF CREDITS -- APPLICABILITY OF ~~ARTICLE CHAPTER~~ ITEM INDORSED "PAY ANY BANK." (1) Unless a contrary intent clearly appears and prior to before the time that a settlement given by a collecting bank for an item is or becomes final, ~~(subsection--(3)--of--section--28-4-211--and--sections--28-4-212--and 28-4-213)~~ the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner any and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and valid rights of recoupment or setoff. When If an item is handled by banks for purposes of presentment, payment, and collection, or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

(a) ~~until-the-item-has-been~~ returned to the customer initiating collection; or

(b) ~~until-the-item-has-been~~ specially indorsed by a bank to a person who is not a bank.

SECTION 16. That Section 28-4-202, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-202. RESPONSIBILITY FOR COLLECTION OR RETURN -- WHEN ACTION SEASONABLE TIMELY. (1) A collecting bank must use exercise ordinary care in:

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor or ~~directly-to-the-depositary-bank-under-subsection--(2)--of--section~~

~~28-4-212~~ after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) ~~making or providing for any necessary protest; and~~

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank ~~taking proper action~~ exercises ordinary care under subsection (1) of this section by taking proper action before its midnight deadline following receipt of an item, notice or ~~payment acts seasonably; settlement. Taking~~ proper action within a reasonably longer time ~~may be seasonable~~ constitute the exercise of ordinary care, but the bank has the burden of ~~so~~ establishing timeliness.

(3) Subject to subsection (1)(a) of this section, a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit or in the possession of others.

SECTION 17. That Section 28-4-203, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-203. EFFECT OF INSTRUCTIONS. Subject to the provisions of chapter 3 concerning conversion of instruments (section 28-3-41920) ~~and the provisions of both chapter 3 and this chapter concerning restrictive indorsements (section 28-3-206)~~, only a collecting bank's transferor can give instructions which that affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to ~~such the~~ instructions or in accordance with any agreement with its transferor.

SECTION 18. That Section 28-4-204, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-204. METHODS OF SENDING AND PRESENTING -- SENDING DIRECTLY TO PAYOR BANK. (1) A collecting bank ~~must~~ shall send items by a reasonably prompt method, taking into consideration any relevant instructions, the nature of the item, the number of such those items on hand, ~~and~~ the cost of collection involved and the method generally used by it or others to present such those items.

(2) A collecting bank may send:

(a) any item directly to the payor bank;

(b) any item to any nonbank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any nonbank payor, if authorized by federal reserve regulation or operating ~~letter~~ circular, clearing-house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

SECTION 19. That Section 28-4-205, Idaho Code, be, and the same is hereby amended to read as follows:

~~28-4-205. SUPPLYING MISSING INDORSEMENT---NO NOTICE FROM PRIOR INDORSEMENT DEPOSITORY BANK HOLDER OF UNINDORSED ITEM. If a customer delivers an item to a depository bank for collection:~~

~~(1) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement. The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of section 28-3-302, it is a holder in due course; and~~

~~(2) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor. The depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.~~

SECTION 20. That Section 28-4-206, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-206. TRANSFER BETWEEN BANKS. Any agreed method which that identifies the transferor bank is sufficient for the item's further transfer to another bank.

SECTION 21. That Section 28-4-207, Idaho Code, be, and the same is hereby repealed.

SECTION 22. That Chapter 4, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-4-207, Idaho Code, and to read as follows:

28-4-207. TRANSFER WARRANTIES. (1) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (a) The warrantor is a person entitled to enforce the item;
- (b) All signatures on the item are authentic and authorized;
- (c) The item has not been altered;
- (d) The item is not subject to a defense or claim in recoupment (section 28-3-305(1)) of any party that can be asserted against the warrantor; and
- (e) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the

transfer was of an incomplete item, according to its terms when completed as stated in sections 28-3-115 and 28-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(3) A person to whom the warranties under subsection (1) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(4) The warranties stated in subsection (1) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SECTION 23. That Chapter 4, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-4-208, Idaho Code, and to read as follows:

28-4-208. PRESENTMENT WARRANTIES. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered; and

(c) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) of this section based on an unauthorized indorsement of

the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 28-3-404 or 28-3-405 or the drawer is precluded under section 28-3-406 or 28-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (2) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SECTION 24. That Chapter 4, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-4-209, Idaho Code, and to read as follows:

28-4-209. ENCODING AND RETENTION WARRANTIES. (1) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(2) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(3) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

SECTION 25. That Section 28-4-208, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-208~~10~~. SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of

either:

(a) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When if credit ~~which--has--been~~ given for several items received at one (1) time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. ~~To the extent and s~~So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to the provisions of chapter 9, ~~except that~~ but:

(a) no security agreement is necessary to make the security interest enforceable ~~(subsection---(i)(b)---of section 28-9-203(1)(a))~~; and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

SECTION 26. That Section 28-4-209, Idaho Code, be, and the same is hereby amended to read as follows:

~~28-4-209~~11. WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN DUE COURSE. For purposes of determining its status as a holder in due course, the a bank has given value to the extent that it has a security interest in an item ~~provided that~~, if the bank otherwise complies with the requirements of section 28-3-302 on what constitutes a holder in due course.

SECTION 27. That Section 28-4-210, Idaho Code, be, and the same is hereby amended to read as follows:

~~28-4-210~~2. PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH OR AT A BANK -- LIABILITY OF ~~SECONDARY-PARTIES~~ DRAWER OR INDORSER. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 28-3-5051 by the close of the bank's next banking day after it knows of the requirement.

(2) Where if presentment is made by notice and ~~neither-honor-nor payment, acceptance or~~ request for compliance with a requirement under section 28-3-5051 is not received by the close of business on the day

after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary-party drawer or indorser by sending him it notice of the facts.

SECTION 28. That Section 28-4-211, Idaho Code, be, and the same is hereby repealed.

SECTION 29. That Chapter 4, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-4-213, Idaho Code, and to read as follows:

28-4-213. MEDIUM AND TIME OF SETTLEMENT BY BANK. (1) With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(a) The medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement; and

(b) The time of settlement is:

(i) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to section 28-4-631(1) to the person receiving settlement.

(2) If the tender of settlement is not by a medium authorized by subsection (1) of this section or the time of settlement is not fixed by subsection (1) of this section, no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(3) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(a) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(b) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(4) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

SECTION 30. That Section 28-4-212, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-2124. RIGHT OF CHARGE-BACK OR REFUND -- LIABILITY OF COLLECTING BANK -- RETURN OF ITEM. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the items, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (~~subsection (3) of section 28-4-211 and subsections (2) and (3) of section 28-4-213~~).

(2) ~~Within the time and manner prescribed by this section and section 28-4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.~~ A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(3) A depository bank which that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 28-4-301).

(4) The right to charge back is not affected by:

(a) prior previous use of the a credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item, but any bank so failing remains liable.

(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency money, the dollar amount of any charge-back or refund ~~shall~~ must be calculated on the basis of the buying-sight bank-offered spot rate for the foreign currency money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

SECTION 31. That Section 28-4-213, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-2135. FINAL PAYMENT OF ITEM BY PAYOR BANK -- WHEN PROVISIONAL DEBITS AND CREDITS BECOME FINAL -- WHEN CERTAIN CREDITS BECOME

AVAILABLE FOR WITHDRAWAL. (1) An item is finally paid by a payor bank when the bank has first done any of the following; ~~whichever happens first:~~

- (a) paid the item in cash; or
- (b) settled for the item without reserving having a right to revoke the settlement ~~and without having such right~~ under statute, clearing-house rule or agreement; or
- (c) ~~completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or~~
- (d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule or agreement.

~~Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.~~

(2) If provisional settlement for an item does not become final, the item is not finally paid.

(3) If the provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(34) If a collecting bank receives a settlement for an item which is or becomes final, ~~(subsection (3) of section 28-4-211, subsection (2) of section 28-4-213)~~ the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(45) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its a customer's account becomes available for withdrawal as of right:

(a) in any case where if the bank has received a provisional settlement for the item, when such the settlement becomes final and the bank has had a reasonable time to learn that the settlement is final receive return of the item and the item has not been received within that time;

(b) in any case where if the bank is both a the depository bank and a the payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(56) A deposit of money in a bank is final when made but, subject to applicable law stating a time for availability of funds and any right of the a bank to apply the a deposit to an obligation of the customer depositor, the a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day following after receipt of the deposit.

SECTION 32. That Section 28-4-214, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-2146. INSOLVENCY AND PREFERENCE. (1) Any If an item is in or

coming comes into the possession of a payor or collecting bank which that suspends payment and which the item is has not been finally paid shall, the item must be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if such the finality occurs automatically upon the lapse of certain time or the happening of certain events (~~subsection (3) of section 28-4-211, subsections (1)(d), (2) and (3) of section 28-4-213~~).

(4) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against such the collecting bank.

SECTION 33. That Section 28-4-301, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-301. DEFERRED POSTING -- RECOVERY OF PAYMENT BY RETURN OF ITEMS -- TIME OF DISHONOR -- RETURN OF ITEMS BY PAYOR BANK. (1) ~~Where an authorized settlement~~ If a payor bank settles for a demand item (other than a documentary draft) ~~received by a payor bank presented~~ otherwise than for immediate payment over the counter ~~has been made~~ before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover ~~any payment~~ the settlement if, before it has made final payment (~~subsection (1) of section 28-4-213~~) and before its midnight deadline, it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is ~~held for protest or is otherwise~~ unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books, it may return such the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection (1) of this section.

(3) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its clearing-house rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

SECTION 34. That Section 28-4-302, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-302. PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF ITEM. ~~In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of section 28-4-207), settlement effected or the like, if~~ (1) If an item is presented on to and received by a payor bank, the bank is accountable for the amount of:

(a) a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case where in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(2) The liability of a payor bank to pay an item pursuant to subsection (1) of this section is subject to defenses based on breach of a presentment warranty (section 28-4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

SECTION 35. That Section 28-4-303, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-303. WHEN ITEMS SUBJECT TO NOTICE, STOP-PAYMENT ORDER, LEGAL PROCESS OR SETOFF -- ORDER IN WHICH ITEMS MAY BE CHARGED OR CERTIFIED.

(1) Any knowledge, notice or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank, ~~whether or not effective under other rules of law~~ comes too late to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, ~~comes too late to so terminate, suspend or modify such right or duty~~ if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any earliest of the following:

(a) ~~accepted or certified~~ the bank accepts or certifies the item;

(b) paid the bank pays the item in cash;

(c) settled the bank settles for the item without reserving having a right to revoke the settlement ~~and without having such right~~ under statute, clearing-house rule or agreement;

(d) ~~completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged there-with or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or~~

~~(e) become~~ the bank becomes accountable for the amount of the item under ~~subsection (1)(d) of section 28-4-213 and section 28-4-302~~ dealing with the payor bank's responsibility for late return of items; or

(e) with respect to checks, a cutoff hour no earlier than one (1) hour after the opening of the next banking day after the banking

day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(2) Subject to the provisions of subsection (1) of this section items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

SECTION 36. That Section 28-4-401, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-401. WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT. (1) As against its customer,--a A bank may charge against his the account of a customer any item which that is otherwise properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and the bank.

(2) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 28-4-403(2) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 28-4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 28-4-402.

(24) A bank which that in good faith makes payment to a holder may charge the indicated account of its customer according to:

- (a) the original tenor terms of his the altered item; or
- (b) the tenor terms of his the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

SECTION 37. That Section 28-4-402, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-402. BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL DISHONOR -- TIME OF DETERMINING INSUFFICIENCY OF ACCOUNT. (1) Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake--Liability is limited to actual damages proved. If so proximately caused and proved damages and may include damages

for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(3) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one (1) determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

SECTION 38. That Section 28-4-403, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-403. CUSTOMER'S RIGHT TO STOP PAYMENT -- BURDEN OF PROOF OF LOSS. (1) A customer may by order to his bank stop payment of any item payable for his account but the order must be or any person authorized to draw on the account if there is more than one (1) person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at such a time and in such a manner as to afford that affords the bank a reasonable opportunity to act on it prior to before any action by the bank with respect to the item described in section 28-4-303. If the signature of more than one (1) person is required to draw on an account, any of these persons may stop payment or close the account.

(2) An oral order is binding upon the bank only for fourteen (14) calendar days unless confirmed in writing within that period. A written order is effective for only six (6) months unless renewed in writing. A stop-payment order is effective for six (6) months, but it lapses after fourteen (14) calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six (6) month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 28-4-402.

SECTION 39. That Section 28-4-405, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-405. DEATH OR INCOMPETENCE OF CUSTOMER. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is under-

taken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such the authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge, a bank may for ten (10) days after the date of death pay or certify checks drawn on or prior to before that date unless ordered to stop payment by a person claiming an interest in the account.

SECTION 40. That Section 28-4-406, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-406. CUSTOMER'S DUTY TO DISCOVER AND REPORT UNAUTHORIZED SIGNATURE OR ALTERATION. (1) ~~When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof~~ A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven (7) years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(3) If a bank sends or makes available a statement of account or items pursuant to subsection (1) of this section, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(24) If the bank establishes proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (13) of this section the customer is precluded from asserting against the bank:

(a) his the customer's unauthorized signature or any alteration on the item, if the bank also establishes proves that it suffered a loss by reason of such the failure; and

(b) an the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen (14) calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty (30) days, in which to examine the item or statement of account and notify the bank.

~~(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).~~

(5) If subsection (4) of this section applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (3) of this section and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (4) of this section does not apply.

(46) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one (1) year from the time after the statement and or items are made available to the customer (subsection (1)) discover and report his the customer's unauthorized signature on or any alteration on the face or back of the item or does not within three (3) years from that time discover and report any unauthorized indorsement on the item is precluded from asserting against the bank such the unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 28-4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.

~~(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.~~

SECTION 41. That Section 28-4-407, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-407. PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER PAYMENT. If a payor bank has paid an item over the stop-payment order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be is subrogated to the rights

(a) of any holder in due course on the item against the drawer or

maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

SECTION 42. That Section 28-4-501, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-501. HANDLING OF DOCUMENTARY DRAFTS -- DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR. A bank which that takes a documentary draft for collection must shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course must, shall seasonably notify its customer of such the fact even though it may have discounted or brought the draft or extended credit available for withdrawal as of right.

SECTION 43. That Section 28-4-502, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-502. PRESENTMENT OF "ON ARRIVAL" DRAFTS. When If a draft or the relevant instructions require presentment "on arrival," "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

SECTION 44. That Section 28-4-503, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-503. RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS AND GOODS -- REPORT OF REASONS FOR DISHONOR -- REFEREE IN CASE OF NEED. Unless otherwise instructed and except as provided in chapter 5, a bank presenting a documentary draft:

(a1) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment; and

(b2) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize his the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

But However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reim-

bursement for any expense incurred in the following instructions and to prepayment of or indemnity for ~~such~~ those expenses.

SECTION 45. That Section 28-4-504, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-504. PRIVILEGE OF PRESENTING BANK TO DEAL WITH GOODS -- SECURITY INTEREST FOR EXPENSES. (1) A presenting bank ~~which that~~, following the dishonor of a documentary draft, has reasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) of this section, the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

SECTION 46. That Chapter 6, Title 28, Idaho Code, be, and the same is hereby repealed.

SECTION 47. That Section 28-1-105, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

Governing law in the article on Funds Transfers. Section 28-4-638.
~~Bulk transfers subject to the chapter on Bulk Transfers. Section 28-6-102.~~

Applicability of the chapter on Investment Securities. Section 28-8-106.

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

SECTION 48. That Section 28-1-201, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent chapters of this act which are applicable to specific chapters or Parts thereof, and unless the context otherwise requires, in this act:

(1) "Action" in the sense of a judicial proceeding includes

recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (sections 28-1-205 and 28-2-208). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (section 28-1-103). (Compare "contract.")

(4) "Bank" means any person engaged in the business of banking, including any insured bank, whether chartered by federal or state law, any insured savings and loan association, whether insured by federal or state law, and any insured credit union, whether chartered by federal or state law, offering deposit or other accounts on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others, including demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous." A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or

clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law. (Compare "agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" ~~means--a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed--to him or to his order or to bearer or in blank~~ with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government ~~as--a--part--of--its--currency and~~

includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more nations.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this act.

(30) "Person" includes an individual or an organization (See section 28-1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 28-2-401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to chapter 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 28-2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with chapter 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 28-2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28-3-303, 28-4-208 and 28-4-209) a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

SECTION 49. That Section 28-1-207, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-207. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS.

(1) A party who, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest" or the like are sufficient.

(2) Subsection (1) of this section does not apply to an accord and satisfaction.

SECTION 50. That Section 28-2-403, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-403. POWER TO TRANSFER -- GOOD FAITH PURCHASE OF GOODS --

"ENTRUSTING." (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

- (a) the transferor was deceived as to the identity of the purchaser, or
- (b) the delivery was in exchange for a check which is later dishonored, or
- (c) it was agreed that the transaction was to be a "cash sale," or
- (d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery of acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on Secured Transactions (chapter 9), ~~Bank Transfers~~ (chapter 6) and Documents of Title (chapter 7).

SECTION 51. That Section 28-2-511, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-511. TENDER OF PAYMENT BY BUYER -- PAYMENT BY CHECK. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in

any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this act on the effect of an instrument on an obligation (section 28-3-~~802~~310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

SECTION 52. That Section 28-9-111, Idaho Code, be, and the same is hereby repealed.

SECTION 53. That Section 28-9-203, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST -- PROCEEDS -- FORMAL REQUISITES. (1) Subject to the provisions of section 28-4-200~~10~~ on the security interest of a collecting bank, section 28-8-321 on security interest in securities and section 28-9-113 on a security interest arising under the chapter on sales, a security interest is not enforceable against the debtor or third parties (with respect to the collateral and does not attach) unless:

- (a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and
- (b) value has been given; and
- (c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) of this section have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 28-9-306.

(4) A transaction, although subject to this chapter, is also subject to the Uniform Consumer Credit Code and the credit unions statute, chapter 21, title 26, Idaho Code, and usury provisions, (sections 28-22-105, 28-22-106 and 28-22-107), and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

SECTION 54. Rights and obligations that arose under Chapter 6, Title 28, Idaho Code, and Section 28-9-111, Idaho Code, before their repeal remain valid and may be enforced as though those statutes had not been repealed.

Approved March 31, 1993.

CHAPTER 289
(S.B. No. 1007)

AN ACT

RELATING TO GEOTHERMAL LEASES ON STATE AND SCHOOL LANDS; AMENDING SECTION 47-1608, IDAHO CODE, TO ESTABLISH A RATE COMMENSURATE WITH CURRENT RECLAMATION COSTS TO PROTECT STATE AND PRIVATE SURFACE OWNERSHIP AND PROVIDE FOR LAND BOARD RECOMMENDED SITE SPECIFIC BOND INCREASES.

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

SECTION 1. That Section 47-1608, Idaho Code, be, and the same is hereby amended to read as follows:

47-1608. BOND REQUIREMENTS. (1) The state board of ~~land~~ ~~commissioners~~ shall require the execution of a good and sufficient bond in an amount the board determines reasonable, which shall not be less than one thousand dollars (\$1,000) in favor of the state of Idaho conditioned upon the payment of all damages to the land surface and improvements thereon where the lease covers, whether or not the lands the surface of which has have been sold or leased for any other purpose.

(2) Upon commencement of operations for the construction drilling of any geothermal resource well, the lessee shall be required by the board to furnish such a bond in an amount as the board determines reasonable which shall not be less than six thousand dollars (\$6,000) which bond both shall be in lieu of the bond first mentioned in required in subsection (1) of this section and shall cover all subsequent operations on such lease; provided however, that the board may, upon finding that such action is reasonably necessary, require that a new bond in a greater amount is required at any time after operations have begun.

Approved March 31, 1993.

CHAPTER 290
(S.B. No. 1082, As Amended in the House)

AN ACT

RELATING TO APPEALS FROM THE BOARD OF TAX APPEALS; AMENDING SECTION 63-3812, IDAHO CODE, TO CLARIFY WHAT A TRIAL DE NOVO MEANS ON APPEALS TO DISTRICT COURT FROM DECISIONS OF THE BOARD OF TAX APPEALS.

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

SECTION 1. That Section 63-3812, Idaho Code, be, and the same is hereby amended to read as follows:

63-3812. APPEAL FROM BOARD -- PAYMENT OF TAXES WHILE ON APPEAL.

Whenever any taxpayer, assessor, the state tax commission or any other party appearing before the board of tax appeals is aggrieved by a decision of the board of tax appeals or a decision on a motion for rehearing, an appeal may be taken to the district court located in the county of residence of the affected taxpayer, or to the district court in and for the county in which property affected by an assessment is located. The appeal shall be taken and perfected in the following manner:

(a) The appellant shall cause notice specifying the grounds of appeal to be filed with the clerk of the board of tax appeals within thirty (30) days after copy of the final decision of the board shall have been deposited in the mail. The grounds of appeal specified in such notice shall frame the issues for such appeal.

(b) Any record made in such matter together with the record of all proceedings shall be filed by the clerk with the district court of the proper county.

(c) Appeals may be based upon any issue presented by the appellant to the board of tax appeals and shall be heard and determined by the court without a jury in a trial de novo on the issues in the same manner as though it were an original proceeding in that court. The court may affirm, reverse or modify the order, direct the tax collector of the county or the state tax commission to refund any taxes found in such appeal to be erroneously or illegally assessed or collected or may direct the collection of additional taxes in proper cases.

(d) Nothing in this section shall be construed to suspend the payment of taxes pending any appeal, except that any privileges as to bonds or other rights extended by the provisions of chapters 30 and 36, title 63, Idaho Code, shall not be affected. Payment of taxes while an appeal hereunder is pending shall not operate to waive the right to an appeal.

(e) Any final order of the district court under this section shall be subject to appeal to the supreme court in the manner provided by law.

Approved March 31, 1993.

CHAPTER 291

(S.B. No. 1204, As Amended in the House)

AN ACT

RELATING TO THE HAZARDOUS WASTE MANAGEMENT ACT; AMENDING SECTION 39-4403, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-4404, IDAHO CODE, TO PROVIDE THAT THE BOARD OF HEALTH AND WELFARE IS DIRECTED TO PROMULGATE RULES AND REGULATIONS WHICH ARE CONSISTENT WITH RCRA AND THE FEDERAL REGULATIONS ADOPTED BY THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY TO IMPLEMENT RCRA; AMENDING SECTION 39-4406, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4407, IDAHO CODE, TO AUTHORIZE ADOPTION BY REFERENCE REGULATIONS CONTAINING CERTAIN LISTS OF

WASTES, TO PROVIDE FOR UPDATING OF RULES AND TO PROVIDE FOR DELISTING OF WASTES; AMENDING SECTION 39-4410, IDAHO CODE, TO REVISE PROCEDURES FOR TRANSPORTATION OF HAZARDOUS WASTES; AMENDING SECTION 39-4411, IDAHO CODE, AS AMENDED BY SECTION 43, CHAPTER 213, LAWS OF 1990, TO AUTHORIZE THE RELEASE OF CONFIDENTIAL INFORMATION IF THE DIRECTOR DETERMINES THAT RELEASE OF THE INFORMATION IS NECESSARY TO SAFEGUARD THE PUBLIC HEALTH AND SAFETY; AMENDING SECTION 39-4416, IDAHO CODE, TO PROVIDE FOR A BOND IN ACCORDANCE WITH THE IDAHO RULES OF CIVIL PROCEDURE; AND AMENDING SECTION 39-4427, IDAHO CODE, TO PROVIDE FOR FEES PER GATE TON, TO PROVIDE FOR A WAIVER OF CERTAIN FEES AND TO PROVIDE FOR REPORTS AND AUDITS.

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

SECTION 1. That Section 39-4403, Idaho Code, be, and the same is hereby amended to read as follows:

39-4403. DEFINITIONS. As used in this chapter:

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

(2) "Commercial hazardous waste facility or site" means any hazardous waste facility whose primary business is the treatment, storage or disposal, for a fee or other consideration, of hazardous waste generated offsite by generators other than the owner and operator of the facility.

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

(4) "Director" means the director of the Idaho department of health and welfare or the director's authorized agent.

(5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(6) "Gate ton" means the weight, in tons (2,000 pounds/ton), of waste material received at a facility. This weight does not include any subsequent changes to the weight resulting from the management of the waste by the facility.

(7) "Generator" means any person, who by virtue of ownership, management, or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(78) "Hazardous waste" means a waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illnesses; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties but do not

include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to national pollution discharge elimination system permits under the Federal Water Pollution Control Act, as amended, 33 U.S.C., Section 1251 et seq., or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C., Section 2011 et seq.

(89) "Hazardous waste management" means the systematic control of the collection, source separation, storage, treatment, transportation, processing, and disposal of hazardous wastes.

(910) "Hazardous waste facility or site" means any property, structure, or ancillary equipment intended or used for the transportation, treatment, storage or disposal of hazardous wastes.

(101) "Injection" means the subsurface emplacement of free liquids.

(112) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste identification code(s), and destination of hazardous waste during any transportation from the point of generation to the point of treatment, storage or disposal.

(123) "Manifested waste" means waste which at the point of origin or generation is required to be manifested for transportation in a manner similar to that of the federal uniform hazardous waste manifest or by other manifest requirements designed to assure proper treatment, storage and disposal of such waste.

(134) "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.

(145) "RCRA" means the Resource Conservation and Recovery Act of 1976 as amended in 1978, 1980 and 1984 from time to time.

(156) "Restricted hazardous waste" means either of the following: (a) Any hazardous waste which contains any of the following substances, in the following concentrations, as determined without considering any dilution which may occur, unless the dilution is a normal part of the manufacturing process:

(i) Liquid hazardous wastes containing free cyanides or sulfides at concentrations greater than, or equal to, one thousand (1,000) parts per million.

(ii) Liquid hazardous wastes containing any of the following metals or elements, or compounds of these metals or elements, at concentrations greater than, or equal to, any of the following:

Arsenic.....	500 parts per million
Cadmium.....	100 parts per million
Chromium (VI).....	500 parts per million
Lead.....	500 parts per million
Mercury.....	20 parts per million
Nickel.....	134 parts per million
Selenium.....	100 parts per million
Thallium.....	130 parts per million
(iii) Liquid hazardous wastes having a pH less than or equal	

~~to two (2);~~

~~(iv) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than, or equal to, fifty (50) parts per million;~~

~~(v) Hazardous wastes containing halogenated organic compounds in total concentration greater than, or equal to, one thousand (1,000) milligrams per kilogram;~~

~~(b) A hazardous waste may be classified as a restricted hazardous waste by the adoption of rules and regulations by the board, taking into account the hazardous wastes banned from land disposal by the U.S. environmental protection agency a waste or combination of wastes regulated as land disposal restricted pursuant to federal statutes and regulations, including 40 CFR part 268.~~

(167) "Storage" means the containment of hazardous wastes, on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

(178) "Transportation" means the movement of any hazardous waste to or from a hazardous waste facility or site.

(189) "Transporter" means any person who transports a hazardous waste to or from a hazardous waste facility or site.

(1920) "Treatment" means any method, technique, or process, including neutralization, which is designed not to be an integral part of a production process, but which is rather designed to change the physical, chemical, or biological character or composition of any hazardous waste prior to storage or final disposal so as to neutralize such waste or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(201) "Waste" means any solid, semisolid, liquid or contained gaseous material for which no reasonable use or reuse is intended or which is intended to be discarded.

SECTION 2. That Section 39-4404, Idaho Code, be, and the same is hereby amended to read as follows:

39-4404. CONSISTENCY WITH FEDERAL LAW. The legislature intends that the state of Idaho enact and carry out a hazardous waste program that will enable the state to assume primacy over hazardous waste control from the federal government.

The legislature finds that the RCRA, as amended, 42 U.S.C., section 6901 et seq., and regulations adopted pursuant thereto, establish complex and detailed provisions for regulation of those who generate, transport, treat, store, and dispose of hazardous wastes. 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 RCRA. However, by the provisions of this chapter, the legislature desires to avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems.

Therefore, the board is directed to promulgate rules and regulations which are in substance consistent with RCRA and the federal regulations adopted by the administrator of the United States environmen-

tal protection agency to implement RCRA. ~~Until such time as the board has promulgated rules and regulations concerning mining and mineral wastes and materials under study by the administrator, those wastes and materials shall not be considered or defined as hazardous wastes under this chapter, provided, however, that spent potliners from primary aluminum reduction, or environmental protection agency hazardous waste number K008, shall be defined as hazardous waste.~~ Farmers and ranchers who treat, store, or dispose of waste pesticides from their operations on lands owned or controlled by them shall not be required by board rules or regulations to do anything more than follow the instructions on the pesticide label and triple rinse empty containers in accordance with the RCRA regulations of the environmental protection agency. The board may not promulgate any rule or regulation that would impose conditions or requirements more stringent or broader in scope than RCRA and the RCRA regulations of the environmental protection agency. The board may, however, promulgate procedural rules and regulations and rules and regulations specifically authorized by this chapter or other state statutes without showing that those rules and regulations are required by RCRA or the regulations of the environmental protection agency; provided that those rules and regulations shall not conflict with this section, other sections of this chapter, RCRA, or the rules and regulations of the environmental protection agency. Any rule or regulation promulgated by the board shall be valid until it is repealed or modified through the administrative process of section 67-5201, Idaho Code, et seq.

SECTION 3. That Section 39-4406, Idaho Code, be, and the same is hereby amended to read as follows:

39-4406. GENERAL POWERS AND DUTIES OF DIRECTOR. The director:

(1) Shall take all actions not inconsistent with this chapter as are necessary and feasible to enable the department to assume and continue primacy over hazardous waste management, pursuant to the RCRA as amended, ~~42-U.S.C., Sections 6901-6987;~~

(2) May conduct and publish studies of hazardous waste management in this state;

(3) Shall develop, publish, and revise as necessary a plan for the safe and effective management of hazardous wastes within this state. Such a plan may identify those locations in the state which are not suitable for the establishment of hazardous waste treatment or disposal facilities or sites;

(4) Shall exercise all powers and discharge all duties expressed in or implied from the other sections of this chapter.

SECTION 4. That Section 39-4407, Idaho Code, be, and the same is hereby amended to read as follows:

39-4407. IDENTIFICATION OF HAZARDOUS WASTES. (1) The board shall establish criteria for determining if any waste or combination of wastes is hazardous or nonhazardous, for the purposes of this chapter. ~~Any waste which meets the hazardous waste criteria established by the board shall be considered a hazardous waste regardless of whether or not it is included by the board in a list of hazardous wastes.~~

(2) The board may adopt, and amend from time to time a list or lists of hazardous wastes. The board may, with public notice but without the necessity of a public hearing, list as hazardous any waste or combination of wastes determined to be hazardous by the United States environmental protection agency. To accomplish this goal, the board may adopt by reference the regulations containing the lists of hazardous wastes and the set of characteristics for identifying hazardous wastes promulgated by the United States environmental protection agency pursuant to RCRA. The board shall update the regulations adopted pursuant to this section as needed to reflect regulatory amendments promulgated by the United States environmental protection agency. The board may adopt regulations for a state hazardous waste delisting program equivalent to that set forth in 40 CFR sections 260.20(b) and 260.22. The state delisting program shall provide for public notice and opportunity for comment before granting or denying delisting requests.

SECTION 5. That Section 39-4410, Idaho Code, be, and the same is hereby amended to read as follows:

39-4410. TRANSPORTATION OF HAZARDOUS WASTE. (1) The board shall promulgate hazardous waste transportation rules and regulations to control the intrastate and interstate transportation of federally regulated types and quantities of hazardous waste. The rules and regulations shall be consistent with the rules and regulations issued by the United States department of transportation and the United States environmental protection agency. The rules and regulations shall also be consistent with the rules and regulations of the Idaho public utilities commission unless such consistency would impair the primacy or the effectiveness of the state's hazardous waste management program. In that case the board shall confer with the commission and endeavor to develop mutually acceptable transportation rules and regulations. If mutually acceptable rules and regulations cannot be developed, the board shall promulgate transportation rules and regulations that minimize conflict with the commission's rules and regulations while assuring the primary authority and effectiveness of the state's hazardous waste management program. Rules and regulations so promulgated by the board shall prevail over conflicting rules and regulations of the commission.

(2) The hazardous waste transportation rules and regulations shall apply to all transporters of federally regulated types and quantities of hazardous waste generated either by themselves or by others. These rules and regulations shall apply to any movement of a regulated quantity of hazardous wastes to or from a hazardous waste facility or site.

(3) The hazardous waste transportation rules and regulations shall provide for but not be limited to:

- (a) Standards for the containerization and labeling of hazardous wastes;
- (b) Standards for the handling and placarding of hazardous waste shipments;
- (c) A hazardous waste tracking system requiring that:
 - (i) All transporters of federally regulated types and quan-

tities of hazardous waste obtain an identification number from the department, the environmental protection agency, or another approved state program, before accepting hazardous waste for transport;

(ii) All shipments of federally regulated types and quantities of hazardous waste to be shipped off site or received from off site be accompanied by a manifest or similar form describing the hazardous waste being shipped and its destination;

(iii) A copy of each manifest or similar form be returned to the generator and/or originator of the shipment and a copy be retained by the transporter for a minimum of three (3) years.

(4) The hazardous waste transportation rules and regulations may provide for special routing of hazardous waste shipments in this state when necessary to protect the public health, the public safety, or the environment consistent with federal statutory, regulatory and constitutional requirements.

(5) No commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, shall receive regulated quantities of hazardous waste as defined by federal law from a motor vehicle or trailer unless the hazardous waste is accompanied by a proper manifest and the transporter has obtained a special permit from the Idaho transportation department as provided in sections 49-433 49-2202 and 49-2203, Idaho Code. If an improperly documented shipment of hazardous waste arrives at a permitted commercial hazardous waste facility or site, the owner or operator of the facility or site shall immediately notify the Idaho transportation department and the Idaho department of law enforcement and follow the requirements of its permits and licenses for notification of appropriate agencies.

SECTION 6. That Section 39-4411, Idaho Code, as amended by Section 43, Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

39-4411. RECORDS -- REPORTING -- MONITORING. (1) Pursuant to the provisions of section 39-4405, Idaho Code, the board shall adopt, and amend as necessary, such rules and regulations relating to records, reporting, and monitoring as may be needed to achieve the purposes of this chapter. These rules may include, but shall not be limited to, prescribing procedures and requirements for:

(a) The establishment, maintenance, and format of records and reports;

(b) The submittal of records and reports;

(c) The taking of samples and the performing of tests and of analyses;

(d) The use of approved monitoring methods and techniques;

(e) The installation, calibration, use, and maintenance of monitoring equipment; and

(f) The provision of relevant information to the department.

(2) Sixty (60) days after promulgation of the criteria and lists specified under section 39-4407, Idaho Code, and the rules and regulations required under section 39-4405, Idaho Code, and subsection (1) of this section, the generation, transportation, treatment, storage,

or disposal of a hazardous waste in this state by any person without reporting such activity to the department as required by the regulations issued pursuant to subsection (1) of this section shall be unlawful.

(3) Information obtained by the department or by agents, contractors, or other representatives of the department, under any provisions of this chapter, shall be available to the public, unless the information, or parts thereof, if made public, would divulge methods, processes, or activities constituting trade secrets, in which case the information shall be subject to disclosure according to chapter 3, title 9, Idaho Code. Nothing in this subsection shall be construed as limiting the disclosure of information by the department to any officer, employee, or authorized representative of the state or the United States, as necessary to carry out the provisions of this chapter or the provisions of RCRA. The provisions of this section shall not limit the department's authority to release confidential information during an emergency involving hazardous waste, if the director determines that release of the information is necessary to safeguard the public interest health and safety.

(4) Each generator shall, at the discretion of the director, no later than thirty (30) days after the end of each calendar quarter submit a written report to the department including the following information:

- (a) The types and quantities of hazardous wastes generated;
- (b) The types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal;
- (c) The types and quantities of such wastes remaining in storage at the end of the reporting period;
- (d) Whether such wastes are destined for disposal or treatment in this state or whether such wastes are destined for disposal or treatment outside this state.

(5) The operator of each hazardous waste disposal facility or site in the state shall, no later than thirty (30) days after the end of each calendar quarter, submit a written report to the department providing information on the types and quantities of wastes received which were generated in Idaho, and information on the types and quantities of wastes received which were generated in other states.

(6) Prior to December 31 of each year the department shall submit a report to the governor and the legislature detailing the types and quantities of hazardous wastes generated in this state, the types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal, the types and quantities of such wastes remaining in storage at the end of the most recent reporting period and the types and quantities of hazardous waste generated outside this state and shipped into this state for storage or disposal.

SECTION 7. That Section 39-4416, Idaho Code, be, and the same is hereby amended to read as follows:

39-4416. CITIZEN SUITS. (1) Except as provided in subsection (2) of this section, any person who has been injured or damaged by an alleged violation of any permit, standard, regulation, condition,

requirement, or order which has become effective pursuant to this chapter, may commence a civil action on that person's own behalf against any person alleged to have committed the violation. A person commencing an action under this section shall be required to file a bond or equivalent security in an amount not less than one thousand dollars (\$1,000) or in conformance with the requirements of rule 65(c) of the Idaho Rules of Civil Procedure if injunctive relief is sought.

(2) No action may be commenced under subsection (1) of this section if the department has commenced and is diligently prosecuting an administrative, civil, or criminal action to require compliance with the law. Further, no action may be commenced under subsection (1) of this section unless the plaintiff has given the department sixty (60) days' notice and substantial evidence of the violation upon which the citizens' action is based. However, if the department commences an action in a court of the state of Idaho, any interested person may intervene as provided in rule 24(a) of the Idaho Rules of Civil Procedure.

(3) In any action under this section, the department may intervene as a matter of right.

(4) When issuing any final order in any action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing party, whenever the court determines such an award is appropriate, except that the state of Idaho shall not be required to pay such costs in any citizen suit where the state has become a party.

(5) Nothing in this section shall restrict any right which a person, or class of persons, may have under any other statute or the common law.

SECTION 8. That Section 39-4427, Idaho Code, be, and the same is hereby amended to read as follows:

39-4427. HAZARDOUS WASTE DISPOSAL FEE. (1) On and after July 1, 1992, there is imposed on the owner or operator of every commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, a fee of twenty-six dollars (\$26.00) per gate ton, or fraction thereof, on all materials disposed of at the facility or site, and, on and after January 1, 1993, the fee shall be thirty dollars (\$30.00) per gate ton, or fraction thereof, on all materials disposed of at the facility or site.

(2) The fees set forth in subsection (1) of this section shall not apply to any of the following types of wastes:

(a) Wastes generated or disposed of by a public agency or other person operating a household hazardous waste collection program;

(b) Wastes generated or disposed of by any agency of the state of Idaho.

Any waste for which the fees are waived under the provisions of this section must be noted as fee-waived waste on the return required in section 39-4428, Idaho Code, and is subject to all audit provisions of section 39-4429, Idaho Code.

CHAPTER 292
(S.B. No. 1259)

AN ACT

APPROPRIATING MONEYS FOR THE OFFICE OF THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 1994; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO STAFF.

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

SECTION 1. There is hereby appropriated to the State Board of Education for the Office of the State Board of Education the following amounts to be expended according to the designated expense classes from the listed fund for the period July 1, 1993, through June 30, 1994:

FOR:	
Personnel Costs	\$698,600
Operating Expenditures	189,900
Capital Outlay	<u>3,300</u>
TOTAL	\$891,800
FROM:	
General Fund	\$891,800

SECTION 2. It is legislative intent that the State Board of Education shall reduce the staff in the Office of the State Board of Education.

Approved March 31, 1993.

CHAPTER 293
(S.B. No. 1260)

AN ACT

APPROPRIATING MONEYS FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR FISCAL YEAR 1994.

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 according to the designated expense classes from the listed fund for the period July 1, 1993, through June 30, 1994:

FOR:	
Personnel Costs	\$1,493,400
Operating Expenditures	1,199,400
Capital Outlay	<u>64,500</u>
TOTAL	\$2,757,300
FROM:	
Public Employee Retirement Administration Fund	\$2,757,300

Approved March 31, 1993.

CHAPTER 294
(S.B. No. 1261)

AN ACT
APPROPRIATING MONEYS FOR COMMUNITY COLLEGE SUPPORT FOR FISCAL YEAR
1994.

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

SECTION 1. There is hereby appropriated to the State Board of Education for Community College Support the following amount, from the listed fund to be expended for the period July 1, 1993, through June 30, 1994:

FROM:

General Fund	\$8,900,800
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Approved March 31, 1993.

CHAPTER 295
(H.B. No. 95, As Amended)

AN ACT
RELATING TO THE PROPERTY TAX EXEMPTION FOR PROPERTY OF ELECTRIC AND NATURAL GAS UTILITIES USED TO PROVIDE POWER FOR IRRIGATION; AMENDING SECTION 63-105J, IDAHO CODE, TO PROVIDE THAT PROPERTY QUALIFIES FOR THE EXEMPTION IF IT IS USED FOR EITHER GENERATING OR DELIVERING ELECTRIC POWER FOR USE IN IRRIGATION OR IF IT IS PROPERTY USED FOR EITHER TRANSMITTING OR DELIVERING NATURAL GAS TO BE USED FOR IRRIGATION; AND AMENDING SECTION 63-106, IDAHO CODE, TO PROVIDE A PROCEDURE FOR PASSING THE BENEFIT OF THE EXEMPTION TO THE IRRIGATOR WHEN THE IRRIGATOR IS NOT A CUSTOMER OF THE OWNER OF THE PROPERTY EXEMPTED IN SECTION 63-105J, IDAHO CODE, AND PROVIDING THAT CONSUMERS SHALL FILE AN APPLICATION WITH THE STATE TAX COMMISSION.

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

SECTION 1. That Section 63-105J, Idaho Code, be, and the same is hereby amended to read as follows:

63-105J. PROPERTY EXEMPT FROM TAXATION -- PROPERTY USED FOR GENERATING AND DELIVERING ELECTRICAL POWER FOR IRRIGATION OR DRAINAGE PURPOSES AND PROPERTY USED FOR TRANSMITTING AND DELIVERING NATURAL GAS ENERGY FOR IRRIGATION OR DRAINAGE PURPOSES. The following property is exempt from taxation: Property used for generating and or delivering electrical power to the extent that such property is used for furnishing power for pumping water for irrigation or drainage purposes on lands in the state of Idaho, and property used for transmitting and or delivering natural gas energy to the extent that such property is used for furnishing natural gas energy for pumping water for irrigation or

drainage purposes on lands in the state of Idaho. This exemption shall accrue to the benefit of the consumer of such power, and or the consumer of such natural gas energy, except in cases where the water so pumped is sold or rented to irrigate lands, in which event the property used for generating and or delivering power, and property used for transmitting and or delivering natural gas energy, shall be assessed for taxation to the extent that such water is so sold or rented.

SECTION 2. That Section 63-106, Idaho Code, be, and the same is hereby amended to read as follows:

63-106. ELECTRIC, OR GAS, PUBLIC UTILITIES PUMPING WATER FOR IRRIGATION OR DRAINAGE -- REDUCTION OF ASSESSMENT IN ACCORDANCE WITH EXEMPTION -- CREDIT ON CUSTOMERS' BILLS OR PAYMENT TO CONSUMERS. (1) The state tax commission shall, at the time of assessment of the property of any electrical, or gas, public utility, cooperative organized under the Rural Electrification Administration Act of the United States Congress, or other company distributing electrical power ("utility"), determine the amount of the exemption under section 63-105J, Idaho Code, and shall reduce such assessment so that any such utility shall not be required to pay any taxes upon that portion of its property so exempted.

The amount of such exemption or reduction by the state tax commission shall be as nearly as practicable, such as would yield the amount of taxes included in the rates of such utility under the tariff schedule(s) applicable to the furnishing of such electricity or gas.

(2) The full amount of taxes which would have been due from such utility if such exemption had not been made, shall be credited or paid annually, for the year in which the exemption is made, on the electric or gas bill, to the consumer by the utility furnishing such electricity or gas for irrigation purposes.

(3) If the consumer is not a customer of the deliverer of electrical power or natural gas energy, the full amount of taxes which would have been due from such utility if such exemption had not been made, shall be paid annually, for the year in which the exemption is made, directly to the consumer by the utility delivering such electricity or gas for irrigation purposes. To qualify for credit or direct payment the person or organization at the point of delivery must also be the person or organization pumping water for irrigation purposes and not a distributor or redistributor of electrical power or natural gas energy.

(4) For the purposes of determining the benefit to which each consumer is entitled by virtue of this exemption, the following procedure is provided.

To receive the benefit of the exemption under section 63-105J, Idaho Code, and this section, each consumer who is not a customer of the deliverer of electrical power or gas energy must file an application with the state tax commission on or before April 30 each year except that for the year 1993, only such application may be filed on or before June 15. The state tax commission shall prescribe by rule the form and information necessary for such application.

On or before the fifteenth day of November each year, the tax col-

lector of each county shall transmit to the state tax commission, duplicate tax statements of each utility, showing the taxes payable by such utility in his county. The state tax commission shall as soon as practicable thereafter, certify to each utility, the aggregate saving in taxes effected in the several counties to each utility by reason of this exemption. On or before the fifteenth day of December of each year, each utility shall file with the state tax commission of Idaho, a statement showing the revenues which were or are to be collected from each irrigation or drainage pumping consumer, and the ratio between the aggregate savings in taxes certified to it by the state tax commission and the aggregate revenues which were or are to be collected from these consumers. The utility shall determine the credit to which each consumer is entitled by virtue of this exemption and shall certify to the state tax commission that it has refunded or credited against the consumers' bills, the amounts due each consumer. This refund or credit shall equal each consumer's bill for the year multiplied by the ratio calculated pursuant to the provisions of this paragraph. The public utilities commission shall have jurisdiction under the public utilities law to insure utility compliance with the provisions of this statute.

Approved March 31, 1993.

CHAPTER 296
(H.B. No. 116, As Amended)

AN ACT

RELATING TO PUBLIC HEALTH DISTRICTS; AMENDING SECTION 39-416, IDAHO CODE, TO REQUIRE THAT MEASURES ADOPTED BY PUBLIC HEALTH DISTRICTS WHICH AFFECT THE PUBLIC SHALL BE ADOPTED IN COMPLIANCE WITH THE ADMINISTRATIVE PROCEDURE ACT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 39-416, Idaho Code, be, and the same is hereby amended to read as follows:

39-416. REGULATIONS ADOPTED BY DISTRICT BOARD -- PROCEDURE. (1) The district board by the affirmative vote of a majority of its members may adopt, amend or rescind regulations, rules and standards as it deems necessary to carry out the purposes and provisions of this act.

(2) Every rule, regulation or standard adopted, amended, or rescinded by the district board shall be done in a manner conforming to the provisions of chapter 52, title 67, Idaho Code.

(3) At the same time that proposed rules, regulations and standards are transmitted to the director of the legislative council, they shall be submitted for review and comment to the state board of health and welfare, and to the board of county commissioners of each county within the public health district's jurisdiction. The state board of health and welfare shall, within seventy-five (75) days of receipt of

a district board's proposed rules or regulations, disapprove of the adoption of the rules or regulations if, on the advice of the attorney general, such rules and regulations would be in conflict with state laws, rules or regulations. The state board of health and welfare shall immediately advise the district board as to the reason for the disapproval.

(4) This section does not apply to measures adopted in for the internal operation of the district board in its--administrative--functions--and--duties, as enumerated in section 39-414, Idaho Code or for federal programs where the regulations are established by the federal government but shall apply to all measures affecting the public at large or any identifiable segment thereof.

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 31, 1993.

CHAPTER 297
(H.B. No. 118)

AN ACT

RELATING TO THE ANNUAL LICENSING OF VEHICLE DEALERS; AMENDING SECTION 49-1607, IDAHO CODE, TO SET LICENSING PERIODS FROM ANNUAL RENEWALS TO STAGGERED RENEWALS BASED ON THE MONTH OF INITIAL LICENSING; AMENDING SECTION 49-1611, IDAHO CODE, TO REMOVE THE REQUIREMENT FOR THE DEPARTMENT TO LIST THE NAME AND ADDRESS OF THE DEALER EMPLOYING A SALESMAN FROM A VEHICLE SALESMAN'S LICENSE CARD; AMENDING SECTION 49-1634, IDAHO CODE, TO CHANGE THE REFERENCE FROM CALENDAR YEAR TO LICENSING YEAR WHEN CERTIFYING COMPLIANCE WITH THE MINIMUM SALES REQUIREMENT TO MAINTAIN RENEWAL OF A DEALER'S LICENSE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-1607, Idaho Code, be, and the same is hereby amended to read as follows:

49-1607. FEES -- FUNDS -- EXPENSES -- EXPIRATION OF LICENSES. (1) The department shall collect with each application for licensure, the following fees:

(a) Dealer's, wholesale dealer's and vehicle manufacturer's license, initial application, one hundred twenty-five dollars (\$125), ten dollars (\$10.00) of which shall be deposited in the county current expense fund. Renewal application, one hundred dollars (\$100).

(b) Vehicle salesman's license, twenty-five dollars (\$25.00), ten dollars (\$10.00) of which shall be deposited in the county current expense fund.

(c) Distributor-factory branch-distributor branch license, one

hundred dollars (\$100).

(d) Representative's license, twenty-five dollars (\$25.00).

(e) To reissue a license, salesman and dealer identification cards or other licensing documents at a dealer's request, not resulting from an error by the department, a fee of ten dollars (\$10.00) per document.

(f) Supplemental lot license or relocated principal place of business, and temporary supplemental lot, twenty-five dollars (\$25.00) for license issued to a single dealer. A fee of fifty dollars (\$50.00) for a license issued to a group of dealers for a temporary supplemental lot.

~~(2) With the exception of salesman licenses, any renewal application postmarked or delivered to the department after January 31 shall be processed as an initial application.~~

~~(3)~~ All fees shall be paid over to the state treasurer for credit to the state highway account out of which shall be paid the expenses of the department and the expenses incurred in enforcing the provisions of this chapter.

~~(4)~~ Dealer licenses, if not suspended or revoked, ~~shall be in effect through December 31 next following the date of issuance.~~ Upon expiration, ~~unless by suspension or revocation,~~ may be renewed from year to year upon the payment of the fees specified in this section to accompany applications, and renewals shall be made in accordance with the provisions of section 49-1634, Idaho Code.

(a) There shall be twelve (12) licensing periods, starting with January and ending in December. A dealer's license shall be in effect from the month of initial licensing through the last day of the next year's calendar month that precedes the month of the initial licensing. During the first calendar year of the staggered licensing system, a dealership may, for the purpose of establishing a preferred licensing period, choose to renew its license for six (6) to eighteen (18) months at a cost of eight dollars and fifty cents (\$8.50) per month.

(b) Any renewal license application received or postmarked after thirty (30) days from the end of the previous year's license period shall be processed as an initial application and initial fees shall be paid.

(54) Salesman licenses, if not suspended or revoked, shall be valid for three (3) years from the date of issue provided that:

(a) Employment remains with the sponsoring dealership; and

(b) The sponsoring dealership has a valid license issued by the department.

Renewals shall be issued in accordance with the provisions of section 49-1635, Idaho Code.

SECTION 2. That Section 49-1611, Idaho Code, be, and the same is hereby amended to read as follows:

49-1611. DISPLAY, FORM AND CUSTODY OF DEALER'S AND SALESMAN'S LICENSE. The department shall prescribe each form of the license. It shall be the duty of each dealer to display conspicuously his own license in his place of business. The director shall prepare and deliver a pocket card, which shall certify that the person whose name

appears on the card is a licensed dealer or vehicle salesman, as the case may be, and each vehicle salesman's card shall also contain the name--and-address-of-the-dealer-employing-him; a current photograph of the applicant and the date of expiration of the license. Each and every salesman shall, on request, display his card.

SECTION 3. That Section 49-1634, Idaho Code, be, and the same is hereby amended to read as follows:

49-1634. DEALER SALES -- MINIMUM SALES REQUIRED FOR LICENSE RENEWAL. (1) A vehicle dealer shall certify upon application for renewal of his dealer's license that during the preceding calendar licensing year he sold at least five (5) vehicles, either at retail or wholesale.

(2) Failure to sell or to verify the sale of a minimum of five (5) vehicles shall be grounds for the department to deny renewal of the dealer's license.

(3) Any vehicle dealer who has had his license denied or has failed to meet the requirement to sell a minimum of five (5) vehicles during the preceding calendar licensing year is entitled to a hearing as provided in section 49-1618, Idaho Code.

SECTION 4. This act shall be in full force and effect on and after January 1, 1994.

Approved March 31, 1993.

CHAPTER 298
(H.B. No. 158)

AN ACT

RELATING TO MOTOR VEHICLE CERTIFICATES OF TITLE; AMENDING SECTION 49-505, IDAHO CODE, TO PROVIDE FOR THE ISSUANCE OF AN ELECTRONIC RECORD OF TITLE AND LIEN FILING UPON WRITTEN AGREEMENT BETWEEN THE DEPARTMENT AND THE LIENHOLDER; AMENDING SECTION 49-510, IDAHO CODE, TO PROVIDE FOR THE CREATION OF AN ELECTRONIC RECORD OF TITLE AND LIEN FILING; AMENDING SECTION 49-511, IDAHO CODE, TO PROVIDE THAT A CANCELLATION OR DISCHARGE OF LIEN NOTICE SHALL BE DELIVERED TO THE DEPARTMENT; AMENDING SECTION 49-513, IDAHO CODE, TO PROVIDE FOR THE SALE OF AN ENCUMBERED VEHICLE ON WHICH EXISTS AN ELECTRONIC LIEN FILING; AND AMENDING SECTION 49-517, IDAHO CODE, TO AUTHORIZE AN ELECTRONIC SYSTEM OF FILING LIENS.

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

SECTION 1. That Section 49-505, Idaho Code, be, and the same is hereby amended to read as follows:

49-505. ISSUANCE OF CERTIFICATES OF TITLE BY DEPARTMENT -- DELIVERY -- ELECTRONIC FILE FOR LIENHOLDERS. Certificates of title shall be printed by the department. The original copy shall be delivered to the

applicant if there are no liens or encumbrances on the certificate. If there are liens or encumbrances recorded, the certificate shall be delivered or mailed to the holder of the lien or encumbrance who is first in time, on the date of the application.

In place of physically issuing a paper certificate of title, the department may create a paperless electronic record of title and lien filing and suspend the requirement to issue a certificate of title if the department and the lienholder enter into a written agreement authorizing the creation of the electronic record of the certificate of title.

SECTION 2. That Section 49-510, Idaho Code, be, and the same is hereby amended to read as follows:

49-510. LIENS AND ENCUMBRANCES -- FILING -- FEE -- NOTATION ON CERTIFICATE -- CONSTRUCTIVE NOTICE. No lien or encumbrance on any vehicle registered under the laws of this state created subsequent to December 31, 1986, irrespective of whether such registration was effected prior or subsequent to the creation of the lien or encumbrance, shall be perfected as against creditors or subsequent purchasers or encumbrancers without notice until the holder of the lien or encumbrance, or his successor or assignee, has complied with the requirements of section 49-504, Idaho Code, and has filed the properly completed title application and all required supporting documents with the department or an agent of the department.

When the holder of a lien or encumbrance, his successor or assignee, has filed with the department or agent of the department a properly completed title application and supporting documents as required by section 49-504, Idaho Code, it shall be the duty of the department or agent of the department to file the same, indorsing on the title application the date and hour of the creation of the lien or encumbrance. A lien is perfected as of the time of its creation if the transaction is notarized and if the filing is completed with the department or an agent of the department within thirty (30) calendar days thereafter; otherwise, as of the date of the filing with the department or an agent of the department. If the title application is incomplete or if the supporting documents are incomplete or missing, the title application and supporting documents as submitted will be returned to the lien holder or his successor or assignee for correction and, if the application is not resubmitted in a complete form, including completed supporting documents, to the department or to the agent of the department within twenty (20) days of their having been returned to the lien holder or his successor or assignee, the original date and hour of receipt by the department or agent of the department shall be void.

When the department is satisfied as to the genuineness and regularity of the documents submitted, it shall issue a new certificate of title which or create a paperless electronic record of the title and lien filing when substantiated by a written agreement as provided in section 49-505, Idaho Code. The title shall contain the name of the owner of the vehicle, the name and address of each holder of a lien or encumbrance, and a statement of all liens or encumbrances which have been filed with the department, together with the date of each lien or

encumbrance and the date and hour received by the department or agent of the department. The filing of a lien or encumbrance and the notation of it ~~upon the certificate of title~~ shall be a condition of perfection and shall constitute constructive notice of the lien or encumbrance and its contents to creditors and subsequent purchasers and encumbrancers. All liens or encumbrances so filed with the department ~~and noted upon the certificate of title~~ shall be perfected and take priority according to the order of time in which the same are noted upon the certificate of title by or entered into the electronic records of the department.

SECTION 3. That Section 49-511, Idaho Code, be, and the same is hereby amended to read as follows:

49-511. CANCELLATION OR DISCHARGE OF LIEN OR ENCUMBRANCE. When a lien or encumbrance is cancelled or discharged, the holder shall note a cancellation or discharge on the certificate of title in the space provided, over his signature, or by some other legal document or electronic record, discharging the encumbrance, and shall deliver it to the owner. ~~The owner shall present the certificate of title within thirty (30) days to the department or its agent~~ department, together with a fee as provided for in section 49-202(2)(b), Idaho Code, and have the department issue a new certificate of title with the lien discharged from the face of the certificate of title and upon the records of the department, and deliver the certificate of title to the owner.

SECTION 4. That Section 49-513, Idaho Code, be, and the same is hereby amended to read as follows:

49-513. SALE OF ENCUMBERED VEHICLE -- CONSENT OF LIENHOLDER -- EFFECT. Sale of any vehicle by the owner with the knowledge and consent of the holder of any lien or encumbrance properly noted upon the certificate of title or upon the electronic records of the department, shall not render the sale void or ineffective as against that lien or encumbrance.

SECTION 5. That Section 49-517, Idaho Code, be, and the same is hereby amended to read as follows:

49-517. PRINTING AND FORM OF CERTIFICATES. (1) All certificates of title shall be printed upon safety paper to be selected by the department, and shall be in such form as the department shall prescribe.

(2) When substantiated by a written agreement as provided in section 49-505, Idaho Code, the department may create a paperless electronic record of a certificate of title in place of issuing a paper document whenever a lien is to be recorded; however, upon written demand from the owner and payment of the fee as provided in subsection (2)(b) of section 49-202, Idaho Code, the department shall issue a paper certificate of title.

(3) In the absence of a certificate of title, the computer records of the department shall be the original title document.

Approved March 31, 1993.

CHAPTER 299
(H.B. No. 159, As Amended)

AN ACT

RELATING TO DUTIES OF THE TRANSPORTATION DEPARTMENT AND THE TRANSPORTATION BOARD; AMENDING SECTION 49-201, IDAHO CODE, TO AUTHORIZE THE BOARD TO CONTRACT WITH PRIVATE COMPANIES OR PUBLIC ENTITIES TO IMPLEMENT THE PROVISIONS OF CHAPTER 2, TITLE 49, IDAHO CODE; AND AMENDING SECTION 49-202, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT TO CONTRACT FOR THE SERVICES OF ANSWERING INQUIRIES REGARDING MOTOR VEHICLE RECORDS, TO ALLOW THE CONTRACTOR TO COLLECT AND RETAIN AN ADDITIONAL FEE AND TO PROVIDE FOR DISTRIBUTION OF VEHICLE IDENTIFICATION NUMBER FEES.

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

SECTION 1. That Section 49-201, Idaho Code, be, and the same is hereby amended to read as follows:

49-201. DUTIES OF BOARD. (1) With the exception of requirements for sections 49-217 and 49-218 and chapters 6 and 9, title 49, Idaho Code, which shall be the responsibility of the director of the department of law enforcement, and section 49-447, Idaho Code, which shall be the responsibility of the director of the department of parks and recreation, the board shall adopt and enforce administrative rules and regulations and may designate agencies or enter into agreements with private companies or public entities as may be necessary to carry out the provisions of this title. It shall also provide suitable forms for applications, registration cards, vehicle licenses, and all other forms requisite for the purpose of the provisions of this title, and shall prepay all transportation charges.

(2) The board may enter into agreements, compacts or arrangements with other jurisdictions on behalf of Idaho for the purpose of conforming procedures for proportional registration of commercial vehicles and other types of reciprocal agreements. Copies of agreements, compacts or arrangements shall be placed on file in the department and the board shall, as to all filings and adoption, conform with the provisions of chapter 52, title 67, Idaho Code. The board may approve, on a case by case basis, exemption from operating fees for private non-profit entities who are bringing public interest programs into the state. These entities may not be in competition with companies who transport goods and services for hire.

(3) The board shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this title for use upon highways within the state. The uniform system shall correlate with, and so far as possible, conform to the sys-

tem set forth in the most recent edition of the manual on uniform traffic control devices for streets and highways and other standards issued or endorsed by the federal highway administrator.

(4) Whenever the board shall determine upon the basis of an engineering and traffic investigation that any maximum speed is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the state highway or interstate highway system, the board may determine and declare a reasonable and safe maximum limit, thereat, not exceeding a maximum limit of sixty-five (65) miles per hour, which shall be effective when appropriate signs giving notice are erected. The speed limit may be declared to be effective at all times or at the times as indicated upon the signs. Differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs.

(5) The board shall adopt and enforce rules as may be consistent with and necessary to determine the classification of and the basis on which fees shall be computed.

SECTION 2. That Section 49-202, Idaho Code, be, and the same is hereby amended to read as follows:

49-202. DUTIES OF DEPARTMENT. (1) All registration and driver's license records in the office of the department shall be public records and open to inspection by the public during normal business hours. If the department has contracted for a service to be provided by another entity, an additional fee shall be charged by that contractor whether the service is rendered during normal business hours, other than normal business hours or on weekends.

(2) In addition to other fees required by law to be collected by the department, the department shall collect the following:

- (a) For certifying a copy of any record pertaining to any vehicle license, any certificate of title, or any driver's license . \$8.00
- (b) For issuing every Idaho certificate of title \$8.00
- (c) For furnishing a duplicate copy of any Idaho certificate of title \$8.00
- (d) For issuance or transfer of every certificate of title on a new or used vehicle or other titled vehicle in an expedited manner (rush titles), in addition to any other fee required by this section \$15.00
- (e) For furnishing a replacement of any receipt of registration \$3.00
- (f) For answering inquiries as to registration or ownership of motor vehicles or driver's license records, per vehicle registration, accident report records, title or per driver's license record \$4.00
- Additional contractor fee, not to exceed \$4.00
- (g) For services in furnishing copies of files of vehicle or other registrations, vehicle titles, or driver's licenses per hour \$10.00
- (h) Placing "stop" cards in vehicle registration or title files, each \$12.00

(i) For issuance of an assigned or replacement vehicle identification number (VIN)\$10.00

(j) For a vehicle identification number (VIN) inspection whether conducted by a city or county peace officer or any other peace officer or designated agent of the state of Idaho, per inspection \$3.00

(k) For all replacement registration stickers, each \$1.00

(l) For issuing letters of temporary vehicle clearance to Idaho based motor carriers \$10.00

(m) For all sample license plates, each \$12.00

(3) The fees required in this section shall not apply when the service is furnished to any federal, state, county or city peace officer when such service is required in the performance of their duties as peace officers.

(4) The department may enter into agreements with private companies or public entities to provide the services for which a fee is collected in subsection (2)(f) of this section. Such private contractor shall collect the fee prescribed and remit the fee to the department. The contractor shall also collect and retain the additional fee charged for his services.

(5) The department shall pay three dollars (\$3.00) of the fee collected by a county assessor or other agent of the department as provided in subsection (2)(a) through (f) of this section, to the county assessor of the county or agent collecting such fee, which shall be deposited with the county treasurer and credited to the county current expense fund. The remainder of the fees collected as provided in that subsection shall be paid by the department to the state treasurer and placed in the state highway account. The fee collected under subsection (2)(j) of this section for a VIN inspection shall be placed in the city general fund if conducted by a city peace officer, in the county current expense fund if conducted by a county peace officer, shall be retained by the special agent authorized to perform the inspection, or paid to the state treasurer and placed to the credit of the department of law enforcement if conducted by the Idaho state police or in the state highway account if conducted by the department.

(56) The department as often as practicable may provide to law enforcement agencies the record of stolen and recovered motor vehicles and suspensions and revocations of driver licenses via the Idaho law enforcement telecommunications system (ILETS).

(67) The department shall provide the forms prescribed in chapter 5 of this title, shall receive and file in its office in Boise, Idaho, all instruments required in chapter 5 of this title to be filed with the department, shall prescribe a uniform method of numbering certificates of title, and maintain in the department indices for such certificates of title. All indices shall be by motor or identification number and alphabetical by name of the owner, and the department shall maintain two (2) separate files on each vehicle, one, a motor or identification number file, the other a file by the name of the owner.

(78) The department shall file each registration received under a distinctive registration number assigned to the vehicle and to the owner thereof, alphabetically under the name of the owner, and numerically and alphabetically under the name of the vehicle.

(89) The department shall not renew a driver's license when fees required by law have not been paid or where fees for past periods are due, owing and unpaid including nonsufficient fund checks.

(910) The department shall not grant the registration of a vehicle when:

(a) The applicant is not entitled to registration under the provisions of this title; or

(b) The applicant has neglected or refused to furnish the department with the information required in the appropriate form or reasonable additional information required by the department, or has failed to comply with the provisions of section 49-436, Idaho Code, in past registration periods; or

(c) The fees required by law have not been paid, or where fees for past registration periods are due, owing and unpaid including nonsufficient fund checks.

(101) The department has the authority to request any person, based upon evidence, to submit to medical, highway, or written examinations, to protect the safety of the public upon the highways.

(112) The department shall revoke the registration of any vehicle:

(a) Which the department shall determine is unsafe or unfit to be operated or is not equipped as required by law;

(b) Whenever the person to whom the registration card or registration plate has been issued shall make or permit to be made any unlawful use of the same or permit their use by a person not entitled thereto;

(c) For any violation of vehicle registration requirements by the owner or operator in the current or past registration periods;

(d) Whenever a motor carrier as defined in section 61-801, Idaho Code, has his permit revoked for any cause except at the request of the permit holder, as provided in section 61-808, Idaho Code, or whenever an interstate carrier has his registration revoked by reason of a revocation of his interstate commerce commission operating authority;

(e) For nonpayment by the owner or operator of the vehicle of use fees computed under sections 49-434 and 49-435, Idaho Code;

(f) For failure of the owner or operator to file the reports required or nonpayment of fees assessed against the owner by the department pursuant to audit under the provisions of section 49-436, Idaho Code;

(g) Identified by any city or county administering a program established by ordinance for the inspection and readjustment of motor vehicles (which program is part of an approved state implementation plan adopted by both the state and federal governments under 42 USC section 7410) as having failed to comply with an ordinance requiring motor vehicle emission inspection and readjustment; provided that no vehicle shall be identified to the department under this subsection (g) unless (i) the city or county certifies to the department that the owner of the motor vehicle has been given notice and had the opportunity for a hearing concerning compliance with the ordinance and has exhausted all remedies and appeals from any determination made at such hearing; and (ii) the city or county reimburses the department for all direct

costs associated with the registration revocation procedure.

(123) The department shall not reregister or permit a vehicle to operate on a special trip permit until all fees, penalties and interest have been paid.

(134) The department shall institute educational programs, demonstrations, exhibits and displays;

(135) The department shall cancel a driver's license when fees required by law have not been paid or where fees for past periods are due, owing and unpaid including nonsufficient fund checks;

(146) The department shall examine persons and vehicles by written, oral and physical tests without compulsion except as provided by law;

(157) The department shall employ expert and special help as needed in the department;

(168) The department shall compile accident statistics and disseminate information relating to those statistics;

(179) The department shall cooperate with the United States in the elimination of road hazards, whether of a physical, visual or mental character.

(1920) The department shall place and maintain traffic-control devices, conforming to the board's manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this title or to regulate, warn, or guide traffic. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the department except by the latter's permission.

(1921) The department may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall find that the structure cannot with safety to itself withstand vehicles traveling at a speed otherwise permissible under this title, shall determine and declare the maximum speed of vehicles which the structure can safely withstand, and shall cause or permit suitable signs stating the maximum speed to be erected and maintained before each end of the structure.

(202) Whenever the department shall determine on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the department may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, and that limit shall be effective when posted upon appropriate fixed or variable signs.

(213) The department shall regulate or prohibit the use of any controlled-access highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(224) The department shall erect and maintain traffic-control devices on controlled-access highways on which any prohibitions are applicable.

(235) Wherever a highway crosses one or more railroads at grade, the department or local authorities within their respective jurisdictions shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warn-

ing signals do not exist. Placement of these stop signs shall be mandatory except when in the determination of the department or local authorities the existence of stop signs at a given crossing would constitute a greater hazard than their absence.

Nothing in this subsection shall be construed as granting immunity to any railroad company as to liability, if any, for an accident which might occur at a crossing where stop signs are erected and in place, but liability, if any, shall be determined as provided by law. Liability on the part of governmental authorities on account of absence of any stop sign at a crossing shall be determined as provided by law.

(246) The department and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of those zones and when signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey those directions.

(257) The department and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this title or title 40, Idaho Code.

(268) The department and local highway authorities within their respective jurisdictions may place official traffic-control devices prohibiting, limiting or restricting the stopping, standing or parking of vehicles on any highway where such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles unduly interferes with the free movement of traffic thereon.

Approved March 31, 1993.

CHAPTER 300
(H.B. No. 184)

AN ACT

RELATING TO THE MOTOR VEHICLE CLASS AND SEASONAL DRIVER'S LICENSES; AMENDING SECTION 49-105, IDAHO CODE, TO PROVIDE ADDITIONAL DEFINITIONS AND TO CORRECT A SPELLING ERROR; AMENDING SECTION 49-301, IDAHO CODE, TO PROVIDE FOR THE ISSUANCE OF SEASONAL DRIVER'S LICENSES TO THOSE DRIVERS WHO ARE ELIGIBLE AND TO CORRECT TERMINOLOGY; AMENDING SECTION 49-306, IDAHO CODE, TO PROVIDE APPLICATION REQUIREMENTS FOR SEASONAL DRIVER'S LICENSES AND TO PROVIDE FEES FOR LICENSING SEASONAL DRIVERS; AMENDING SECTION 49-313, IDAHO CODE, TO PROVIDE FOR THE EXAMINATION OF SEASONAL DRIVERS AND TO PROVIDE FOR SKILL WAIVERS; AMENDING SECTION 49-318, IDAHO CODE, TO PROVIDE FOR THE ISSUANCE OF DUPLICATE LICENSES; AMENDING SECTION 49-319, IDAHO CODE, TO PROVIDE FOR THE RENEWAL OF SEASONAL

DRIVER'S LICENSES; AMENDING SECTION 49-335, IDAHO CODE, TO PROVIDE FOR DISQUALIFICATION OF COMMERCIAL OPERATORS WHO ARE CONVICTED OF DISQUALIFYING OFFENSES UNDER FEDERAL LAW AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 49-105, Idaho Code, be, and the same is hereby amended to read as follows:

49-105. DEFINITIONS -- D.

(1) "Dealer" means every person in the business of buying, selling or exchanging five (5) or more new or used vehicles, new or used motorcycles, snow machines or ~~motorscooters~~ motor scooters, travel trailers, all-terrain vehicles or motor homes in any calendar year, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, or who has an established place of business for the sale, lease, trade, or display of these vehicles. No insurance company, bank, finance company, public utilities company, or other person coming into possession of any vehicle, as an incident to its regular business, who shall sell that vehicle under any contractual rights it may have, shall be considered a dealer. See also "salvage pool", section 49-120, Idaho Code.

(2) "Dealer's selling agreement." (See "Franchise", section 49-107, Idaho Code)

(3) "Department" means the Idaho transportation department acting directly or through its duly authorized officers and agents, except in chapters 6 and 9, title 49, Idaho Code, where the term means the Idaho department of law enforcement, except as otherwise specifically provided.

(4) "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a vehicle dealership who, in the event of the owner's death, is entitled to inherit the ownership interest in the dealership under the same terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a dealership, has been appointed by a court as the legal representative of the dealer's property.

(5) "Director" means the director of the Idaho transportation department, except in chapters 6, 9 and 22, title 49, Idaho Code, where the term means the director of the Idaho department of law enforcement.

(6) "Disqualification" as defined in 49 CFR part 383, means withdrawal by the department of commercial vehicle driving privileges.

(7) "Distributor" means any person, firm, association, corporation or trust, resident or nonresident, who has a franchise from a manufacturer of vehicles to distribute vehicles in this state, and who in whole or in part sells or distributes new vehicles to dealers or who maintains distributor representatives.

(8) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

(9) "Distributor representative" means any person, firm, associa-

tion, corporation or trust, and each officer and employee thereof engaged as a representative of a distributor or distributor branch of vehicles for the purpose of making or promoting the sale of vehicles, or for supervising or contacting dealers or prospective dealers.

(10) "District" means:

(a) Business district. The territory contiguous to and including a highway when within any six hundred (600) feet along the highway there are buildings in use for business or industrial purposes, including hotels, banks or office buildings, railroad stations and public buildings which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the highway.

(b) Residential district. The territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred (300) feet or more is in the main improved with residences, or residences and buildings in use for business.

(c) Urban district. The territory contiguous to and including any highway which is built up with structures devoted to business, industry or dwelling houses.

(11) "Documented vessel" means a vessel having a valid marine document as a vessel of the United States.

(12) "Drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicles within a certain distance or time limit.

(13) "Driver" means every person who drives or is in actual physical control of a vehicle.

(14) "Driver's license" means a license or permit issued by the department or by any other jurisdiction to an individual which authorizes the individual to operate a motor vehicle or commercial motor vehicle on the highways in accordance with the requirements of title 49, Idaho Code.

(15) "Driver's license - classes of" are issued for the operation of a vehicle based on the size of the vehicle or the type of load and mean:

(a) Class A. This license shall be issued and valid for the operation of any combination of motor vehicles with a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds, provided the manufacturer's gross vehicle weight rating (GVWR) of the vehicle(s) being towed is in excess of ten thousand (10,000) pounds. Persons holding a valid class A license may also operate vehicles requiring a class B, C, or D license for operation, with any appropriate endorsements.

(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 oper-

ate vehicles requiring a class C license, with any appropriate endorsements, and vehicles requiring 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 placarded for hazardous materials. Persons holding a valid class C license may also operate vehicles requiring a class D license.

(d) Class D. This license shall be issued and valid for the operation of a motor vehicle that is not a commercial vehicle as defined in section 49-123, Idaho Code.

(e) "Seasonal driver's license" means a special restricted class B or C driver's license to operate certain commercial vehicles in farm-related industries under restrictions imposed by the department. As used in this definition, "farm-related industry" shall mean custom harvesters, farm retail outlets and suppliers, agricultural businesses and livestock feeders. Seasonal driver's licenses are not valid for driving vehicles carrying any quantities of hazardous material requiring placarding, except for diesel fuel in quantities of one thousand (1,000) gallons or less, liquid fertilizers, i.e., plant nutrients, in vehicles or implements of husbandry with total capacities of three thousand (3,000) gallons or less, and solid fertilizers, i.e., solid plant nutrients, that are not mixed with any organic substance.

(16) "Driver's license endorsements" mean 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.

(a) "Endorsement T - Double/triple trailer" means this endorsement is required on a class A license to permit the licensee to operate a vehicle authorized to tow more than one (1) trailer.

(b) "Endorsement H - Hazardous material" means this endorsement is required on a class A, B or C license if the driver is operating a vehicle transporting a hazardous material that is required to be placarded under the hazardous materials transportation act and by rules and regulations of the U.S. department of transportation.

(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. This definition does not include portable tanks having a rated capacity under one thousand (1,000) gallons.

(17) "Driveway" means a private road giving access from a public way to a building on abutting grounds.

(18) "Dromedary tractor" means every motor vehicle designed and used primarily for drawing a semitrailer and so constructed as to

carry manifested cargo in addition to a part of the weight of the semitrailer.

SECTION 2. That Section 49-301, Idaho Code, be, and the same is hereby amended to read as follows:

49-301. DRIVERS TO BE LICENSED. (1) No person, except those expressly exempted by the provisions of this chapter, shall drive any motor vehicle upon a highway unless the person has a valid Idaho driver's license. No person shall operate a commercial motor vehicle as defined in section 49-123, Idaho Code, upon a highway unless he has a seasonal or class A, B or C driver's license with required endorsements. No person shall receive a driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction, or until he executes an affidavit that he does not possess a driver's license. No person shall be permitted to have more than one (1) driver's license at any time.

(2) All operator's and chauffeur's licenses issued shall remain valid until expired, except a chauffeur's or operator's license will not remain valid after April 1, 1992, for operation of a commercial motor vehicle.

SECTION 3. That Section 49-306, Idaho Code, be, and the same is hereby amended to read as follows:

49-306. APPLICATION FOR DRIVER'S LICENSE OR INSTRUCTION PERMIT.

(1) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths. Officers and employees of the department and sheriffs and their deputies are authorized to administer the oaths without charge. Every application for a permit or driver's license shall be accompanied by the following fee, none of which is refundable:

- (a) Class A, B, C license with endorsements \$23.50
- (b) Class D license \$19.50
- (c) Class A, B, C instruction permit \$15.50
- (d) Class D instruction permit \$11.50
- (e) Duplicate driver's license or permit issued under section 49-318, Idaho Code \$11.50
- (f) Driver's license extension issued under section 49-319, Idaho Code \$ 6.50
- (g) License classification change (upgrade) \$15.50
- (h) Endorsement addition \$11.50
- (i) Class A, B, C skills tests \$35.00
- (j) Class D skills test \$ 3.00
- (k) Knowledge test \$ 3.00
- (1) Seasonal driver's license \$23.50

(2) Every application shall state the full name, date of birth, place of birth, sex, Idaho residence address and mailing address, if different, of the applicant, height, weight, hair color, eye color, and for a class A, B, or C driver's license or seasonal driver's license the applicant's social security number as verified by the

applicant's social security card. A driver's license or instruction permit issued on and after January 1, 1993, shall not contain an applicant's social security number. An applicant's social security number shall be exempt from disclosure except for inquiries from agencies or institutions authorized to obtain such information by federal law or regulation, from peace officers or from jury commissioners. Every application shall also state whether the applicant has previously been licensed as a driver, and if so, when and by what state or country, and whether a driver's license or privileges have ever been suspended, revoked, denied, disqualified, cancelled or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, denial, disqualification, cancellation or refusal and the applicant's oath that all information is correct as signified by the applicant's signature. The applicant may be required to submit proof of identity and date and place of birth as set forth in a certified copy of his birth certificate and other satisfactory evidence to satisfy the issuing officer or the department.

(3) Whenever an application is received from a person previously licensed in another jurisdiction, the department shall request a copy of the driver's record from the other jurisdiction and the national driver register. When received, the driver's record from the previous jurisdiction shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(4) Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

(5) The department shall notify the commercial driver license information system of the proposed application for a class A, B or C driver's license to insure identification of the person and to obtain clearance to issue the license.

(6) When the fees required under this section are collected by a county officer, they shall be paid over to the county treasurer not less often than monthly, who shall immediately:

(a) Deposit an amount equal to five dollars (\$5.00) from each driver's license or instruction permit application fees, application for a duplicate driver's license or permit, classification change, seasonal driver's license and additional endorsement in the current expense fund; and

(b) Deposit an amount equal to three dollars (\$3.00) from each fee for a knowledge test or class D skills test in the current expense fund; and

(c) Remit the remainder to the state treasurer.

(7) When the fees required under this section are collected by a state officer or agency, they shall be paid over to the state treasurer.

(8) The state treasurer shall distribute the moneys received from fees imposed by the provisions of this section, whether collected by a county officer or by a state officer or agency as follows:

(a) Two dollars (\$2.00) of each fee for a driver's license or seasonal driver's license shall be deposited in the emergency medical services account II created in section 39-146A, Idaho Code; and

(b) Sixteen dollars and fifty cents (\$16.50) of each fee for a seasonal or class A, B, or C driver's license shall be deposited in the state highway account; and

(c) Ten dollars and fifty cents (\$10.50) of each fee for a class A, B, or C instruction permit or driver's license classification change shall be deposited in the state highway account; and

(d) Six dollars and fifty cents (\$6.50) of each fee for a duplicate seasonal or class A, B, or C driver's license, class A, B, or C driver's license extension, or additional endorsement shall be deposited in the state highway account; and

(e) Five dollars and thirty cents (\$5.30) of each fee for a class D driver's license shall be deposited in the driver training account; and

(f) Seven dollars and twenty cents (\$7.20) of each fee for a class D driver's license shall be deposited in the highway distribution account; and

(g) Two dollars and sixty cents (\$2.60) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the driver training account; and

(h) Three dollars and ninety cents (\$3.90) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the highway distribution account; and

(i) Five dollars (\$5.00) of each fee for a class A, B, or C skills test shall be deposited in the state highway account. ~~The contractor which administered the skills test shall be entitled to thirty dollars (\$30.00) of this fee.~~

(9) The contractor administering the skills test shall be entitled to thirty dollars (\$30.00) of the skills test fee. A contractor administering the skills test may collect an additional fee for the use of the contractor's vehicle for the skills test.

(10) The department may issue seasonal class B or C driver's licenses that:

(a) Will only be valid for driving commercial vehicles that normally require class B or C commercial driver's licenses;

(b) Will be valid for seasonal periods that begin on the date of issuance and that are not to exceed one hundred eighty (180) days in a twelve (12) month period;

(c) May only be obtained twice in a driver's lifetime;

(d) Are valid only within a one hundred-fifty (150) mile radius of the place of business or farm being serviced; and

(e) Will be valid only in conjunction with valid class D driver's licenses.

(11) The department may issue seasonal class B or C driver's licenses to drivers who:

(a) Have not violated the single license provisions of 49 CFR part 383;

(b) Have not had any license suspensions, revocations or cancellations;

(c) Have not had any convictions in any vehicle for any offense listed in section 49-335(1) or 49-335(2), Idaho Code, or any one

(1) serious traffic offense;

- (d) Have at least one (1) year of driving experience with a class D or equivalent license in any type motor vehicle; and
- (e) Are at least sixteen (16) years old.

SECTION 4. That Section 49-313, Idaho Code, be, and the same is hereby amended to read as follows:

49-313. EXAMINATION OF APPLICANTS. (1) The sheriff or deputy shall examine every applicant for an instruction permit, seasonal driver's license, or a driver's license, except as otherwise provided by law. It shall include a test of the applicant's eyesight and hearing, his ability to read and understand highway signs regulating, warning, and directing traffic. At the discretion of the examiner, an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle for a class D driver's license may be required. In addition, the applicant's knowledge of traffic laws of this state shall be tested by a written examination, except as provided in section 49-319, Idaho Code. At the discretion of the examiner, the prescribed written examination may be conducted orally.

(2) The knowledge and skill examinations for applicants for driver's licenses in class A, B or C shall be conducted in compliance with 49 CFR part 383.

(3) The skill test for a class A, B, C or D driver's license shall be given by the department or its authorized agents.

(4) Any person who has successfully completed an approved driver training course and who applies for a driver's license more than three (3) months after completion of the driver training course shall be required to retake the skill test in addition to any other tests required upon application for a driver's license.

(5) The department shall not issue a tank, double/triple trailer, or hazardous material endorsement unless the applicant, in addition to all other applicable qualifications, has passed an appropriate knowledge test. The department shall not issue a passenger endorsement unless the applicant, in addition to all other applicable qualifications, has passed an appropriate knowledge and skills test.

(6) Any person failing to pass a knowledge or skill test for a class A, B, C or D driver's license may not retake the test within one (1) week of the failure.

(7) Any person retaking a knowledge endorsement or skill test for a driver's license shall pay the appropriate testing fee as specified in section 49-306, Idaho Code.

(8) A skill examination for a class A, B or C driver's license may be waived for an applicant who certifies within the preceding two (2) years:

- (a) He has not violated the single license provisions of 49 CFR part 383;
- (b) He has not had any license suspension, revocation or cancellation;
- (c) He has not had any conviction for any type of motor vehicle for any of the disqualification offenses contained in 49 CFR part 383.51;
- (d) He has not had any violation of state or local laws relating

to motor vehicle traffic control, arising in connection with any traffic accident, and has no record of an accident in which he was at fault; and

(e) He is regularly employed in a job requiring operation of a commercial motor vehicle; and

(f) He has previously taken and passed a skills test given by a state classified licensing and testing system and that the test was behind-the-wheel in a representative vehicle for that applicant's driver's license classification; or

(g) He has operated, for at least two (2) years immediately preceding application for a commercial driver's license, a vehicle representative of the commercial motor vehicle he operates or expects to operate.

(9) The department or its authorized agents may refuse to give an applicant a skills test if there are reasonable grounds to believe that the safety of the applicant, public, or the examiner would be jeopardized by doing so. Reasonable grounds would include, but not be limited to, the applicant's inability to pass the eye test, written tests, or a statement by a licensed physician stating the applicant is not physically able to drive a motor vehicle.

(10) The department or its authorized agents may deny issuance or renewal of a driver's license to any applicant who does not meet the licensing requirements for the class of driver's license being renewed or issued.

(11) Skill examinations for seasonal driver's licenses shall be waived.

SECTION 5. That Section 49-318, Idaho Code, be, and the same is hereby amended to read as follows:

49-318. DUPLICATE DRIVER LICENSES. In the event that an instruction permit or, class A, B, C or seasonal driver's license is lost or destroyed, or a name of a licensee is changed by marriage or otherwise legally changed, the person to whom the permit or driver's license was issued may, upon payment of the fee fixed in section 49-306, Idaho Code, and upon furnishing satisfactory proof to the department that the permit or, class A, B, C or seasonal driver's license has been lost or destroyed, or the name has been changed, obtain a duplicate or substitute permit or driver's license. The applicant shall provide proof of identity and date and place of birth as set forth in a certified copy of his birth certificate and other satisfactory evidence. In the case of a name change, the applicant shall provide legal documentation to verify the change in accordance with department rules.

SECTION 6. That Section 49-319, Idaho Code, be, and the same is hereby amended to read as follows:

49-319. EXPIRATION AND RENEWAL OF DRIVER'S LICENSE. (1) Every driver's license originally issued to a driver shall expire on the licensee's birthday in the fourth year following the issuance of the driver's license. Every driver's license shall be renewable on or before its expiration, but not more than twelve (12) months before, upon application, payment of the required fee, and satisfactory com-

pletion of the required eyesight and hearing examination. No knowledge test shall be required for renewal of a driver's license, except for renewal of a hazardous material endorsement. Appropriate knowledge tests shall be required for an upgrade in a driver's license class. In the case of a name change, the applicant shall provide legal documentation to verify the change in accordance with department rules.

(2) When a driver's license has been expired for less than twelve (12) months, the renewal of the driver's license shall start from the original date of expiration regardless of the year in which the application for renewal is made. If the driver's license is expired for more than twelve (12) months, the applicant shall be required to take the knowledge test and the application shall expire on the licensee's birthday in the fourth year following issuance of the driver's license.

(3) (a) If a driver's license has expired or will expire and the licensee is temporarily out-of-state except on active military duty, and the driver's license has not, as provided by law, been suspended, revoked, cancelled, denied, refused or disqualified, the licensee may request in writing on a form prescribed by the department an extension of the driver's license. The request shall be accompanied by the fee fixed in section 49-306, Idaho Code, and the extension shall be less than a twelve (12) month period. If the department determines that an extension of the driver's license is necessary, it may issue a certificate of extension showing the date to which the expired driver's license is extended, and this certificate shall be attached to the expired driver's license. Certificates of extension are limited to one (1) per licensee.

(b) Upon returning to the state of Idaho, the licensee shall within ten (10) days, apply for a renewal of the expired driver's license and surrender the certificate of extension and the expired driver's license.

(c) A hazardous material endorsement cannot be extended.

(4) An Idaho driver's license issued to any person prior to serving on active duty in the armed forces of the United States, or a member of the immediate family accompanying such a person, if valid and in full force and effect upon entering active duty, shall remain in full force and effect and shall, upon application, be extended for a period of four (4) years so long as active duty continues, if the driver's license is not suspended, denied, disqualified, cancelled or revoked, as provided by law, during the active duty, and the driver's license shall remain in full force and effect sixty (60) days following the date the holder is released from active duty.

(5) The department may use a mail renewal process for class D licenses based on criteria established by rule and regulation.

(6) A seasonal driver's license is only valid for a one hundred eighty (180) day period from the date of issuance. Only one (1) seasonal driver's license may be obtained in any twelve (12) month period, and may only be obtained twice in a driver's lifetime.

SECTION 7. That Section 49-335, Idaho Code, be, and the same is hereby amended to read as follows:

49-335. DISQUALIFICATIONS AND PENALTIES -- COMMERCIAL DRIVER'S LICENSE. (1) Any person who operates a commercial motor vehicle and who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if convicted of a first violation under state or federal law of:

- (a) Operating a commercial motor vehicle while under the influence of alcohol or a controlled substance;
- (b) Operating a commercial motor vehicle while the alcohol concentration of the person's blood, breath or bodily substance is 0.04 or more;
- (c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;
- (d) Using a commercial motor vehicle in the commission of any felony~~s~~.

(2) Any person who operates a commercial motor vehicle and who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if the person refuses to submit to a test to determine the driver's alcohol concentration while operating a commercial motor vehicle.

(3) If any of the offenses specified in subsection (1) or (2) of this section occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three (3) years.

(4) A person is disqualified for the period of time specified in 49 CFR part 383 if found to have committed two (2) or more of any of the offenses specified in subsections (1) or (2) of this section, or any combination of those offenses, arising from two (2) or more separate incidents.

(5) A person is disqualified for the period of time specified in 49 CFR part 383 from operating a commercial motor vehicle who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession of a controlled substance with the intent to manufacture, distribute or dispense such controlled substance.

(6) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty (60) days if convicted of two (2) serious traffic violations, or one hundred twenty (120) days if convicted of three (3) serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three (3) year period.

(7) A person who drives, operates, or is in physical control of a commercial motor vehicle within this state while having any detectable amount of alcohol in his system or who refuses to submit to an alcohol test must be placed out of service for twenty-four (24) hours and be subject to the provisions of section 18-8002, Idaho Code.

Approved March 31, 1993.

CHAPTER 301
(H.B. No. 185)

AN ACT

RELATING TO THE DISTRIBUTION OF TAX REVENUES; AMENDING SECTION 63-2412, IDAHO CODE, TO PROVIDE FOR THE DISTRIBUTION OF REVENUE TO A PARKS AND RECREATION CAPITAL IMPROVEMENT ACCOUNT.

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

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

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

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

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

(c) As soon as possible after the beginning of each fiscal year, the sum of one hundred fifty thousand dollars (\$150,000) shall be distributed to the railroad grade crossing protection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 62-304C, Idaho Code.

(d) As soon as possible after the beginning of each fiscal year, the sum of fifty thousand dollars (\$50,000) shall be distributed to the local bridge inspection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 40-703, Idaho Code.

(e) As soon as possible after the beginning of the fiscal year 1987, the sum of fifty thousand dollars (\$50,000) shall be distributed to the local highway needs assessment account in the dedicated fund to pay amounts from the account pursuant to the provisions of section 40-716, Idaho Code. As soon as possible after the beginning of each subsequent fiscal year, only the sum necessary to bring the balance of the local highway needs assessment account to fifty thousand dollars (\$50,000) shall be distributed to that account.

(f) From the balance remaining with the commission after distrib-

uting the amounts in paragraphs (a) through (e) of subsection (1) of this section:

1. ~~One and one-half per cent (1.50%) shall be distributed as follows: sixty-six per cent (66%) of the one and one-half per cent (1.50%) shall be distributed to the waterways improvement account, as created in chapter 15, title 57, Idaho Code. Up to twenty per cent (20%) of the moneys distributed to the waterways improvement account under the provisions of this paragraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the waterways improvement account. Thirty-three per cent (33%) of the one and one-half per cent (1.50%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One per cent (1%) of the one and one-half per cent (1.50%) shall be distributed to the search and rescue account created in section 67-2903, Idaho Code.~~

Beginning July 1, 1991, One and twenty-eight hundredths per cent (1.28%) shall be distributed as follows: sixty-six per cent (66%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed to the waterways improvement account, as created in chapter 15, title 57, Idaho Code. Up to twenty per cent (20%) of the moneys distributed to the waterways improvement account under the provisions of this paragraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the waterways improvement account. Thirty-three per cent (33%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One per cent (1%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed to the search and rescue account created in section 67-2903, Idaho Code;

2. ~~One and one-half per cent (1.50%) shall be distributed as follows: sixty-six per cent (66%) of the one and one-half per cent (1.50%) shall be distributed to the off-road motor vehicle account, as created in section 57-1901, Idaho Code. Up to twenty per cent (20%) of the moneys distributed to the off-road motor vehicle account by this subpart may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the off-road motor vehicle account. Thirty-three per cent (33%) of the one and one-half per cent (1.50%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One per cent (1%) of the one and one-half per cent (1.50%) shall be distributed to the search and~~

~~rescue account created in section 67-2903, Idaho Code;~~

~~Beginning July 1, 1991, one and twenty-eight hundredths per cent (1.28%) shall be distributed as follows: sixty-six per cent (66%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed to the off-road motor vehicle account, as created in section 57-1901, Idaho Code. Up to twenty per cent (20%) of the moneys distributed to the off-road motor vehicle account by this subpart may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the off-road motor vehicle account. Thirty-three per cent (33%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed to the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One per cent (1%) of the one and twenty-eight hundredths per cent (1.28%) shall be distributed to the search and rescue account created in section 67-2903, Idaho Code; and~~

~~3. Ninety-seven per cent (97%) shall be distributed to the highway distribution account created in section 40-701, Idaho Code; and~~

~~Beginning July 1, 1991, ninety-seven and forty-four hundredths per cent (97.44%)~~ Forty-four hundredths per cent (.44%) shall be distributed to the park and recreation capital improvement account as created in section 57-1801, Idaho Code, to be used solely to improve roads and bridges within and leading to parks and recreation areas of the state.

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

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

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

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

Approved March 31, 1993.

CHAPTER 302

(H.B. No. 188, As Amended)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE THAT PRIVATE ASSOCIATION PEER REVIEW COMMITTEE RECORDS ARE EXEMPT FROM DISCLOSURE, TO REQUIRE THAT AN AGENCY HAVING RECORDS

EXEMPT FROM DISCLOSURE UNDER THE SUBSECTION SHALL ANNUALLY MAKE AVAILABLE A STATISTICAL SUMMARY OF THE NUMBER AND TYPES OF MATTERS CONSIDERED AND THEIR DISPOSITION AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

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

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section mean information, including a formula, pattern, compilation, program, computer program, device, method, technique or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

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

(e) Vital statistics records.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

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

(14) Any personal records, other than names and addresses, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

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

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

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

(b) Analysis, compilation and other manipulated forms of the

original data produced by use of the program; or

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

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment.

(27) Records of a person maintained pursuant to chapter 18, title 16, Idaho Code.

(28) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and

addresses of growers and shippers maintained by commodity commissions.

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision making.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative auditor prior to release of the related final audit and all other records or materials in the possession of the office of the legislative auditor that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

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

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relat-

ing to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

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

(378) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

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

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(379) 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.

Approved March 31, 1993.

CHAPTER 303
(H.B. No. 213)

AN ACT

RELATING TO LIBRARY DISTRICTS; AMENDING SECTION 33-2702, IDAHO CODE, TO REVISE THE DEFINITION OF QUALIFIED ELECTOR, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-2705, IDAHO CODE, TO REVISE PROCEDURES FOR THE CONDUCT OF ELECTIONS; AMENDING SECTION 33-2716, IDAHO CODE, TO REVISE PROCEDURES FOR THE NOMINATION AND ELECTION OF THE TRUSTEES OF A LIBRARY DISTRICT; AND AMENDING SECTION 33-2728, IDAHO CODE, TO REVISE PROCEDURES REGARDING BOND ELECTIONS.

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

SECTION 1. That Section 33-2702, Idaho Code, be, and the same is hereby amended to read as follows:

33-2702. QUALIFIED ELECTOR. Any person voting, or offering to vote, at an election to create a library district, add territory thereto, or elect trustees thereof, must be, at the time of the election, a resident of the area involved for thirty (30) days prior to the date of the election, registered and an elector within the meaning of article 6, section 2, article VI, of the Constitution of the state of Idaho ~~except--that--registration--shall--not--be--required--Each--voter--shall--be--required--to--execute--an--oath--of--election--attesting--his--qualification--and--file--said--oath--with--the--board--of--election--at--the--time--he--casts--his--ballot.~~

SECTION 2. That Section 33-2705, Idaho Code, be, and the same is hereby amended to read as follows:

33-2705. CONDUCT OF ELECTION. Upon the county commissioners having made the order referred to in subsection (5) of section 33-2704, Idaho Code, the clerk of the board of county commissioners shall cause to be published a notice of an election to be held for the purpose of determining whether or not the proposed library district shall be organized under the provisions of this chapter. The date of this election shall be ~~not later than sixty (60) days after the issuance of the above-mentioned order~~ the next uniform election date as provided for in section 34-106, Idaho Code. Whenever more than one (1) petition is presented to the county commissioners calling for an election to create library districts, the first presented shall take precedence. Notice of the election shall be given, the election shall be conducted, and the returns thereof canvassed as provided for elections ~~for the consolidation of school districts in chapter 14, title 34, Idaho Code, and under the general election laws of the state of Idaho.~~ The ballot shall contain the word "(Name) Free Library District--Yes" and "(Name) Free Library District--No," each followed by a box wherein the voter may express his choice by marking a cross "X." The board or boards of election shall make returns and certify the results to the boards of county commissioners within three (3) days after the elec-

tion, and said board shall, within seven (7) days after the election, canvass the returns. If a majority of all votes cast be in the affirmative, the board shall enter an order declaring the library district established and designating its boundaries and name.

SECTION 3. That Section 33-2716, Idaho Code, be, and the same is hereby amended to read as follows:

33-2716. BOARD OF TRUSTEES -- NOMINATION AND ELECTION -- RECALL.

(1) The procedure for nomination and election of trustees of a library district shall be as provided for ~~the nomination and election of trustees of a school district pursuant to chapter 4, title 33, Idaho Code. This shall include notice requirements, conduct of election, provision for absentee voting, nominations, uniform date of election, and declaration and filling of vacancies in chapter 14, title 34, Idaho Code, and in the general election laws of Idaho. The declaration and filing of vacancies of the library board of trustees shall be conducted under the provisions of chapter 4, title 33, Idaho Code.~~

(2) Notwithstanding the limitations of chapter 17, title 34, Idaho Code, each library district trustee shall be subject to recall following procedures as closely as possible to the procedures described for the recall of county commissioners pursuant to chapter 17, title 34, Idaho Code.

Individuals signing a petition to recall a library trustee or voting in an election to recall a library trustee shall meet the requirements of section 33-2702, Idaho Code.

If, pursuant to section 33-2717, Idaho Code, no election was held for the trustee being recalled:

(a) The number of district electors required to sign the petition seeking a recall election must be not less than fifty (50), or twenty per cent (20%) of the number of votes cast in the last trustee election held in the library district, whichever is the greater.

(b) To recall any trustee, a majority of the votes cast at the recall election must be in favor of such recall, and additionally, the number of votes cast in the recall election must equal or exceed the number of votes cast in the last trustee election held in the library district.

SECTION 4. That Section 33-2728, Idaho Code, be, and the same is hereby amended to read as follows:

33-2728. BOND ELECTION. The purposes for which bonds may be issued shall be: To acquire, purchase, or improve a library site or sites; to build a library or libraries, or other building or buildings; to demolish or remove buildings; to add to, remodel or repair any existing building; to furnish and equip any building or buildings, including all facilities and appliances necessary to maintain and operate the buildings of the library; and to purchase motor vehicles for use as bookmobiles.

The library district may issue bonds in an amount not to exceed four-tenths percent (.4%) of the market value for assessment purposes of property within the district, less any aggregate outstanding

indebtedness.

The board of trustees of any library district, upon approval of a majority thereof, may call a bond election on the question as to whether the board shall be empowered to issue bonds of the district in an amount and for a period of time to be stated in the notice of election. The notice of bond elections, the qualification of bond electors, the conduct of the election, and the canvass of election and determination of the result of election; shall be in accordance with chapter 14, title 34, Idaho Code, and with the general election laws of the state of Idaho. ~~The issuance of bonds, the expenditure of bond proceeds and the repayment of the bonds shall all be determined--and done in accordance with the laws of Idaho with respect to the authorization and issuance of bonds by~~ as specified in school districts law.

Approved March 31, 1993.

CHAPTER 304
(H.B. No. 229)

AN ACT

RELATING TO DRIVER'S LICENSES AND IDENTIFICATION CARDS; AMENDING SECTION 49-306, IDAHO CODE, TO PROVIDE THAT APPLICATIONS ON FILE SHALL BE EXEMPT FROM DISCLOSURE; AMENDING SECTION 49-2443, IDAHO CODE, TO DELETE THE REQUIREMENT THAT AN APPLICATION SHALL CONTAIN AN APPLICANT'S SOCIAL SECURITY NUMBER AND TO CORRECT A SPELLING ERROR; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 49-306, Idaho Code, be, and the same is hereby amended to read as follows:

49-306. APPLICATION FOR DRIVER'S LICENSE OR INSTRUCTION PERMIT.

(1) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths. Officers and employees of the department and sheriffs and their deputies are authorized to administer the oaths without charge. Every application for a permit or driver's license shall be accompanied by the following fee, none of which is refundable:

- (a) Class A, B, C license \$23.50
- (b) Class D license \$19.50
- (c) Class A, B, C instruction permit \$15.50
- (d) Class D instruction permit \$11.50
- (e) Duplicate driver's license or permit issued under section 49-318, Idaho Code \$11.50
- (f) Driver's license extension issued under section 49-319, Idaho Code \$ 6.50
- (g) License classification change (upgrade) \$15.50
- (h) Endorsement addition \$11.50
- (i) Class A, B, C skills tests \$35.00

(j) Class D skills test \$ 3.00

(k) Knowledge test \$ 3.00

(2) Every application shall state the full name, date of birth, place of birth, sex, Idaho residence address and mailing address, if different, of the applicant, height, weight, hair color, and eye color, and for a class A, B, or C driver's license the applicant's social security number as verified by the applicant's social security card. A driver's license or instruction permit issued on and after January 1, 1993, shall not contain an applicant's social security number. ~~An applicant's social security number~~ Applications on file shall be exempt from disclosure except for inquiries from agencies or institutions authorized to obtain such information by federal law or regulation, from peace officers or from jury commissioners. Every application shall also state whether the applicant has previously been licensed as a driver, and if so, when and by what state or country, and whether a driver's license or privileges have ever been suspended, revoked, denied, disqualified, cancelled or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, denial, disqualification, cancellation or refusal and the applicant's oath that all information is correct as signified by the applicant's signature. The applicant may be required to submit proof of identity and date and place of birth as set forth in a certified copy of his birth certificate and other satisfactory evidence to satisfy the issuing officer or the department.

(3) Whenever an application is received from a person previously licensed in another jurisdiction, the department shall request a copy of the driver's record from the other jurisdiction and the national driver register. When received, the driver's record from the previous jurisdiction shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(4) Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

(5) The department shall notify the commercial driver license information system of the proposed application for a class A, B or C driver's license to insure identification of the person and to obtain clearance to issue the license.

(6) When the fees required under this section are collected by a county officer, they shall be paid over to the county treasurer not less often than monthly, who shall immediately:

(a) Deposit an amount equal to five dollars (\$5.00) from each driver's license or instruction permit application fees, application for a duplicate driver's license or permit, classification change, and additional endorsement in the current expense fund; and

(b) Deposit an amount equal to three dollars (\$3.00) from each fee for a knowledge test or class D skills test in the current expense fund; and

(c) Remit the remainder to the state treasurer.

(7) When the fees required under this section are collected by a state officer or agency, they shall be paid over to the state treasurer.

(8) The state treasurer shall distribute the moneys received from fees imposed by the provisions of this section, whether collected by a county officer or by a state officer or agency as follows:

(a) Two dollars (\$2.00) of each fee for a driver's license shall be deposited in the emergency medical services account II created in section 39-146A, Idaho Code; and

(b) Sixteen dollars and fifty cents (\$16.50) of each fee for a class A, B, or C driver's license shall be deposited in the state highway account; and

(c) Ten dollars and fifty cents (\$10.50) of each fee for a class A, B, or C instruction permit or driver's license classification change shall be deposited in the state highway account; and

(d) Six dollars and fifty cents (\$6.50) of each fee for a duplicate class A, B, or C driver's license, class A, B, or C driver's license extension, or additional endorsement shall be deposited in the state highway account; and

(e) Five dollars and thirty cents (\$5.30) of each fee for a class D driver's license shall be deposited in the driver training account; and

(f) Seven dollars and twenty cents (\$7.20) of each fee for a class D driver's license shall be deposited in the highway distribution account; and

(g) Two dollars and sixty cents (\$2.60) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the driver training account; and

(h) Three dollars and ninety cents (\$3.90) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the highway distribution account; and

(i) Five dollars (\$5.00) of each fee for a class A, B, or C skills test shall be deposited in the state highway account. The contractor which administered the skills test shall be entitled to thirty dollars (\$30.00) of this fee.

(9) The contractor administering the skills test shall be entitled to thirty dollars (\$30.00) of the skills test fee. A contractor administering the skills test may collect an additional fee for the use of the contractor's vehicle for the skills test.

SECTION 2. That Section 49-2443, Idaho Code, be and the same is hereby amended to read as follows:

49-2443. APPLICATION. Application for an identification card must be made in person before an examiner authorized by the department to issue driver's licenses. The examiner shall obtain the following from the applicant:

(1) The true and full name and Idaho residence address and mailing address, if different, of the applicant;

(2) The identity and date and place of birth of the applicant as set forth in a certified copy of his birth certificate and other satisfactory evidence of identity acceptable to the examiner or the department;

(3) The height and weight of the applicant;

- (4) The color of eyes and hair of the applicant; and
 (5) Applicant's signature; and
~~(7) Applicant's social security number.~~

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, 1993.

CHAPTER 305

(H.B. No. 230, As Amended, As Amended)

AN ACT

RELATING TO INSURANCE COVERAGE; AMENDING SECTION 41-2140, IDAHO CODE, TO CLARIFY THAT COVERAGE IN DISABILITY INSURANCE POLICIES FOR INJURY OR SICKNESS FOR NEWBORN DEPENDENT CHILDREN APPLIES TO DEPENDENT CHILDREN FROM THE MOMENT OF BIRTH; AMENDING SECTION 41-2210, IDAHO CODE, TO CLARIFY THAT COVERAGE IN ANY GROUP DISABILITY INSURANCE CONTRACT OR BLANKET DISABILITY CONTRACT FOR INJURY OR SICKNESS FOR NEWBORN DEPENDENT CHILDREN APPLIES TO DEPENDENT CHILDREN FROM THE MOMENT OF BIRTH; AMENDING SECTION 41-3437, IDAHO CODE, TO CLARIFY THAT COVERAGE IN A SUBSCRIBER'S CONTRACT FOR INJURY OR SICKNESS FOR NEWBORN DEPENDENT CHILDREN APPLIES TO DEPENDENT CHILDREN FROM THE MOMENT OF BIRTH; AMENDING SECTION 41-3932, IDAHO CODE, TO CLARIFY THAT COVERAGE IN HEALTH MAINTENANCE ORGANIZATION CONTRACTS FOR INJURY OR SICKNESS FOR NEWBORN DEPENDENT CHILDREN APPLIES TO DEPENDENT CHILDREN FROM THE MOMENT OF BIRTH; AND AMENDING SECTION 41-4023, IDAHO CODE, TO CLARIFY THAT COVERAGE IN EVERY SELF-FUNDED HEALTH CARE PLAN FOR INJURY OR SICKNESS FOR NEWBORN DEPENDENT CHILDREN APPLIES TO DEPENDENT CHILDREN FROM THE MOMENT OF BIRTH.

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

SECTION 1. That Section 41-2140, Idaho Code, be, and the same is hereby amended to read as follows:

41-2140. REQUIRED PROVISIONS. (1) Any disability insurance contract delivered or issued for delivery in this state ~~more than one hundred twenty (120) days after the effective date of this act~~, which provides coverage for injury or sickness for newborn dependent children of the insured, shall provide such coverage for such newborn and ~~infants children, including adopted newborn children that are placed with the adoptive insured within sixty (60) days of the adopted child's date of birth,~~ from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive insured more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies ~~of such infant children~~

from the moment of birth. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive insured, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive insured signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with an insured continues in the same manner as it would with respect to a naturally born child of the insured until the first to occur of the following events:

- (a) Date the child is removed permanently from that placement; or
- (b) The date the insured rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

(2) No policy of disability insurance which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions, as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the policy. If a fixed amount is specified in such policy for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the policy. Where the policy contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the policy. This section shall apply to all disability policies except individual noncancelable or guaranteed renewable policies, issued or delivered before January 1, 1977.

With respect to such individual noncancelable or guaranteed renewable policies issued or delivered before January 1, 1977, the insurer shall communicate the availability of coverage of involuntary complications of pregnancy when negotiating any changes in such policies.

For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All policies subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such policy which is in conflict with this section shall be of no force or effect.

SECTION 2. That Section 41-2210, Idaho Code, be, and the same is hereby amended to read as follows:

41-2210. REQUIRED PROVISION IN GROUP AND BLANKET POLICIES. (1)

Any group disability insurance contract or blanket disability insurance contract, delivered or issued for delivery in this state more than ~~one-hundred-twenty-(120)-days-after-the-effective-date-of--this~~ act, which provides coverage for injury or sickness for newborn dependent children of subscribers or other members of the covered group, shall provide coverage for such newborn ~~and-infants~~ children, including adopted newborn children that are placed with the adoptive subscriber or other member of the covered group within sixty (60) days of the adopted child's date of birth, from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive subscriber or other member of the covered group more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies ~~of-such-infant-children-from-the-moment-of-birth.~~ For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive subscriber or other member of the covered group, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive subscriber or other member of the covered group signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with a subscriber or other member of the covered group continues in the same manner as it would with respect to a naturally born child of the subscriber or other member of the covered group until the first to occur of the following events:

- (a) Date the child is removed permanently from that placement; or
- (b) The date the subscriber or other member of the covered group rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

(2) No policy of disability insurance which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions, as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the policy. If a fixed amount is specified in such policy for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the policy. Where the policy contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the policy. This section shall apply to all disability policies except any group disability policy made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All policies subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such policy which is in conflict with this section shall be of no force or effect.

SECTION 3. That Section 41-3437, Idaho Code, be, and the same is hereby amended to read as follows:

41-3437. REQUIRED PROVISIONS -- INFANTS. There shall be a provision that a A subscriber's contract, delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act, which provides coverage for injury or sickness for newborn dependent children of subscribers or other members of the covered group, shall provide coverage for such newborn and infants children, including adopted newborn children that are placed with the adoptive subscriber or other member of the covered group within sixty (60) days of the adopted child's date of birth, from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive subscriber or other member of the covered group more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive subscriber or other member of the covered group, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive subscriber or other member of the covered group signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection as to a child placed for adoption with a subscriber or other member of the covered group continues in the same manner as it would with respect to a naturally born child of the subscriber or other member of the covered group until the first to occur of the following events:

- (1) Date the child is removed permanently from that placement; or
- (2) The date the subscriber or other member of the covered group rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

SECTION 4. That Section 41-3932, Idaho Code, be, and the same is hereby amended to read as follows:

41-3932. COMPLICATIONS OF PREGNANCY. (1) Any health maintenance organization contract delivered or issued for delivery in this state, which provides coverage for injury or sickness for newborn dependent children of the subscribers or other members of the covered group,

shall provide such coverage for such newborn children and infants, including adopted newborn children that are placed with the adoptive subscriber or other member of the covered group within sixty (60) days of the adopted child's date of birth, from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive subscriber or other member of the covered group more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive subscriber or other member of the covered group, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive subscriber or other member of the covered group signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with a subscriber or other member of the covered group continues in the same manner as it would with respect to a naturally born child of the subscriber or other member of the covered group until the first to occur of the following events:

- (a) Date the child is removed permanently from that placement; or
- (b) The date the subscriber or other member of the covered group rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

(2) No health maintenance organization contract which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the plan. If a fixed amount is specified in such plan for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the plan. Where the plan contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the plan.

Where a plan which provides or arranges direct health care services for its members contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from prenatal care and delivery. However, expenses resulting from any delivery in excess of the deductible amount shall be treated as expenses for any other illness under the plan. If the pregnancy is interrupted, the maternity deductible charged for prenatal care and delivery shall be based on the value of the medical services received, providing that it is never

more than two-thirds (2/3) of the plan's maternity deductible.

This section shall apply to all health maintenance organization contracts except any group health maintenance organization contracts made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All health maintenance organization contracts subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such plan which is in conflict with this section shall be of no force or effect.

SECTION 5. That Section 41-4023, Idaho Code, be, and the same is hereby amended to read as follows:

41-4023. COVERAGE FROM MOMENT OF BIRTH -- COMPLICATIONS OF PREGNANCY. (1) Every self-funded plan issued or amended on or after the operative date of the amendments to this section in this state or providing coverage to any covered family residing within this state, shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn child or infant of any covered family covered, including a newborn child placed with the adoptive covered family within sixty (60) days of the adopted child's date of birth. Coverage under the self-funded plan for an adopted newborn child placed with the adoptive covered family more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive covered family, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive covered family signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with a covered family continues in the same manner as it would with respect to a naturally born child of the covered family until the first to occur of the following events:

(a) Date the child is removed permanently from that placement; or

(b) The date the covered family rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

No such plan may be issued or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn or adopted children or infants of a covered family covered from and after the moment of birth that is inconsistent with the provisions of this section.

(2) No self-funded plan which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it

contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the plan. If a fixed amount is specified in such plan for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the plan. Where the plan contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the plan. This subdivision shall apply to all self-funded plans except any such plan made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this subdivision, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All plans subject to this subdivision and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such plan which is in conflict with this section shall be of no force or effect.

Approved March 31, 1993.

CHAPTER 306

(H.B. No. 239, As Amended)

AN ACT

RELATING TO INCREASED BID OPPORTUNITIES FOR IDAHO SUPPLIERS; AMENDING SECTION 67-5718, IDAHO CODE, TO PROVIDE A HIGHER BID AMOUNT AND SPECIFY SMALL BID SOLICITATION PROCEDURES FROM BIDDERS WITH SIGNIFICANT IDAHO ECONOMIC PRESENCE AND DIRECTING THE DEPARTMENT OF ADMINISTRATION TO SUBMIT A REPORT TO THE 1995 LEGISLATURE.

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

SECTION 1. That Section 67-5718, Idaho Code, be, and the same is hereby amended to read as follows:

67-5718. REQUISITIONS FOR PROPERTY -- NOTICE -- FORM -- GUARANTEE -- PROCEDURE FOR BIDDING. The administrator of the division of purchasing shall not make or cause to be made any acquisition until a requisition for the property to be acquired has been filed in his office, and such requisition must bear the certificate of the head of the agency making the requisition that there are proper funds or sufficient balance in appropriations out of which the amount of the requisition may lawfully be paid, except as provided to the contrary

under provisions of this chapter allowing emergency purchases.

If the property to be acquired may reasonably be expected to cost in excess of five ten thousand dollars (\$510,000) if purchased, or two five hundred dollars (\$2500) per month if procured, there must be accompanying the requisition a copy of the specifications proposed for use in the acquisition. Upon receipt of the requisition, notice must be commenced within a reasonable period of time and must allow not less than ten (10) days from notice to bid opening date.

Provided, however, that in cases where the total value of the property to be acquired is not in excess of five ten thousand dollars (\$510,000) if purchased, or two five hundred dollars (\$2500) per month if procured, the administrator shall notify registered vendors in such manner as he deems appropriate, and if. To enhance small business bidding opportunities, the administrator shall seek a minimum of two (2) bids from registered vendors having a significant Idaho economic presence as defined in the Idaho Code. If he finds that it is impractical or impossible to obtain two (2) bids for the proposed transaction, he may acquire the property in any manner he deems best. For any acquisition not otherwise requiring specifications, the same may be required by regulation drawn by the administrator.

Provided further, however, that in connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections 60-101 and 60-103, Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

Notice shall be sent to each registered vendor of the property to be acquired, except that if there are more than ten (10) registered vendors for the property to be acquired, the administrator of the division of purchasing may, in his discretion, limit the notices sent to ten (10). Nothing shall prevent all registered vendors from bidding on the property to be acquired. The administrator shall cause all invitations to bid to be posted in a conspicuous place in his office.

The notice shall describe the property to be acquired in sufficient detail to apprise a bidder of the exact nature or functionality of the property required; and shall give the time when, and the place where, bids will be opened. The bid opening date shall be set forth in the specifications. Each bid shall be in writing, sealed and marked, "sealed bid for . . . , to be opened . . . , 19.." and shall be mailed or delivered to the office of the administrator of the division of purchasing at Boise, Idaho.

All sealed bids received shall be opened at the time and place specified in the invitation for bids, and in the public view, and a record of each bid shall then and there be made. Contracts shall be awarded to and orders placed with the lowest responsible bidder. The administrator shall have the right to reject any and all bids pursuant to rules and regulations established for the division.

Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in the Idaho Code.

to the 1995 Legislature as to the effectiveness and benefits realized because of the changes made by this act.

Approved March 31, 1993.

CHAPTER 307
(H.B. No. 254, As Amended)

AN ACT

RELATING TO FISH AND GAME AND THE STATUTE OF LIMITATION FOR MISDEMEANORS; AMENDING CHAPTER 14, TITLE 36, BY THE ADDITION OF A NEW SECTION 36-1406, IDAHO CODE, TO PROVIDE THAT NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATUTE OF LIMITATION FOR SOME MISDEMEANOR VIOLATIONS OF THE FISH AND GAME CODE IS TWO YEARS.

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

SECTION 1. That Chapter 14, 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 36-1406, Idaho Code, and to read as follows:

36-1406. STATUTE OF LIMITATION FOR MISDEMEANORS. Notwithstanding any other provision of law, a prosecution for misdemeanors under the provisions of this title must be commenced by the issuance of a citation or filing of a complaint within two (2) years after its commission for any of the following offenses:

(a) Unlawfully taking or possessing any big game animal, caribou, or grizzly bear.

(b) The unlawful sale or purchase of wildlife as set forth in section 36-501, Idaho Code.

(c) Unlawfully purchasing, possessing or using any license, tag or permit by any person who does not reside in the state of Idaho at the time of purchase.

The prosecution for all other misdemeanors under this title must be commenced as provided in section 19-403, Idaho Code.

Approved March 31, 1993.

CHAPTER 308
(H.B. No. 255, As Amended)

AN ACT

RELATING TO DREDGE OR PLACER MINING; AMENDING SECTION 47-1317, IDAHO CODE, TO PROVIDE FOR MAXIMUM BOND AMOUNT PER ACRE FOR RECLAMATION AND TO REQUIRE A REPORT TO THE DIRECTOR ANNUALLY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 47-1317, Idaho Code, be, and the same is hereby amended to read as follows:

47-1317. APPLICATION, PERMIT AND BOND REQUIRED. (a) Before any person may conduct a placer or dredge mining operation on lands or natural watercourses in the state of Idaho, such person shall file with the director an application for a permit upon a form provided by the director, and shall pay an application fee of fifty dollars (\$50.00), for each ten (10) acres or fraction thereof above involved in such application, provided that no application fee shall exceed one thousand dollars (\$1,000). Application fees shall be deposited in the dredge and placer mining account.

(b) The permit to issue in any such case shall be in a form provided and approved by the board. No such permit shall be issued to any applicant until the applicant files with the director an initial bond in an amount ~~determined by the board to be~~ necessary to pay the estimated reasonable costs of reclamation required under the permit for each acre of land to be disturbed during the first season of operation plus ten percent (10%). The amount of the bond shall not exceed one thousand eight hundred dollars (\$1,800) per acre of disturbed land. At the beginning of each calendar year or before operations begin, the operator shall notify the director of any increase or decrease in the acreage of disturbed lands which will result from planned placer mining activity within the next operating season. A correlated increase or decrease in the bond shall be required by the director for a change in disturbed acreage. In the event of failure to reclaim by the permittee, of reclamation of to reclaim disturbed lands proposed to be disturbed in the permit area, the cost charged to the permittee shall be reasonable costs of reclamation plus ten percent (10%); provided that in no event shall any bond submitted pursuant to this section exceed one thousand eight hundred dollars (\$1,800) for any given acre of disturbed land. The determination by the board of ~~the bond amount~~ reclamation costs shall constitute a final decision subject to judicial review as set forth in subsection (d) of section 47-1320, Idaho Code. The bond may be submitted in the form of a surety, cash, certificate of deposit, or other bond acceptable to the director, provided that any bond shall be in the applicable amount set forth above.

(c) It shall be unlawful for any person to conduct placer or dredge mining operations in this state without first having obtained a permit and bond as herein provided. The board shall determine whether a permit application and bond submitted by an applicant satisfies the requirements of this act and regulations promulgated thereto. Upon such determination, the board shall notify the applicant in writing of approval or denial of the permit application and bond. Any notice of rejection shall state the reasons for such rejection. An applicant may submit an amended permit application and bond.

(d) It shall be the duty of the board in its administration of this act to cause periodic inspections to be made of the operations under such permits to determine compliance with this law and to make rules and regulations with respect thereto and the cost and expense of making such inspections shall be borne by the permittee, which such costs and expenses shall constitute a lien upon equipment, personal property, or real property of the permittee and upon minerals produced

from the permit area, and the failure to pay the amount thereof on demand by the board shall be cause for termination of the permit. All inspection fees shall be deposited in the dredge and placer mining account.

(e) The board may release an applicant from the requirement that the applicant submit a bond if the director determines that the applicant has insured faithful performance of the requirements of this act and regulations promulgated thereto pertinent to land and watercourse restoration by submitting and having on file a current and valid bond with the United States government, which bond equals or exceeds the amount set forth above, provided that such release by the director shall not release an applicant from bonding under this act, should the permittee fail to continuously maintain a valid bond with the United States government or from compliance with any other requirement of this act or regulations promulgated thereto.

(f) Upon determination by the director that restoration has been satisfactorily completed on a portion of a permit area in accordance with the applicable approved permit and with subsection (a) of section 47-1314, Idaho Code, the board may reduce the bond amount to reflect the completed restoration.

(g) That if any applicant for such dredge or other placer mining operations as contemplated by this act be not the owner of the lands described in the application or any part thereof, the owner of such lands shall indorse his approval of the application, and no permit shall be issued in the absence of such approval by the owner of lands described in the application not owned by the applicant.

(h) No permit shall be issued proposing to alter or occupy the bed of a navigable stream or to dredge any stream or watercourse without notification to the department of water resources of the pending application. The department of water resources shall respond to said notification within twenty (20) days, and the response shall be included in any permit granted hereunder by a showing whether the permit constitutes a permit from the department of water resources or whether an additional permit from the department of water resources shall be required.

(i) No permit shall issue hereunder to dredge nor otherwise placer mine any lands owned by the state of Idaho, including the beds of navigable streams, and including the mineral reservations in lands sold by the state, unless a mineral lease shall be made of such terms and at such royalty to the state as its board of state land commissioners shall prescribe and determine.

(j) The Idaho state board of land commissioners shall have the power to deny any application for a permit on state land, stream or river beds, or on any unpatented mining claims, upon its determination that a dredge mining operation on the land proposed would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat and other factors which in the judgment of the state land board may be pertinent, and may deny an application upon notification by the department of water resources that the grant of such permit would result in permanent damage to a stream channel.

(k) Upon default, in the event that the amount of the bond is insufficient to reclaim the land in compliance with the act and the

approved plan, the attorney general is empowered to commence legal action against the operator in the name of the board to recover the amount in excess of the bond necessary to reclaim the land in compliance with the act and the approved plan.

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 31, 1993.

CHAPTER 309
(H.B. No. 258)

AN ACT

RELATING TO DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF FISH AND GAME; AMENDING SECTION 36-106, IDAHO CODE, TO AUTHORIZE THE DIRECTOR TO ISSUE A LICENSE/TAG/PERMIT TO A NONRESIDENT LANDOWNER WHO RESIDES IN A CONTIGUOUS STATE FOR AN EMERGENCY DEPREDATION HUNT WHICH INCLUDES THE LANDOWNER'S PROPERTY.

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 regulations 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 the Idaho personnel commission act and rules promulgated pursuant to chapter 53, title 67, Idaho Code, 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 regulations 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 resource 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 regulations 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.

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 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 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.

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 coordinating 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.

Approved March 31, 1993.

CHAPTER 310
(H.B. No. 261)

AN ACT

RELATING TO THE STATE TREASURER'S INVESTMENT AUTHORITY; REPEALING SECTIONS 41-5001 THROUGH 41-5006, INCLUSIVE, IDAHO CODE; AMENDING SECTION 67-1210, IDAHO CODE, TO INCLUDE, AS A PERMITTED INVESTMENT OF IDLE MONEYS IN THE STATE TREASURY, THE UNITED STATES SMALL BUSINESS ADMINISTRATION GUARANTEED PORTION OF IDAHO BANK LOANS TO FINANCE THE UPGRADE OF UNDERGROUND STORAGE TANKS IN COMPLIANCE WITH UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGULATIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Sections 41-5001 through 41-5006, inclusive, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Section 67-1210, Idaho Code, be, and the same is hereby amended to read as follows:

67-1210. INVESTMENT OF IDLE MONEYS. It shall be the duty of the state treasurer to invest idle moneys in the state treasury, other than moneys in public endowment funds, in any of the following:

(a) Bonds, treasury bills, interest-bearing notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and

interest.

(b) General obligation or revenue bonds of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.

(c) General obligation or revenue bonds of any county, city, metropolitan water district, municipal utility district, school district or other taxing district of this state.

(d) Notes, bonds, debentures, or other similar obligations issued by the Farm Credit System or institutions forming a part thereof under the Farm Credit Act of 1971 [U.S.C., tit. 12, sections 2001-2259] and all Acts of Congress amendatory thereof or supplementary thereto; in bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act [U.S.C., tit. 12, sections 1421-1449]; in bonds, debentures and other obligations of the Federal National Mortgage Association established under the National Housing Act [U.S.C., tit. 12, sections 1701-1750g] as amended, and in the bonds of any federal home loan bank established under said act and in other obligations issued or guaranteed by agencies or instrumentalities of the government of the state of Idaho or of the United States, including the United States small business administration guaranteed portion of any loan approved by an Idaho banking corporation and by the state treasurer for the purpose of financing the addition to or retrofit of an underground storage tank or underground storage tank system with items including, but not limited to, cathodic protection, lining or spill and overflow controls to improve the ability of an underground storage tank or tank system to prevent the release of petroleum or petroleum products, which additions or retrofit are necessary to bring the tank or tank system into compliance with underground storage tank upgrade regulations promulgated by the United States environmental protection agency pursuant to subtitle I of the solid waste disposal act, as amended by the resource conservation and recovery act.

(e) Bonds, notes or other similar obligations issued by public corporations of the state of Idaho including, but not limited to, the Idaho state building authority, the Idaho housing authority and the Idaho water resource board, but such investment shall not extend beyond seven (7) days.

(f) Repurchase agreements covered by any legal investment for the state of Idaho.

(g) Tax anticipation notes and registered warrants of the state of Idaho.

(h) Tax anticipation bonds or notes and income and revenue anticipation bonds or notes of taxing districts of the state of Idaho.

(i) Time deposit accounts and savings accounts in state depositories including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(j) Time deposit accounts and savings accounts of state or federal savings and loan associations located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the Federal Savings and Loan Insurance Corporation including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and simi-

lar transaction accounts.

(k) Revenue bonds of institutions of higher education of the state of Idaho.

(l) Share, savings and deposit accounts of state and federal credit unions located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the national credit union share insurance fund and/or any other authorized deposit guaranty corporation, including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

The term "idle moneys" means the balance of cash and other evidences of indebtedness which are accepted by banks as cash in the ordinary course of business, in demand deposit accounts, after taking into consideration all deposits and withdrawals, on a daily basis.

The interest received on all such investments, unless otherwise specifically required by law, shall be paid into the general account of the state of Idaho. Provided, unless otherwise specifically provided by statute, funds received by the state pursuant to a federal law, regulation, or federal-state agreement which governs disposition of interest earned upon such funds shall be classified in the agency asset fund provided by section 57-811, Idaho Code. Any interest earned upon such funds shall be accounted for separately to give effect to the federal law, regulation, or federal-state agreement.

If the interest is to be credited to a separate account, to partially compensate for the amount of interest the general account would otherwise receive if such separate investment were not required, the state treasurer shall charge the account an investment administration fee equal to one-quarter of one percent (.25%) per year of the average daily balance of the account, including separate investments, if any, of that account. The fee may be charged monthly in an amount approximately one-twelfth of the fee which would be payable on an annual basis. The amount of the investment administration fee shall constitute an appropriation from the account for which the investment administration services are rendered.

To partially compensate for the interest the general account has lost when such interest was diverted to certain state funds or accounts by statute authorizing them to be invested individually and receive their own interest, the state treasurer shall charge an investment administration fee to each such state fund or account, other than the general account, which receives investment income from investments administered by the office of state treasurer. The investment administration fee shall be equal to one-quarter of one percent (.25%) per year of the average daily balance of the fund or account, including separate investments, if any, of that fund or account. The fee may be charged monthly in an amount approximately one-twelfth of the fee which would be payable on an annual basis. The amount of the investment administration fee shall constitute an appropriation from the fund or account for which the investment administration services are rendered.

The term "to invest" means to use the idle moneys in the state treasury to buy, sell, including selling before maturity at either a gain or a loss, retain, or exchange any of the investments described in this section, considering the probable safety of the capital, the

probable income to be derived, and the liquidity of the assets.

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, 1993.

CHAPTER 311
(H.B. No. 326)

AN ACT

RELATING TO THE SEARCH AND RESCUE ACCOUNT; AMENDING SECTION 19-4705, IDAHO CODE, TO INCREASE THE PERCENTAGE OF FINES AND FORFEITURES COLLECTED FOR VIOLATIONS OF THE FISH AND GAME LAWS TO BE REMITTED TO THE SEARCH AND RESCUE ACCOUNT.

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 five two and one-half per cent (52 1/2%) to the state treasurer for deposit in the state general account, five ten per cent (510%) to the search and rescue account, twenty-two and one-half per cent (22 1/2%) to the district court fund and sixty-sevenfive and one-half per cent (67-1/265%) to the public school income 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 per cent (10%) to the state treasurer for deposit in the state general account, forty-five per cent (45%) to the state treasurer for deposit in the highway distribution account, twenty-two and one-half per cent (22 1/2%) to the district court fund and twenty-two and one-half per cent (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 per cent (10%) to the state treasurer for deposit in the state general account and ninety per cent (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 per cent (10%) to the state treasurer for deposit in the state general account and ninety per cent (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 per cent (10%) to the state treasurer for deposit in the state general account and ninety per cent (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 per cent (10%) to the state treasurer for deposit in the state general account and ninety per cent (90%) to the city whose ordinance was violated.

(g) Fines and forfeitures remitted for violations not specified in this act shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general account and ninety per cent (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 per cent (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 per cent (10%) to the state treasurer for deposit to the state general account and ninety per cent (90%) to the general account 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 per cent (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.

CHAPTER 312
(H.B. No. 327, As Amended)

AN ACT

RELATING TO A STRUCTURE FOR BUSINESS RELATIONS BETWEEN DISTRIBUTORS AND SUPPLIERS OF BEER; AMENDING TITLE 23, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 11, TITLE 23, IDAHO CODE; DECLARING THE POLICY OF THIS STATE; DEFINING TERMS; PROHIBITING CERTAIN CONDUCT BY DISTRIBUTORS AND SUPPLIERS; REQUIRING A DISTRIBUTOR TO GIVE NOTICE OF A TRANSFER OF DISTRIBUTOR'S BUSINESS AND PROVIDING FOR SUPPLIER CONSENT; PERMITTING THE AMENDMENT, MODIFICATION, TERMINATION OR NONRENEWAL OF AN AGREEMENT, FOR CAUSE; PROVIDING FOR NOTICE OF INTENT TO TERMINATE, MODIFY, AMEND OR NOT RENEW AN AGREEMENT; PROVIDING ARBITRATION; PROVIDING REMEDIES FOR BREACH OF TERMS OF AN AGREEMENT; PROVIDING FOR WAIVER OF BENEFITS; AND PROVIDING SEVERABILITY.

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

SECTION 1. That Title 23, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 11, Title 23, Idaho Code, and to read as follows:

CHAPTER 11
DISTRIBUTORS AND SUPPLIERS OF BEER

23-1101. DECLARATION OF POLICY. It is hereby declared to be the policy of the legislature of the state of Idaho to regulate and control the importation, sale and distribution of beer within the state of Idaho, in the exercise of its powers under the twenty-first amendment to the constitution of the United States of America, and pursuant to section 26, article III, of the constitution of the state of Idaho. In furtherance of that policy, the restrictions and regulations contained in this chapter are enacted to promote equality and fair dealing in the business relationship between Idaho distributors of beer and the suppliers of such product and to assure the establishment and maintenance of an orderly system for the distribution of such products in accordance with the laws of this state regulating the sale and distribution of such products to the public.

23-1102. DEFINITIONS. Whenever used in this chapter, the following words or phrases, or the plural thereof, unless the context clearly requires otherwise, shall have the meaning ascribed to them in this section:

(1) "Agreement" means any agreement between a distributor and a supplier, whether oral or written, whereby a distributor is granted the right to purchase a brand, or brands, of beer sold by a supplier and to resell such products within the state of Idaho.

(2) "Amend," "amendment," or "modify," means any alteration or change in the agreement, which causes a material change in the distributor's business or relationship with the supplier, and which alteration or change does not apply to all distributors in the state

of Idaho who distribute supplier's products.

(3) "Ancillary business" means a business owned by a distributor, by a substantial stockholder of a distributor, or by a substantial partner of a distributor, the primary business of which is directly related to the transporting, storing or marketing of the supplier's products.

(4) "Designated member" means:

(a) The spouse, child, grandchild, parent, brother or sister of a deceased individual who owned an interest in a distributor;

(b) Any person who inherits an ownership interest in a distributor;

(c) The appointed and qualified personal representative or the testamentary trustee of a deceased individual owning an interest in a distributor;

(d) The person appointed by a court as the guardian or conservator of the property of an incapacitated individual owning an interest in a distributor; or

(e) A person who has succeeded to the deceased individual's ownership interest in the distributor pursuant to a written contract or instrument which has been previously approved, in writing, by a supplier.

(5) "Distributor" means a business entity, whether sole proprietorship, partnership, corporation, association, syndicate, or any other combination of persons, licensed by the state of Idaho to sell beer to retailers. The term "distributor" shall not include a brewery, brewery branch or subsidiary thereof, which is licensed by the state of Idaho and which license authorizes sales of beer to be made directly to a retailer, whether or not licensed as a distributor by the state of Idaho.

(6) "Good faith" means honesty in fact in the conduct or transaction involved and the observance of reasonable commercial standards of fair dealing in the trade, as such term and standards are defined in, and interpreted pursuant to, the uniform commercial code, title 28, Idaho Code.

(7) "Person" means any individual, partnership, corporation, association, syndicate, or any other combination of individuals or corporations.

(8) "Reasonable standards and/or qualifications" mean those criteria established and consistently applied by a supplier to distributors within the state of Idaho and similarly situated distributors in adjoining states who:

(a) Have entered into, continued or renewed an agreement with the supplier during a period of twenty-four (24) months prior to the proposed transfer of the distributor's business; or

(b) Have changed managers or successor managers during a period of twenty-four (24) months prior to the proposed change in manager or successor manager of the distributor.

(9) "Retaliatory action" includes the refusal to continue an agreement, or a material part thereof, or a material reduction in the quality of service or quantity of products available to a distributor under an agreement, which refusal or reduction is not made in good faith.

(10) "Similarly situated distributors in adjoining states" mean

distributors in adjoining states having an agreement with the supplier who have reasonably comparable business, area and market characteristics to an Idaho distributor of supplier's products, which business, area and market characteristics may include, but are not limited to, the following: gross sales' volume concerning supplier's products, facilities, number of employees, business capitalization, market areas, considering the population and the demographics thereof, and the square miles of area served.

(11) "Substantial stockholder" or "substantial partner" means a person who owns an interest of ten percent (10%) or more of a distributor.

(12) "Supplier" means any person, either within or outside the state of Idaho, who enters into an agreement with a distributor for the sale of beer to such distributor with the intent that such products will be resold by the distributor to retailers within the state of Idaho. The term "supplier" shall also be deemed to include the successor in interest to a supplier's business generally, or with reference to a specific brand or brands, of beer. The term "supplier" shall not include any person who produces fewer than thirty thousand (30,000) barrels of beer annually and who is licensed by the state of Idaho for such purpose.

(13) "Transfer of distributor's business" or similar phrase, means the voluntary sale, assignment or other transfer of all or control of the business, or all or substantially all of the assets of the distributor, or all or control of the capital stock of the distributor, including without limitation the sale or other transfer of capital stock or assets by merger, consolidation or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the distributor.

23-1103. PROHIBITED ACTS. The following are prohibited under the provisions of this chapter:

(1) A distributor shall not:

(a) Transfer the distributor's business without giving the supplier written notice of the proposed transfer of the business as required under the provisions of this chapter.

(b) Transfer the distributor's business without receiving the supplier's written approval for the proposed transfer, where required by an agreement and consistent with the provisions of this chapter.

(c) Distribute, sell or deliver beer to a retailer whose premises are situated outside the geographic territory agreed upon by the distributor and the supplier, as the area in which the distributor will sell beer purchased from the supplier, without the consent of the supplier and the distributor who has been assigned such territory by the supplier.

(2) A supplier shall not, directly or indirectly, or through an affiliate or subsidiary:

(a) Require any distributor to do any illegal act or to violate any law or regulation either by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and the distributor, or by any other means.

(b) Require any distributor to accept delivery of any beer or other commodity which has not been ordered by the distributor or, if ordered, has been canceled by the distributor in accordance with reasonable cancellation procedures of the supplier. Provided however, a supplier may impose reasonable inventory requirements upon a distributor if the requirements are made in good faith and are generally applied to other distributors in Idaho and similarly situated distributors in adjoining states having an agreement with the supplier.

(c) Withhold delivery of beer ordered by a distributor or change a distributor's allocation of a brand or brands by the supplier if the withholding or change is not made in good faith.

(d) Engage in any conduct that requires a distributor to fix or maintain the resale prices at which the distributor sells products received from the supplier.

(e) Require a distributor to purchase one (1) or more brands of beer or other products in order for the distributor to purchase another brand or brands of beer. Provided however, that if a distributor has agreed to distribute a brand or brands of beer before the effective date of this chapter, the distributor shall continue to distribute the brand or brands of beer in conformance with the provisions of this chapter.

(f) Require a distributor to assent to any unreasonable requirement, condition, understanding or term of an agreement which limits the distributor's right to sell a brand or brands of beer or other products of any other supplier.

(g) Require a distributor to submit financial reports or other specific financial or sales information regarding products sold by the distributor, other than those of the supplier, as a condition of renewal or continuation of an agreement.

(h) Require a distributor to terminate the designation of an individual as a manager or successor manager of a distributor, or refuse to approve the designation of an individual as manager or successor manager, unless the manager or successor manager fails to meet reasonable standards or qualifications for such position which standards or qualifications are nondiscriminatory and are applied uniformly to all distributors similarly situated. In any legal action, or other dispute resolution proceedings, challenging such termination or designation, the distributor shall have the burden of proving that the termination of the manager or successor manager was required by the supplier or that the supplier refused to approve the designation of an individual as manager or successor manager. Upon the distributor making such prima facie showing, the supplier shall have the burden of proving that such person fails to meet nondiscriminatory and reasonable standards and qualifications.

(i) Take any retaliatory action against a distributor who, with just cause, files a complaint with any regulatory body or in any court of law regarding an alleged violation of federal, state or local law or of any administrative rule by the supplier.

business shall give the supplier written notice of the distributor's proposed transfer of the distributor's business not less than thirty (30) days prior to the date specified in the notice for completion of the transfer, except in cases of transfer to a designated member, in which case the transferee shall give the supplier written notice of the transfer within a reasonable time after the transfer is completed.

(2) A supplier's written consent shall be required for a transfer of the distributor's business to a person other than a designated member. Provided however, written consent from a supplier shall be required for a transfer of the distributor's business to a designated member if any of the following conditions apply:

(a) The transferee or any owner of the transferee has been convicted of a felony under the laws of any state or of the federal government which would adversely affect the good will or interests of the supplier.

(b) The transferee or any owner of the transferee has had a license for the sale of beer, wine or any alcoholic beverage suspended or revoked by the regulatory agency of the federal government or of any state and such suspension or revocation interrupted service by the transferee or by the owner of the transferee for a period of more than thirty (30) days.

(c) The transferee or any owner of the transferee is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the transferee's business or assets, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the transferee.

(d) The transferee or any owner of the transferee has had any previous agreement with the supplier involuntarily terminated, canceled, discontinued or not renewed by the supplier for good cause.

(3) If the transferee is a designated member, a supplier shall not interfere with, prevent, or unreasonably delay the transfer of the distributor's business. An unreasonable delay is one that exceeds thirty (30) days after the service of the notice required by subsection (1) of this section and the receipt of all material information reasonably requested from which the supplier can determine whether the transfer to the designated member may require the supplier's consent. If consent is required, a supplier may not withhold consent or unreasonably interfere with the transfer of the distributor's business if the transferee meets reasonable standards and qualifications which are material and nondiscriminatory.

(4) If the transferee is not a designated member, a supplier may not withhold consent or unreasonably interfere with or delay the transfer of the distributor's business if the transferee meets reasonable standards and qualifications which are material and nondiscriminatory. An unreasonable delay is one that exceeds thirty (30) days after the receipt of all material information reasonably requested to enable the supplier to determine whether the transferee meets reasonable standards and qualifications.

(5) In any legal action, or other dispute resolution proceeding, between a distributor and supplier relating to the supplier's refusal

to consent to the transfer of the distributor's business to a transferee, the distributor shall have the burden of proving that the supplier withheld consent, interfered with or delayed the proposed transfer of the distributor's business. Upon the distributor making such prima facie showing, the supplier shall have the burden of proving that the proposed transferee does not meet such reasonable standards and qualifications.

23-1105. SUPPLIER'S RIGHT TO AMEND, CANCEL OR FAIL TO RENEW IMMEDIATELY UPON WRITTEN NOTICE -- GROUNDS. A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement with a distributor immediately upon written notice given by the supplier as provided in section 23-1108, Idaho Code, only if any of the following occur:

(1) Revocation or suspension of a governmental permit or license held by the distributor whereby the distributor cannot service the distributor's sales territory for a period of more than thirty (30) days.

(2) The distributor is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the distributor's business or assets, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the distributor.

(3) A stockholder or a partner of the distributor who holds or owns ten percent (10%) or more of the stock or value of the distributor has been convicted of a felony under the laws of the United States or the laws of any state which conviction would adversely affect the good will or interests of the distributor or supplier. Provided however, that if another stockholder or other stockholders, or partner or partners, or a designated member or members, or other person, notifies the supplier in writing prior to the conviction of an intent to purchase the partnership interest or the stock of the offending stockholder or partner and then purchases the interest or stock within thirty (30) days after a final conviction or within thirty (30) days after the supplier has consented to the transfer, whichever event occurs last, the supplier shall not amend, modify, terminate, cancel, discontinue or fail to renew such agreement. Any purchase of an interest or stock pursuant to the provisions of this subsection shall comply with the requirements and conditions of supplier consent contained in the provisions of section 23-1104, Idaho Code.

(4) An assignment of the distributor's agreement with the supplier, or a transfer of the distributor's business, other than to a designated member, has been made without written notice as provided under the provisions of this chapter.

(5) Fraud by the distributor in his dealings with the supplier or with reference to supplier's products.

(6) The distributor has failed to pay for products ordered and delivered in accordance with established terms with a supplier and fails to make full payment within five (5) business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier.

(7) A transfer of the distributor's business is made despite

timely and proper notice of disapproval by the supplier.

(8) The distributor has sold or delivered beer to a retailer whose premises are outside of the territory assigned to the distributor by the supplier in the agreement.

23-1106. SUPPLIER'S RIGHT TO DISCONTINUE DISTRIBUTION OF BRAND.

(1) A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement, with reference to a brand sold by a supplier, not less than thirty (30) days after written notice is given by the supplier as provided in section 23-1108, Idaho Code, if the supplier discontinues production or discontinues distribution in this state of a brand of beer sold by the supplier to the distributor.

(2) Nothing in this section shall prohibit a supplier from conducting test marketing of a product which is not currently being sold in this state, provided that the supplier has notified the director, Idaho department of law enforcement, in writing, of its plans to conduct test marketing, which notice shall describe the market area in which the test shall be conducted, the name or names of the distributor or distributors who will be selling the product, the name or names of the product being tested, and the period of time, not to exceed eighteen (18) months, during which the testing will take place.

(3) If a supplier causes the discontinuance of distribution in this state of a brand of beer, except a brand that is being test marketed pursuant to subsection (2) of this section, then that brand cannot be reintroduced or sold to distributors within this state by any supplier for a period of six (6) months after providing the written notice required in the provisions of this section. A supplier who is test marketing a brand or brands in this state, in compliance with subsection (2) of this section, shall not be subject to the six (6) month reintroduction limitation set forth in the provisions of this subsection.

(4) Whenever a supplier discontinues distribution in this state of a brand of beer, the supplier shall be required, at the distributor's request, to purchase from the distributor any unsold inventory of that brand.

23-1107. SUPPLIER REQUIREMENTS UPON AMENDMENT, CANCELLATION OR REFUSAL TO RENEW AN AGREEMENT.

Except as provided in sections 23-1105 and 23-1106, Idaho Code, a supplier may not amend, modify, terminate, cancel, discontinue, or refuse to renew an agreement with a distributor, or cause a distributor to resign from an agreement, unless the supplier has complied with the following requirements:

(1) The supplier shall give written notice to the distributor, as provided in section 23-1108, Idaho Code.

(2) The supplier acts in good faith. In any legal action, or dispute resolution proceeding, the supplier shall have the burden of proving that it acted in good faith.

(3) The supplier has good cause. In any legal action, or dispute resolution proceeding, the supplier shall have the burden of proving that it has good cause. Good cause exists when all of the following have occurred:

(a) The distributor has failed to comply substantially with essential and reasonable requirements imposed upon him by the

agreement, if such requirements are not discriminatory, either by their terms or in the method of their enforcement, as compared with requirements imposed on other distributors in Idaho or similarly situated distributors in adjoining states and if such requirements are not in violation of any law or regulation.

(b) The supplier first acquired knowledge of the failure described in subsection (3)(a) of this section not more than twenty-four (24) months before the date notification was given pursuant to the provisions of section 23-1108, Idaho Code.

(c) The supplier has given written notice to the distributor, stating specifically the manner in which the distributor has failed to comply with the agreement.

(d) The distributor was given adequate opportunity to use good faith efforts to correct the failure to comply with the agreement. Adequate opportunity shall be thirty (30) days after receipt of the supplier's notice to submit a plan of corrective action to comply with the agreement and an additional ninety (90) days after the submission of a plan of corrective action to correct the failure in accordance with the plan.

23-1108. NOTICE REQUIREMENTS. Notice by a supplier of any proposed amendment, modification, termination, cancellation, discontinuance or refusal to renew an agreement with the distributor shall be written, shall be provided to the distributor in the manner provided in the agreement, if written, or if the agreement is oral, by certified mail, and the notice shall contain all of the following:

(1) A statement of intention to amend, modify, terminate, cancel, discontinue or refuse to renew the agreement.

(2) A statement of the reason(s) for the amendment, modification, termination, cancellation, discontinuance or nonrenewal.

(3) The date on which the amendment, modification, termination, cancellation, discontinuance or nonrenewal will take effect.

23-1109. TRANSFEREE OF DISTRIBUTOR'S BUSINESS BOUND BY AGREEMENTS IN EFFECT AT TIME OF TRANSFER -- SUPPLIER'S SUCCESSOR BOUND BY AGREEMENTS IN EFFECT AT TIME OF SUCCESSION TO SUPPLIER'S INTEREST. (1) A transferee of a distributor's business that continues to operate the business shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer.

(2) A successor to a supplier's interest in a particular brand or brands of beer, whether acquired by purchasing of the brand name or all or substantially all of the stock or assets of the supplier of that brand or brands, or who has been granted the marketing rights to a particular brand or brands of beer shall be bound by all terms and conditions of each agreement with distributors with respect to that brand or brands in effect on the date of the succession to such interest as a condition of such successor in interest continuing to sell that brand or brands to distributors for resale within this state.

23-1110. COMPENSATION TO DISTRIBUTOR UPON TERMINATION, CANCELLATION OR NONRENEWAL OF AGREEMENT. (1) In the event that an agreement is terminated, canceled or not renewed by a supplier, the distributor

shall be entitled to reasonable compensation for the laid-in cost to the distributor of the inventory of the supplier's products, including any taxes paid on the inventory by the distributor, together with a reasonable charge for handling of the products.

(2) In the event that an agreement is terminated, canceled or not renewed by a supplier in bad faith or for other than good cause, the distributor shall be entitled to additional compensation from the supplier for:

(a) The fair market value of any and all assets, including ancillary businesses, relating to the transporting, storing or marketing of supplier's products; and

(b) The good will of the business.

(3) The total compensation to be paid by the supplier shall be reduced by any sum received by the distributor from sale of assets of the business used in the distribution of the supplier's products as well as by whatever value such assets may have to the distributor that are unrelated to the supplier's products.

(4) As used in subsection (2)(a) of this section, fair market value means the highest dollar amount at which a seller would be willing to sell and a buyer would be willing to buy when each possesses all information relevant to the transaction.

23-1111. **ARBITRATION.** Any dispute arising under the provisions of this chapter may be settled by such dispute resolution procedures, including arbitration, as may be provided by a written agreement between the parties. In the absence of a written agreement providing for dispute resolution procedures, any dispute arising under the provisions of this chapter may be settled by arbitration, if every party involved in the dispute agrees to arbitrate. Arbitration shall be conducted in accordance with the uniform arbitration act of the state of Idaho, chapter 9, title 7, Idaho Code.

23-1112. **JUDICIAL REMEDIES OF PARTIES.** (1) If a supplier engages in conduct prohibited under the provisions of this chapter, a distributor with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages, court costs, and, in the court's discretion, attorney's fees, reasonably incurred as the result of the prohibited conduct. If a distributor engages in conduct prohibited under the provisions of this chapter, a supplier with which the distributor has an agreement may maintain a civil action against the distributor to recover actual damages, court costs and, in the court's discretion, attorney's fees reasonably incurred as a result of the prohibited conduct. Actual damages shall include damages to any ancillary business incurred as a result of the prohibited conduct.

(2) A supplier or distributor may bring an action for declaratory judgment for determination of any controversy arising pursuant to the provisions of this chapter.

(3) Upon proper application to the court, a supplier or distributor may obtain injunctive relief against any violation of the provisions of this chapter.

(4) The remedies provided in this section shall not abolish any other cause of action or remedy available to the supplier or the dis-

tributor.

(5) Nothing contained in this chapter shall give rise to a claim against the supplier or distributor by any proposed transferee of the distributor's business.

23-1113. WAIVER OF BENEFITS OF CHAPTER. No agreement shall require a supplier or distributor to waive any rights granted pursuant to any provision of this chapter and the provisions of any agreement which would have such an effect shall be null and void. However, if a good faith dispute arises between the parties as to the meaning of any rights or obligations created in the provisions of this chapter, or the performance by a party of its obligations, the parties may enter into a written voluntary settlement of the dispute.

SECTION 2. If any provision of this act or the applications thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

Approved March 31, 1993.

CHAPTER 313
(H.B. No. 352)

AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 31-717, IDAHO CODE, TO PROVIDE COUNTY INITIATIVE AND REFERENDUM ELECTIONS ON DATES CONSISTENT WITH ELECTION CONSOLIDATION; AMENDING SECTION 31-1905, IDAHO CODE, TO PROVIDE CONDUCT OF COUNTY BOND ELECTIONS ON DATES CONSISTENT WITH ELECTION CONSOLIDATION; AMENDING SECTION 34-106, IDAHO CODE, AS ADDED BY CHAPTER 176, LAWS OF 1992, TO SPECIFY DATES FOR INITIATIVE, REFERENDUM AND RECALL ELECTIONS; AMENDING SECTION 34-702A, IDAHO CODE, AS AMENDED BY CHAPTER 176, LAWS OF 1992, TO PROVIDE DATES FOR FILING DECLARATION OF INTENT FOR WRITE-IN CANDIDATES; AMENDING SECTION 34-1401, IDAHO CODE, AS ADDED BY CHAPTER 176, LAWS OF 1992, TO PROVIDE APPLICATION OF ELECTION CONSOLIDATION TO MUNICIPAL ELECTIONS; AMENDING SECTION 34-1403, IDAHO CODE, AS ADDED BY CHAPTER 176, LAWS OF 1992, TO PROVIDE A CORRECT CITATION; REPEALING SECTION 34-1404, IDAHO CODE, AS ADDED BY CHAPTER 176, LAWS OF 1992; AMENDING CHAPTER 14, TITLE 34, IDAHO CODE, BY THE ADDITION OF SECTION 34-1404, IDAHO CODE, AS ADDED BY CHAPTER 176, LAWS OF 1992, TO PROVIDE THE TIME AND METHOD OF FILING A DECLARATION OF CANDIDACY; AMENDING SECTION 34-1405, IDAHO CODE, AS ADDED BY CHAPTER 176, LAWS OF 1992, TO PROVIDE THE TIME AND METHOD OF PUBLIC NOTICE OF THE ELECTION FILING DEADLINE; AMENDING SECTION 34-1406, IDAHO CODE, AS ADDED BY CHAPTER 176, LAWS OF 1992, TO PROVIDE THE METHOD OF PUBLICATION OF THE NOTICE OF THE ELECTION; AMENDING SECTION 34-1407, IDAHO CODE, AS ADDED BY CHAPTER 176, LAWS OF 1992, TO PROVIDE THE DEADLINE FOR FILING DECLARATION OF INTENT FOR WRITE-IN CANDIDATES; AMENDING SECTION 34-1101, IDAHO

CODE, TO PROVIDE THE TIME FOR OPENING AND CLOSING OF POLLS; AMENDING SECTION 34-1707, IDAHO CODE, TO PROVIDE THE TIME FOR RECALL ELECTIONS; AMENDING SECTION 50-501, IDAHO CODE, TO PROVIDE THE TIME OF AN INITIATIVE OR REFERENDUM ELECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 31-717, Idaho Code, be, and the same is hereby amended to read as follows:

31-717. COUNTY INITIATIVE AND REFERENDUM. The board of county commissioners of each county shall provide by ordinance for direct legislation by the people through the initiative and referendum. Minimum requirements of the ordinance adopted shall be as follows: (1) petitioners for initiative or referendum shall be equal to twenty per cent (20%) of the total number of voters registered to vote at the last general election in the county; (2) petitions for referendum shall be filed not less than sixty (60) days following the final adoption of the ordinance to be subject to referendum; (3) a special election for initiative or referendum shall be provided ~~not more than ninety (90) days following the certification of the petition; provided that in the event a general or primary election will occur within the ninety (90) days, the initiative or referendum shall be submitted at the time of the general or primary election as prescribed in section 34-106, Idaho Code;~~ (4) requirements for signature, verification of valid petitions, printing of petition, and time limits, except as expressly modified herein, shall be as nearly as practicable as provided in sections 34-1701 through 34-1705, Idaho Code.

SECTION 2. That Section 31-1905, Idaho Code, be, and the same is hereby amended to read as follows:

31-1905. CONDUCT OF BOND ELECTION. If the question of bonding the county as herein provided is submitted to the voters, the election shall be conducted in all respects in conformity with title 34, Idaho Code. Such an election may be held in conjunction with a primary or general election, provided that the number of qualified electors of the county voting at such bond election shall be solely determined by the number of votes cast on the specific question of bonding the county. ~~If the election is held separately from a primary or general election, the polls shall be open from 12 noon to 8:00 p.m.~~

SECTION 3. That Section 34-106, Idaho Code, as added by Chapter 176, Laws of 1992, be, and the same is hereby amended to read as follows:

34-106. LIMITATION UPON ELECTIONS. On and after January 1, 1994, notwithstanding any other provisions of the law to the contrary, there shall be no more than four (4) elections conducted in any county in any calendar year, except as provided in this section, and except that elections to fill vacancies in the United States house of representatives shall be held as provided in the governor's proclamation.

(1) The dates on which elections may be conducted are:

- (a) the first Tuesday in February of each year; and
- (b) the fourth Tuesday in May of each year; and
- (c) the first Tuesday in August of each year; and
- (d) the Tuesday following the first Monday in November of each year.

(e) In addition to the elections specified in paragraphs (a) through (d) of this subsection, an emergency election may be called upon motion of the governing board of a political subdivision. An emergency exists when 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 a national or local defense, or it is necessary to do emergency work to safeguard life, health or property. Such a special election, if conducted by the county clerk, shall be conducted at the expense of the political subdivision submitting the question.

(2) Candidates for office elected in February, May or August shall take office on the date specified in the certificate of election but not more than sixty (60) days following the election.

(3) Candidates for office elected in November shall take office as provided in the constitution, or on January 1, next succeeding the November election.

(4) The governing board of each political subdivision subject to the provisions of this section, which, prior to January 1, 1994, conducted an election for members of that governing board on a date other than a date permitted in subsection (1) of this section, shall establish as the election date for that political subdivision the date authorized in subsection (1) of this section which falls nearest the date on which elections were previously conducted, unless another date is established by law.

(5) The secretary of state is authorized to provide such assistance as necessary, and to prescribe any needed rules, regulations or interpretations for the conduct of election authorized under the provisions of this section.

(6) School districts governed by title 33, Idaho Code, and water districts governed by chapter 6, title 42, Idaho Code, are exempt from the provisions of this section.

(7) Initiative, referendum and recall elections conducted by any political subdivision shall be held on the nearest date authorized in subsection (1) of this section which falls more than forty-five (45) days after the clerk of the political subdivision orders that such initiative, referendum or recall election shall be held.

SECTION 4. That Section 34-702A, Idaho Code, as amended by Chapter 176, Laws of 1992, be, and the same is hereby amended to read as follows:

34-702A. DECLARATION OF INTENT FOR WRITE-IN CANDIDATES. No write-in vote for any office in a primary, special, or general election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of said office if elected. The declaration of intent shall be filed with the secretary of state if for a federal, state, or

legislative district office and with the county clerk if for a county office. Such declaration of intent shall be filed not later than ~~ten~~ eleven (11) days before the day of election. The secretary of state shall prescribe the form for said declaration.

SECTION 5. That Section 34-1401, Idaho Code, as added by Chapter 176, Laws of 1992, be, and the same is hereby amended to read as follows:

34-1401. ELECTION ADMINISTRATION. Notwithstanding any provision to the contrary, the election official of each political subdivision shall administer all elections on behalf of any political subdivision, subject to the provisions of this chapter, including all ~~municipal elections~~, special district elections, and elections of special questions submitted to the electors as provided in this chapter. School districts governed by title 33, Idaho Code, and water districts governed by chapter 6, title 42, Idaho Code, irrigation districts governed by title 43, Idaho Code, are exempt from the provisions of this chapter. All municipal elections shall be conducted pursuant to the provisions of chapter 4, title 50, Idaho Code, except that they shall be governed by the elections dates authorized in section 34-106, Idaho Code, the registration procedures prescribed in section 34-1402, Idaho Code, and the time the polls are open pursuant to section 34-1409, Idaho Code. For the purposes of achieving uniformity, the secretary of state shall, from time to time, provide directives and instructions to the various county clerks and political subdivision election officials. Unless a specific exception is provided in this chapter, the provisions of this chapter shall govern in all questions regarding the conduct of elections on behalf of all political subdivisions. In all matters not specifically covered by this chapter, other provisions of title 34, Idaho Code, governing elections shall prevail over any special provision which conflicts therewith.

A political subdivision may contract with the county clerk to conduct all or part of the elections for that political subdivision. In the event of such a contract, the county clerk shall perform all necessary duties of the election official of a political subdivision including, but not limited to, notice of the filing deadline, notice of the election, and preparation of the election calendar.

SECTION 6. That Section 34-1403, Idaho Code, as added by Chapter 176, Laws of 1992, be, and the same is hereby amended to read as follows:

34-1403. CONDUCT OF ELECTIONS. All elections conducted in this state on behalf of each political subdivision within the county shall be conducted in a uniform manner with regard to the qualifications of electors and shall be conducted on the dates as provided by law. In the event that a statute governing a political subdivision provides for qualifications more restrictive than the qualifications for an elector in section 34-~~402~~, Idaho Code, the election official of the district shall provide an elector's oath to be executed at the time of the election certifying to the elector's qualifications for the specific election.

SECTION 7. That Section 34-1404, Idaho Code, as added by Chapter 176, Laws of 1992, be, and the same is hereby repealed.

SECTION 8. That Chapter 14, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-1404, Idaho Code, and to read as follows:

34-1404. DECLARATION OF CANDIDACY. Candidates for election in any political subdivision shall be nominated by nominating petitions, each of which shall bear the name of the nominee, the office for which the nomination is made, the term for which nomination is made, bear the signature of not less than five (5) electors of the candidate's specific zone or district of the political subdivision, and be filed with the election official of the political subdivision. The form of the nominating petition shall be as provided by the county clerk and shall be uniform for all political subdivisions. For an election to be held on the fourth Tuesday in May, in even-numbered years, the nomination petition shall be filed during the period specified in section 34-704, Idaho Code. The election official shall verify the qualifications of the nominees and shall, no more than seven (7) days after the close of filing, certify the nominees and any special questions placed by action of the governing board of the political subdivision. For an election to be held on the first Tuesday after the first Monday of November, in even-numbered years, the nomination shall be filed on or before September 1. The election official shall verify the qualifications of the nominees, and shall not later than seven (7) days after the close of filing, certify the nominees and any special questions placed by action of the governing board of the political subdivisions. For all other elections, the nomination shall be filed not later than 5:00 p.m. on the sixth Friday preceding the election for which the nomination is made. The election official shall verify the qualifications of the nominee, and shall not more than seven (7) days following the filing certify the nominees and any special questions, placed by action of the governing board of the political subdivisions, to be placed on the ballot of the political subdivision.

SECTION 9. That Section 34-1405, Idaho Code, as added by Chapter 176, Laws of 1992, be, and the same is hereby amended to read as follows:

34-1405. NOTICE OF ELECTION FILING DEADLINE. ~~(i) For an election to be held on the fourth Tuesday in May or on the first Tuesday after the first Monday in November in even-numbered years, not less than ninety (90) days preceding an election, and for all other elections, not less than seventy-five (75) days preceding an election date; Not more than fourteen (14) nor less than seven (7) days preceding the candidate filing deadline for an election,~~ the election official of each political subdivision shall cause to be published a notice of the forthcoming election candidate filing deadline. The notice shall include not less than the name of the political subdivision, the place where filing for each office takes place, and a notice of the availability of declarations of candidacy. The notice shall be published in

~~at least two (2) newspapers published within the county, but if this is not possible, the notice shall be published in one (1) newspaper published within the county or a newspaper which has general circulation within the county~~ the official newspaper of the political subdivision.

(2) The secretary of state shall compile an election calendar annually which shall include not less than a listing of the political subdivisions which will be conducting candidate elections in the forthcoming year, the place where filing for each office takes place, and the procedure for a declaration of candidacy. Annually in December, the county clerk shall cause to be published the election calendar for the county for the following calendar year. It shall be the duty of the election official of each political subdivision to notify the county clerk, not later than the last day of November, of any election for that political subdivision to occur during the next calendar year. In the event of failure to so notify the county clerk, the election official of the political subdivision shall cause to be published notice of the omitted election as soon as he is aware of the omission. This publication shall be in addition to the publication required by paragraph (1) of this section. The election calendar for the county shall be published in at least two (2) newspapers published within the county, but if this is not possible, the calendar shall be published in one (1) newspaper which has general circulation within the county. Copies of the election calendar shall be available, without charge, from the office of the secretary of state or the county clerk.

SECTION 10. That Section 34-1406, Idaho Code, as added by Chapter 176, Laws of 1992, be, and the same is hereby amended to read as follows:

34-1406. NOTICE OF ELECTION. The election official of each political subdivision shall give notice for any election by publishing such notice in ~~at least two (2) issues of at least two (2) newspapers published within the county or if this is not possible, at least two (2) issues of a newspaper published within the county or having a general circulation within the county~~ the official newspaper of the political subdivision. The notice shall state the date of the election, the polling places, and the hours during which the polls shall be open for the purpose of voting. The first publication shall be made not less than twelve (12) days prior to the election, and the last publication of notice shall be made not less than five (5) days prior to the election.

SECTION 11. That Section 34-1407, Idaho Code, as added by Chapter 176, Laws of 1992, be, and the same is hereby amended to read as follows:

34-1407. WRITE-IN CANDIDATES. No write-in candidate for any elective office shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of the office. The declaration of intent shall be filed with the election official not less than ten

~~(10)~~ eleven (11) days before the date of the election.

If the statutes governing elections within a specific political subdivision provide that no election shall be held in the event that no more than one (1) candidate has filed for an office, that statute shall be interpreted in such a manner as to allow for filing a declaration of intent for a write-in candidate until ~~ten-(10)~~ eleven (11) days preceding the election. However, if no candidate has filed within that time, no election shall be held for that political subdivision.

SECTION 12. That Section 34-1101, Idaho Code, be, and the same is hereby amended to read as follows:

34-1101. OPENING AND CLOSING OF POLLS. (1) At all ~~primary and general~~ elections conducted pursuant to title 34, Idaho Code, the polls shall be opened at 8:00 A.M. and remain open until all registered electors of that precinct have appeared and voted or until 8:00 P.M. of the same day, whichever comes first. The county clerk, at his option, however, may open the polls in his county at 7:00 A.M. for a primary or general election.

~~(2) At all other elections conducted under title 34, Idaho Code, the polls shall be opened at 12 noon and remain open until all registered electors of that precinct have appeared and voted or until 8:00 P.M. of the same day, whichever comes first; except that where, in the discretion of the local official charged with the responsibility of conducting the election, the polls may be open for a longer period, provided that timely notice of such time extension has been given the electorater.~~

~~(3)~~ Upon opening the polls, one (1) of the judges shall make the proclamation of the same and thirty (30) minutes before closing the polls a proclamation shall be made in the same manner. Any elector who is in line at 8:00 P.M. shall be allowed to vote notwithstanding the pronouncement that the polls are closed.

SECTION 13. That Section 34-1707, Idaho Code, be, and the same is hereby amended to read as follows:

34-1707. SUFFICIENCY OF PETITION -- NOTIFICATION -- EFFECT OF RESIGNATION -- SPECIAL ELECTION. (1) (a) In the event that a petition filed with the secretary of state does not contain the required number of certified signatures after being returned by the county clerks, the secretary of state shall inform the person or organization under whose authority the petition was circulated that the petition is defective for lack of certified signatures, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within thirty (30) days of the date that the secretary of state finds the petition defective for lack of certified signatures. If the petition is not perfected within the thirty (30) day period, the secretary of state shall declare the petition null and void ab initio in its entirety.

(b) In the event that a petition filed with the secretary of state is found by the secretary of state to contain the required number of certified signatures, the secretary of state shall promptly, by certified mail, inform the officer being recalled, and the petitioner,

that the recall petition is in proper form.

(i) If the officer being recalled resigns his office within five (5) days after notice from the secretary of state, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(ii) If the officer being recalled does not resign his office within five (5) days after notice from the secretary of state, a special election shall be ordered by the secretary of state, unless he is the officer being recalled, in which event the governor shall order such special election. The special election must be held ~~within not less than forty-five (45) days nor more than sixty (60) days, and the date of the special election shall be specified in the order~~ on the date prescribed in section 34-106, Idaho Code. If the officer being recalled is one (1) specified in section 34-1701(1)(a), Idaho Code, the special election shall be conducted statewide. If the officer being recalled is one (1) specified in section 34-1701(1)(b), Idaho Code, the special election shall be conducted only in the legislative district.

(2) (a) In the event that a petition filed with a county clerk does not contain the required number of certified signatures, the county clerk shall inform the person or organization under whose authority the petition was circulated that the petition is defective for lack of certified signatures, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within thirty (30) days of the date that the clerk finds the petition defective for lack of certified signatures. If the petition is not perfected within the thirty (30) day period, the clerk shall declare the petition null and void ab initio in its entirety.

(b) In the event that a petition filed with the county clerk is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(i) If the officer being recalled resigns his office within five (5) days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(ii) If the officer being recalled does not resign his office within five (5) days after notice from the county clerk, a special election shall be ordered by the county clerk. The special election must be held ~~within not less than forty-five (45) days nor more than sixty (60) days, and the date of the special election shall be specified in the order~~ on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted county-wide.

(3) (a) In the event that a petition filed with a city clerk does not contain the required number of certified signatures, the city clerk shall inform the person or organization under whose authority the petition was circulated that the petition is defective for lack of certified signatures, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within thirty (30) days of the date that the city clerk finds the petition defective for lack of certified signatures. If the petition

is not perfected within the thirty (30) day period, the clerk shall declare the petition null and void ab initio in its entirety.

(b) In the event that a petition filed with a city clerk is found by the city clerk to contain the required number of certified signatures, the city clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(i) If the officer being recalled resigns his office within five (5) days after notice from the city clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(ii) If the officer being recalled does not resign his office within five (5) days after notice from the city clerk, a special election shall be ordered by the city clerk. The special election must be held within not less than forty-five (45) days nor more than sixty (60) days, and the date of the special election shall be specified in the order. The special election shall be conducted city-wide.

SECTION 14. That Section 50-501, Idaho Code, be, and the same is hereby amended to read as follows:

50-501. INITIATIVE AND REFERENDUM. The city council of each city shall provide by ordinance for direct legislation by the people through the initiative and referendum. Minimum requirements of the ordinance adopted shall be as follows: (1) petitioners for initiative or referendum shall be equal to twenty percent (20%) of the total number of voters registered to vote at the last general election in the city; (2) petitions for referendum shall be filed not less than sixty (60) days following the final adoption of the ordinance to be subject to referendum; (3) a special election for initiative or referendum shall be provided ~~not more than ninety (90) days following the certification of the petition; provided that in the event a municipal election will occur within the ninety (90) days, the initiative or referendum shall be submitted at the time of the municipal election~~ as prescribed in section 34-106, Idaho Code; (4) requirements for signature, verification of valid petitions, printing of petition, and time limits, except as expressly modified herein, shall be as nearly as practicable as provided in sections 34-1701 through 34-1705, Idaho Code. This section does not apply to bond elections.

SECTION 15. This act shall be in full force and effect on and after January 1, 1994.

Approved March 31, 1993.

CHAPTER 314
(H.B. No. 365)

AN ACT
RELATING TO THE PRACTICE OF PODIATRY; AMENDING SECTION 54-609, IDAHO

CODE, TO ELIMINATE THE REQUIREMENT PROHIBITING THE USE OF TRADE NAMES FOR PODIATRIC PRACTICES, TO ELIMINATE THE REQUIREMENT PROHIBITING PRACTICE UNDER THE NAME OF ANOTHER PODIATRIST, AND TO ELIMINATE THE REQUIREMENT PROHIBITING THE PRACTICE BY A PODIATRIST UNDER ANY OTHER NAME THAN THAT WHICH APPEARS ON THE PRACTITIONER'S LICENSE.

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

SECTION 1. That Section 54-609, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

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

5. ~~Practice podiatry under a trade name, under the name of another podiatrist, or under any other name than that which appears on the practitioner's license; or use~~ any title other than that of podiatrist or doctor of podiatric medicine; provided the term "foot specialist" or "physician and surgeon of the feet" may be used as explanatory terms of the title podiatrist but not alone or as a substitute therefor.

6. ~~Conduct the practice of podiatry in connection with any of the following: Beauty parlor, barber shop, turkish bath, shoe store, department store, massage parlor, or other such commercial establishment;~~

7. Employ a solicitor or solicitors to obtain business.

Approved March 31, 1993.

CHAPTER 315
(H.B. No. 382)

AN ACT

RELATING TO VITAL STATISTICS RECORDS; AMENDING SECTION 39-257, IDAHO CODE, TO PROVIDE THAT COPIES OF FINAL DECREES OF ADOPTION ARE CONFIDENTIAL, AND ARE NOT TO BE REVEALED EXCEPT TO THE REGISTRANT, PARENTS OR LEGAL REPRESENTATIVE, OR BY COURT ORDER; AMENDING SEC-

TION 39-259A, IDAHO CODE, TO PROVIDE THAT ADULT ADOPTEE LISTS ARE CONFIDENTIAL AND ARE NOT TO BE DISCLOSED; AND AMENDING SECTION 39-270, IDAHO CODE, TO PROVIDE THAT CERTIFICATES AND RECORDS IN THE CUSTODY OF THE STATE REGISTRAR SHALL BE OPEN TO INSPECTION SUBJECT TO THE PROVISIONS OF THIS CHAPTER AND THE REGULATIONS OF THE STATE BOARD OF HEALTH AND WELFARE.

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

SECTION 1. That Section 39-257, Idaho Code, be, and the same is hereby amended to read as follows:

39-257. MARRIAGE OF NATURAL PARENTS OF PERSON BORN IN IDAHO -- JUDICIAL DETERMINATION OF PARENTAGE OF PERSON BORN IN IDAHO -- NEW BIRTH CERTIFICATES -- PROCEDURE. When a person born in Idaho has been legitimated by the subsequent marriage of said person's natural parents and immediately assumes or is assigned a name other than is shown on the recorded birth certificate, the birth certificate of such person may be replaced by a new and conventional certificate (prepared and filed by the state registrar), reflecting the name so assumed or assigned, upon proper application therefor filed by such legitimated person or the parents or one of them, but no one else. Such application shall be in writing and shall be accompanied by a copy of the relevant marriage certificate (if there was one issued and regardless of where it was issued), certified by the issuer or recorder of the same, and, in any event, an affidavit of each of the spouses, factually indicating such parentage, the time and place of the marriage, the identity of the child concerned and the child named in the original birth certificate and giving the assumed or assigned name of the child, which instruments shall be filed of record along with the old birth certificate, but separate from any replacement issued hereunder (which shall be filed separately).

When a person born in Idaho has had said person's natural parentage finally determined by a court of competent jurisdiction, in this or any other state of the United States, the state registrar may prepare and file a new and conventional birth certificate for that person, reflecting the name(s) of the parent(s) and the child's new name, if applicable, upon application made by that person or either or both of the persons adjudged to be the natural parent(s), or that person's guardian, but no one else. This application shall be accompanied by a certified copy of the court decree in question and an affidavit of one (1) person factually indicating that the decree involves the same person that the original birth certificate involved. These instruments shall be filed of record along with the old birth certificate, but separate from any replacement issued hereunder (which shall be filed separately).

It shall be the duty of each clerk of court in the state of Idaho to file with the state registrar certified copies of each final decree of paternity determination made by that court within fifteen (15) days after each of such decrees becomes final. Such certified copies of such decrees and all other instruments mentioned in this section, except any replacement certificate, ~~shall be subject to disclosure according to chapter 3, title 9, Idaho Code~~ are confidential and shall

not be revealed to any person other than the registrant, if of age, the parents or the duly appointed legal representative of any of them, or upon court order issued in the interest of justice.

SECTION 2. That Section 39-259A, Idaho Code, be, and the same is hereby amended to read as follows:

39-259A. VOLUNTARY ADOPTION REGISTRY FOR PROVIDING LIMITED ACCESS TO BIRTH INFORMATION OF ADULT ADOPTEEES. (a) The state registrar of vital statistics shall establish and maintain a confidential list of qualified adult adoptees who have presented a consent regarding the release of identifying information about themselves. Any consent by a qualified adult adoptee shall be accompanied by the adoptee's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Any consent shall also indicate whether the qualified adult adoptee desires release of his identifying information if a match occurs after his death. The qualified adult adoptee may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed adoptee. The registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with the provisions of this section.

(b) The state registrar of vital statistics shall establish and maintain a confidential list of qualified birthparents who have presented a consent regarding the release of identifying information about themselves. Any consent by a qualified birthparent shall be accompanied by the birthparent's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Any consent shall also indicate whether the qualified birthparent desires release of his identifying information if a match occurs after his death. The qualified birthparent may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed birthparent. The registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with the provisions of section 39-258(h), and subsections (b), (c) and (d) of section 39-259, Idaho Code. Any birthparent who, in terminating his parental rights, used an alias and this alias is listed in the original sealed birth certificate, may also file a consent with the registry. A birthparent shall not be matched with a qualified adult adoptee without the consent of the other birthparent unless:

- (1) There is only one (1) birthparent listed on the birth certificate; or
- (2) The other birthparent is deceased; or
- (3) The other birthparent is unable to be located by the department of health and welfare or by a licensed child placement agency designated by the department of health and welfare, after a search, which shall consist, at a minimum, of a certified letter

to the other birthparent at the last known address and a newspaper advertisement made in the county of the last known address; such search to be completed within ninety (90) days and the cost of said search to be fully funded and completed by the birthparent seeking a match; said search to be in accordance with the rules and regulations promulgated by the department.

(c) The state registrar of vital statistics shall establish and maintain a confidential list of qualified adult birth siblings who have presented a consent regarding the release of identifying information about themselves. Any consent by a qualified birth sibling shall be accompanied by the birth sibling's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Any consent shall also indicate whether the qualified birth sibling desires release of his identifying information if a match occurs after his death. The qualified birth sibling may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed birth sibling. The registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with the provisions of sections 39-258(h) and 39-259(b), Idaho Code, and this section.

(d) The state registrar shall maintain a confidential list of relatives of deceased qualified adult adoptees and relatives of deceased qualified birthparents who have presented a consent regarding the release of identifying information about themselves. Any consent by such relative shall be accompanied by the person's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Such relative may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed relative. The state registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with the provisions of this section.

(e) The state registrar shall regularly review the lists provided for in subsections (a), (b), (c) and (d) of this section, and any other nonsealed administrative files or records within the office to determine if there is a match. If it appears that a match has occurred, then and only then is the registrar authorized to proceed to confirm the match through recourse to sealed documents on file in the office of the registrar. When a match is confirmed, the registrar shall notify each party, by its designated method only, prior to an exchange of identifying information. Nothing in this section shall be construed to allow any state or local governmental department, agency, or institution, or any employee thereof, to solicit any consent for the release of identifying information.

(f) When a match is made and both the adopted person and the birthparent or parents, submit to the state registrar a notarized request for a copy of the original birth record of the adopted person, the state registrar shall issue such copy, marked "NOT FOR OFFICIAL

USE", at the usual cost of certificate copies.

(g) Nothing in this section shall be construed to allow the registrar to issue a copy of the original birth certificate to any registrant, except as provided for in subsection (f) of this section.

(h) Except upon order of a court of record of this state and notwithstanding any other provision of law, the information acquired by the registry shall not be subject to disclosure according to chapter 3, title 9, Idaho Code disclosed under its public records law, sunshine or freedom of information legislation, rules or practice.

(i) The initial fee to be charged each person requesting that his name be placed on the list provided for in subsections (a), (b), (c) and (d) of this section, and for the services provided by the registrar in establishing and implementing the registry pursuant to this section, shall be ten dollars (\$10.00). Except for the cost of the search described in subsection (b)(3) of this section, the fee shall cover all direct and indirect costs incurred pursuant to this section. The state board of health and welfare shall annually review the fees and expenses incurred pursuant to this section and, as needed, adjust the fees charged to cover the expenses of administering the provisions of this section.

SECTION 3. That Section 39-270, Idaho Code, be, and the same is hereby amended to read as follows:

39-270. DISCLOSURE OF INFORMATION. (a) Certificates and records in the custody of the state registrar shall be open to inspection subject to the provisions of this chapter and the regulations of the board, the provisions of section 9-302, Idaho Code, to the contrary notwithstanding; and it shall be unlawful for any state or local official or employee under this chapter to disclose any data contained in the records, except as authorized by this chapter and chapter 3, title 9, Idaho Code the regulations of the board.

(b) A complete copy, or any part of a certificate, may be issued to any applicant who can show direct and tangible interest in the record for which he applies. A complete copy, or any part of a certificate, shall be issued upon request to a state, federal or local public agency for child support enforcement purposes pursuant to chapters 10, 11 and 12, title 7, Idaho Code, and sections 16-1622, 16-1815, 32-710A, and 56-203, Idaho Code, or for the purpose of investigation of fraud related to benefit payments. Subject to such provisions as the board may prescribe, data contained on records may be used by federal, state or municipal agencies for the purpose of verification of data.

(c) As provided in chapter 3, title 9, Idaho Code, data contained on records may be used for research, public health or statistical purposes. No lists of registration shall be compiled for public use.

(d) The manner of keeping local records and the use thereof shall be prescribed by the board, in keeping with the provisions of this section.

(e) When one hundred (100) years have elapsed after the date of birth, or fifty (50) years have elapsed after the date of death, stillbirth, marriage or divorce, the records of these events in the custody of the state registrar shall become public records and infor-

mation shall be made available in accordance with chapter 3, title 9, Idaho Code.

Approved March 31, 1993.

CHAPTER 316
(H.B. No. 384)

AN ACT

RELATING TO SCHOOL-COMMUNITY LIBRARY DISTRICTS; AMENDING SECTION 33-2739, IDAHO CODE, TO PROVIDE A ONE-TIME FIFTEEN MONTH FISCAL YEAR TO MOVE SCHOOL-COMMUNITY LIBRARY DISTRICTS FROM A JULY - JUNE FISCAL YEAR TO AN OCTOBER - SEPTEMBER FISCAL YEAR, TO PROVIDE A FISCAL YEAR FROM OCTOBER 1 TO SEPTEMBER 30; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 33-2739, Idaho Code, be, and the same is hereby amended to read as follows:

33-2739. SCHOOL-COMMUNITY LIBRARY DISTRICTS -- BOARD OF TRUSTEES -- POWERS AND DUTIES -- FISCAL YEAR. (1) The board of trustees of the school-community library district shall perform the duties required of, and have the power and authority granted to library district trustees pursuant to this chapter, including the authority to levy upon the taxable property in the school-community library district an annual tax not to exceed six hundredths per cent (.06%) of market value for assessment purposes for establishing and maintaining public library services. The school-community library district board shall have exclusive control of the school-community library district fund and shall cause to be made a full and complete audit of the books and accounts of the district as provided for in section 33-2726, Idaho Code.

(2) To bring the fiscal year of school-community library districts into conformity with the fiscal year of library districts, fiscal year 1994 for school-community library districts shall be defined as beginning on July 1, 1993 and ending on September 30, 1994. To fund school-community library district operations from July 1, 1993 through September 30, 1994:

(a) The four (4) existing school-community library districts are authorized to budget for the fifteen (15) month period;

(b) The county commissioners of the relevant counties are authorized to set the levy for the fifteen (15) month period for the four (4) existing school-community library districts;

(c) The state tax commission is authorized to approve the levy for the fifteen (15) month period for the four (4) existing school-community library districts;

(d) The relevant counties are authorized to collect ad valorem taxes for the fifteen (15) month period for the relevant existing school-community library districts within each county's bound-

aries;

(e) For the fifteen (15) month period only, the maximum allowable levy for school-community library districts shall be seven and one-half hundredths percent (.075%) of market value for assessment purposes.

This subsection (2) shall be void and of no further force and effect on and after September 30, 1994.

(3) On and after fiscal year 1995, school-community library districts shall have a fiscal year of October 1 through September 30.

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 31, 1993.

CHAPTER 317
(H.B. No. 392)

AN ACT

RELATING TO PROPERTY SUBJECT TO TAXATION; AMENDING SECTION 63-105A, IDAHO CODE, TO PROVIDE FOR CONSULTATION WITH AND INFORMATION TO COUNTY TREASURERS AND ASSESSORS, TO REDEFINE UNIMPROVED REAL PROPERTY FOR PURPOSES OF PAYMENT OF FEE IN LIEU OF TAXES ON DEPARTMENT OF FISH AND GAME OWNED LANDS; AND DECLARING AN EMERGENCY AND PROVIDING FOR RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-105A, Idaho Code, be, and the same is hereby amended to read as follows:

63-105A. PROPERTY EXEMPT FROM TAXATION -- GOVERNMENT PROPERTY.

(1) The following property is exempt from taxation: Property belonging to the United States, except when taxation thereof is authorized by the congress of the United States, this state, or to any county or municipal corporation or school district within this state.

(2) However, unimproved real property of more than ten (10) contiguous acres owned in fee simple by the department of fish and game shall be subject to a fee in lieu of taxes contingent upon the following conditions and requirements;

(a) The fee in lieu of taxes shall not exceed the property tax for the property at the time of acquisition by the department of fish and game, unless the tax rate for the property shall have been increased.

(b) The department shall determine and identify the parcels of property and their current use as qualified under the provisions of this act. The department shall consult with the appropriate county assessor treasurer and determine the fee to be paid on the property. The fee shall be an amount equal to the tax the property would generate if assessed as agricultural property.

(c) Any future increase in the fee paid in lieu of taxes shall be determined by the amount of taxes the property would generate if assessed as agricultural property. The increase may be determined by the department working cooperatively with the appropriate county assessor. The method used for determining the fee that would be due on department property is to be used only under this subsection and has no other application in any other section of the Idaho Code.

(d) The department shall then provide to the treasurer assessor of the county where the parcels are located on or before the second Monday of March each year, a listing identifying each parcel of unimproved property by legal description, size and amount of the fee for the preceding calendar year. The treasurer shall prepare and submit a billing for payment based on this information to the department. Once the fee has been determined, payment shall be made by June 20 of that year from moneys appropriated for that purpose. However, if the fees exceed the moneys appropriated for that purpose, the director of the department of fish and game shall calculate the percent reduction that must be made and certify the proportionate reduction to each county treasurer assessor.

(e) For the purpose of this section only, unimproved real property shall mean property on which no homesite or improved site is located, and homesite or improved site shall mean any buildings, structures, or fixtures which have been erected or affixed to the land and the necessary acreage required to utilize the homesite or improved site as determined by the county assessor shall be exempt. For purposes of this subsection only, roads or fences shall not be considered as improvements.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect and retroactive to July 1, 1992.

Approved March 31, 1993.

CHAPTER 318
(H.B. No. 396)

AN ACT

RELATING TO NONCLASSIFIED PUBLIC EMPLOYEES; AMENDING SECTION 59-1603, IDAHO CODE, TO PROVIDE THAT A LUMP SUM BONUS MAY NOT EXCEED ONE THOUSAND DOLLARS IN ANY FISCAL YEAR, EXCEPT THAT A GREATER AMOUNT MAY BE GRANTED IF APPROVED IN ADVANCE BY THE STATE BOARD OF EXAMINERS.

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

SECTION 1. That Section 59-1603, Idaho Code, be, and the same is hereby amended to read as follows:

59-1603. CONFORMITY WITH CLASSIFIED POSITIONS. (1) To the extent possible, each nonclassified position in the executive department will be paid a salary or wage comparable to classified positions with similar duties, responsibilities, training, experience and other qualifications. Temporary employees and agricultural inspectors referred to in subsections (n) and (p) of section 67-5303, Idaho Code, shall not be entitled to sick leave accruals provided in section 59-1605, Idaho Code, vacation leave provided in section 59-1606, Idaho Code, nor holiday pay defined in subsection (12) of section 67-5302, Idaho Code, unless contributions are being made to the public employees retirement system in accordance with chapter 13, title 59, Idaho Code, and rules promulgated by the retirement board. Vacation and sick leave accruals, but not holiday pay, shall be awarded retroactively, if necessary, to the date such employees become eligible for retirement system membership. Officers and employees who are not paid from the salary schedule established in section 67-5309C(a), Idaho Code, are not eligible for the longevity factors provided by section 67-5309C(b), Idaho Code.

(2) To the extent possible, each nonclassified position in the legislative department will be paid a salary or wage comparable to classified positions with similar duties, responsibilities, training, experience and other qualifications. Officers and employees who are not paid from the salary schedule established in section 67-5309C(a), Idaho Code, are not eligible for the longevity factors provided by section 67-5309C(b), Idaho Code.

(3) The supreme court shall determine the schedules of salary and compensation for all officers and employees of the judicial department which are not otherwise fixed by law. To the extent possible, the supreme court shall adopt schedules which are compatible with the state's accounting system. The judicial department may also maintain personnel records and files under such system as is ordered by the supreme court.

(4) The state board of education shall determine the schedules of salary and compensation, longevity, and prescribe policies for overtime and compensatory time off from duty, for all officers and employees of the state board of education who are not subject to the provisions of chapter 53, title 67, Idaho Code, and which are not otherwise fixed by law. To the extent possible, the state board of education shall adopt schedules and policies which are compatible with the state's accounting system. The state board of education may also maintain personnel records and files under a system of its own, if approved by the state auditor.

(5) Members of the legislature, the lieutenant governor, other officers whose salaries are fixed by law, and members of part-time boards, commissions and committees shall be paid according to law.

(6) Any schedule of salary and compensation, if not the schedule prescribed by section 67-5309C(a), Idaho Code, must be approved by the appointing authority and be communicated to the state auditor in writing at least thirty (30) days in advance of the effective date of the schedule.

(7) In addition to salary increases provided by any compensation schedule adopted pursuant to paragraph (6) of this section, nonclassified officers and employees, except those who are elected

officials or whose salaries are fixed by law, may be granted a lump sum bonus not to exceed one thousand dollars (\$1,000) in any given fiscal year based upon an affirmative certification of meritorious service. Exceptions to the one thousand dollar (\$1,000) limit provided in this section may be granted if approved in advance by the state board of examiners.

(8) Each appointing authority, including the elective offices in the executive department, the legislative department, the judicial department, and the state board of education and the board of regents, shall comply with all reporting requirements necessary to produce the list of employee positions prescribed by section 67-3519, Idaho Code.

(89) The adjutant general, with the approval of the governor, shall prescribe personnel policies for all officers and employees of the national guard which are not otherwise fixed by law. Such policies will include an employee grievance procedure with appeal to the adjutant general. The adjutant general shall determine schedules of salary and compensation which are, to the extent possible, comparable to the schedules used for federal civil service employees of the national guard and those employees serving in military status. Schedules adopted shall be compatible with the state's accounting system to the extent possible.

Approved March 31, 1993.

CHAPTER 319
(H.B. No. 402)

AN ACT

RELATING TO THE SALES TAX; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3605B, IDAHO CODE, TO DEFINE MINING; AMENDING SECTION 63-3622D, IDAHO CODE, TO CLARIFY THE BUSINESSES ENGAGED IN FARMING OR MINING FOR WHICH THE PRODUCTION EXEMPTION IS AVAILABLE; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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 63-3605B, Idaho Code, and to read as follows:

63-3605B. MINING. The term "mining" means the extraction from the earth of a mineral as defined in sections 47-701 and 47-701A, Idaho Code, excepting therefrom geothermal resources, and includes the further processing of such mineral.

SECTION 2. 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. An independent 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.

(de) 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.

(ef) Without regard to the use of such property, this section does not exempt:

(1) Hand tools with a unit purchase price not in excess of one hundred dollars (\$100). A hand tool is an instrument used or worked by hand.

(2) Tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming or fabricating operations such as office equipment and supplies, and equipment and supplies used in selling or distributing activities.

(3) Property used in research or development.

(4) Property used in transportation activities.

(5) Machinery, equipment, tools or other property used to make repairs. This subsection does not include repair parts that become a component part of tangible property exempt from tax under this section or lubricants, hydraulic oil, or coolants used in the operation of tangible personal property exempt under this section.

(6) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or install tangible personal property which is:

(i) Not held for resale in the regular course of business; and

(ii) Owned by the manufacturer, processor, miner, farmer or fabricator;

provided, however, this subsection does not prevent exemption of machinery, equipment, tools or other property exempted from tax under subsection (a)(2) or (a)(3) of this section.

(7) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

(8) Motor vehicles licensed or required to be licensed by the laws of this state or another state or any aircraft.

(9) Tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from tax under this chapter in sections 63-3622F, 63-3622G, 63-3622I and 63-3622M, Idaho Code.

(10) Tangible personal property described in section 63-3622HH, Idaho Code.

(fg) 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 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 December 11, 1990.

Approved March 31, 1993.

CHAPTER 320
(H.B. No. 411, As Amended)

AN ACT

RELATING TO REAL ESTATE APPRAISERS; AMENDING SECTION 54-4105, IDAHO CODE, TO PROVIDE THAT EMPLOYEES OF THE IDAHO TRANSPORTATION DEPARTMENT SHALL BE EXEMPT FROM THE MANDATORY LICENSURE OR CERTIFICATION PROVISIONS OF CHAPTER 41, TITLE 54, IDAHO CODE, FOR A PERIOD OF ONE YEAR ONLY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 54-4105, Idaho Code, be, and the same is hereby amended to read as follows:

54-4105. EXCEPTIONS. (1) The provisions of this chapter do not apply to any person who does not hold himself out as, or offer to perform services as, a real estate appraiser.

(2) The provisions of this chapter do not restrict the right to use the term "certified evaluator for ad valorem tax purposes," provided that such term is not used in a manner that creates the impression of certification by the state of Idaho to perform real estate appraisals other than ad valorem tax appraisals. However, nothing in this chapter shall entitle a state licensed or state certified real estate appraiser to appraise real estate for ad valorem tax purposes unless he has first been certified by the Idaho state tax commission pursuant to section 63-513(24), Idaho Code.

(3) The provisions of this chapter shall not apply to a licensed real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser.

(4) Any person who is not licensed or certified under the provisions of this chapter may assist a state licensed or certified real estate appraiser in the performance of an appraisal, provided that he is actively and personally supervised by the state licensed or certified appraiser and provided further that any appraisal report rendered in connection with the appraisal is reviewed and signed by the state licensed or certified real estate appraiser.

(5) For a period of one (1) year after the enactment of this act only, the provisions of this chapter requiring mandatory licensure or certification shall not apply to employees of the Idaho transportation department.

SECTION 2. An emergency existing therefor, which emergency is

hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 31, 1993.

CHAPTER 321
(H.B. No. 412, As Amended)

AN ACT

RELATING TO MOTOR VEHICLE TITLES AND TEMPORARY PERMITS; AMENDING SECTION 49-504, IDAHO CODE, TO PROVIDE FOR OPERATION OF NONCOMMERCIAL VEHICLES AND LADENED AND UNLADENED COMMERCIAL VEHICLES AND VEHICLE COMBINATIONS UNDER AUTHORITY OF A SEVENTY-TWO HOUR TEMPORARY PERMIT IN LIEU OF LICENSE PLATES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 49-504, Idaho Code, be, and the same is hereby amended to read as follows:

49-504. APPLICATIONS TO DEPARTMENT FOR CERTIFICATES -- PROCEDURE -- IDENTIFICATION NUMBERS. (1) Application for a certificate of title shall be made upon a form furnished by the department and shall contain a full description of the vehicle including the make, identification numbers, and the odometer reading at the time of sale or transfer, and whether the vehicle is new or used, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, and the name and address of the person to whom the certificate of title shall be delivered, and any other information as the department may require. The application shall be filed with the department, and if a certificate of title has previously been issued for that vehicle in this state, shall be accompanied by the certificate of title duly assigned, unless otherwise provided for in this chapter. The department may promulgate rules and regulations to provide for exceptions to the odometer requirement.

(2) If a certificate of title has not previously been issued for the vehicle in this state, the application, unless otherwise provided for in this chapter, shall be accompanied by a proper bill of sale or a duly certified copy thereof, or by a certificate of title, bill of sale or other evidence of ownership required by the law of any other state from which the vehicle was brought into this state, and a vehicle identification number inspection completed by any city, county or state peace officer or other special agent authorized by the department.

(3) In the case of a new vehicle being titled for the first time, no certificate of title or registration shall be issued unless the application is indorsed by a franchised new vehicle dealer licensed to sell a new vehicle. Each application shall be accompanied by a manufacturers' certificate of origin or manufacturers' statement of origin executed by the manufacturer and delivered to his agent or his franchised vehicle dealer. The certificate or statement of origin shall be

in a form prescribed by the board and shall contain the year of manufacture or the model year of the vehicle, the manufacturer's vehicle identification number, the name of the manufacturer, the number of cylinders, a general description of the body, if any, and the type or model. Upon sale of a new vehicle, the manufacturer, his agent or franchised dealer shall execute and deliver to the purchaser an assignment of the certificate or statement, together with any lien or encumbrance to which the vehicle is subject.

(4) The department shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. The department shall maintain an identification numbers index of registered vehicles, and upon receiving an application for a certificate of title, shall first check the identification number shown in the application against the index. The department, when satisfied that the applicant is the owner of the vehicle and that the application is in proper form, shall issue in the name of the owner of the vehicle a certificate of title bearing a title number, the date issued and a description of the vehicle as determined by the department, together with a statement of the owner's title and of all liens or encumbrances upon the vehicle, and whether possession is held by the owner under a lease, contract or conditional sale, or other like agreement.

(5) In all cases of transfer of vehicles the application for certificates of title shall be filed within thirty (30) calendar days after the delivery of the vehicles. Licensed dealers need not apply for certificate of title for vehicles in stock or when they are acquired for stock purposes.

(6) In the case of the sale of a vehicle by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. If a lien is to be recorded, the title documentation as required in this section shall be submitted to the department by the dealer or the lienholder upon application signed by the purchaser. A copy of this application shall be given to the purchaser to be used as a seventy-two (72) hour temporary permit ~~to transport the vehicle from the place of purchase to the licensing office to obtain title/registration and license plates. In all other cases the certificates shall be obtained by the purchaser and the seller's bill of sale shall serve as a seventy-two (72) hour permit to transport the vehicle from the place of purchase to the licensing office to obtain title/registration and license plates.~~ In all other cases the certificates shall be obtained by the purchaser and the seller's bill of sale shall serve as a seventy-two (72) hour permit. This temporary permit allows operation of any noncommercial vehicle or unladen commercial vehicle or vehicle combination without license plates for the period of time specified in the permit. A laden commercial vehicle or vehicle combination may also operate without license plates for the period of time specified in the temporary permit provided that the owner or operator has also obtained a permit issued under the provisions of section 49-432, Idaho Code, and provided user fees have been paid for the laden weight and mileage.

(7) If the vehicle has no identification number, then the department shall designate an identification number for that vehicle at the time of issuance of the certificate of title. The identification num-

ber shall be permanently affixed to or indented upon the frame of the vehicle and legibly maintained by the owner at all times while a certificate of title to the vehicle shall be issued and outstanding.

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 31, 1993.

CHAPTER 322
(H.B. No. 429)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 1994.

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, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
A. ADMINISTRATION:			
FROM:			
Self-Governing Operating Fund	\$ 995,700	\$ 619,500	\$1,615,200
B. REGULATION:			
FROM:			
Self-Governing Operating Fund	\$1,142,600	\$ 453,000	\$1,595,600
C. ARSON, FIRE AND FRAUD PREVENTION:			
FROM:			
Self-Governing State Fire Marshal Fund	\$ 395,000	\$ 208,000	\$ 603,000
GRAND TOTAL	\$2,533,300	\$1,280,500	\$3,813,800

Approved March 31, 1993.

CHAPTER 323
(H.B. No. 432)

AN ACT

APPROPRIATING MONEYS FOR VOCATIONAL EDUCATION FOR FISCAL YEAR 1994.

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

SECTION 1. There is hereby appropriated to the State Board of Vocational Education the following amount, to be expended by the Division of Vocational Education for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION AND SUPERVISION:				
FROM:				
General				
Fund	\$1,361,600	\$221,300		\$ 1,582,900
Federal Grant				
Fund	<u>94,700</u>	<u>157,200</u>		<u>251,900</u>
TOTAL	<u>\$1,456,300</u>	<u>\$378,500</u>		<u>\$ 1,834,800</u>
B. GENERAL PROGRAMS:				
FROM:				
General				
Fund	\$ 170,700	\$ 32,600	\$ 4,932,100	\$ 5,135,400
Federal Grant				
Fund	117,500	10,000	4,657,000	4,784,500
Hazardous Materials				
Training				
Fund			<u>128,700</u>	<u>128,700</u>
TOTAL	<u>\$ 288,200</u>	<u>\$ 42,600</u>	<u>\$ 9,717,800</u>	<u>\$10,048,600</u>
C. POST-SECONDARY PROGRAMS:				
FROM:				
General Fund			\$18,905,600	\$18,905,600
Unrestricted				
Fund			<u>175,000</u>	<u>175,000</u>
TOTAL			<u>\$19,080,600</u>	<u>\$19,080,600</u>
D. DISPLACED HOMEMAKER PROGRAM:				
FROM:				
General				
Fund			\$ 29,700	\$ 29,700
Displaced Homemaker				
Fund		\$ 5,000	135,000	140,000
Federal Grant				
Fund			<u>341,300</u>	<u>341,300</u>
TOTAL		<u>\$ 5,000</u>	<u>\$ 506,000</u>	<u>\$ 511,000</u>

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
E. IDAHO STATE COUNCIL ON VOCATIONAL EDUCATION:				
FROM:				
Federal Grant Fund	\$ 97,300	\$ 57,400		\$ 154,700
GRAND TOTAL	\$1,841,800	\$483,500	\$29,304,400	\$31,629,700

Approved March 31, 1993.

CHAPTER 324
(H.B. No. 433)

AN ACT
APPROPRIATING MONEYS TO THE PUBLIC HEALTH TRUST FUND FOR THE PUBLIC
HEALTH DISTRICTS FOR FISCAL YEAR 1994.

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

SECTION 1. There is hereby appropriated \$4,757,400 from the General Fund to be deposited in the Public Health Trust Fund for the period July 1, 1993, through June 30, 1994.

Approved March 31, 1993.

CHAPTER 325
(H.B. No. 434)

AN ACT
EXPRESSING LEGISLATIVE INTENT; AND APPROPRIATING MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 1994.

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

SECTION 1. It is legislative intent that the expenditures for the Department of Correction not exceed the following amount for the period July 1, 1993, through June 30, 1994:

FROM:	
General Fund	\$44,196,500
Miscellaneous Revenue Fund	84,400
Parolee Supervision Fund	1,101,900
Penitentiary Endowment Fund	1,029,900
Work Crews - Inmate Labor Fund	1,635,100
Community Work Centers - Inmate Labor Fund	187,200
Federal Grant Fund	650,200
TOTAL	\$48,885,200

SECTION 2. There is hereby appropriated to the Department of Correction the following amounts, to be expended for designated programs according to designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General					
Fund	\$ 1,949,700	\$ 1,159,700	\$ 7,900	\$ 1,617,700	\$ 4,735,000
Parolee Supervision					
Fund	35,900	13,000			48,900
Miscellaneous Revenue					
Fund		5,500			5,500
TOTAL	\$ 1,985,600	\$ 1,178,200	\$ 7,900	\$ 1,617,700	\$ 4,789,400
B. IDAHO STATE CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General					
Fund	\$ 6,886,500	\$ 985,300			\$ 7,871,800
Penitentiary Endowment					
Fund		1,029,900			1,029,900
Miscellaneous Revenue					
Fund	48,100				48,100
TOTAL	\$ 6,934,600	\$ 2,015,200			\$ 8,949,800
C. IDAHO CORRECTIONAL INSTITUTION - OROFINO:					
FROM:					
General					
Fund	\$ 2,607,900	\$ 796,500		\$ 48,700	\$ 3,453,100
Miscellaneous Revenue					
Fund		800			800
TOTAL	\$ 2,607,900	\$ 797,300		\$ 48,700	\$ 3,453,900
D. NORTH IDAHO CORRECTIONAL INSTITUTION - COTTONWOOD:					
FROM:					
General					
Fund	\$ 1,540,300	\$ 629,200	\$ 11,000		\$ 2,180,500
Work Crews - Inmate Labor					
Fund	52,800	89,100	40,000		181,900
TOTAL	\$ 1,593,100	\$ 718,300	\$ 51,000		\$ 2,362,400
E. SOUTH IDAHO CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General					
Fund	\$ 2,497,700	\$ 858,100	\$ 200,000		\$ 3,555,800
Work Crews - Inmate Labor					
Fund	273,500	259,000	54,500		587,000
TOTAL	\$ 2,771,200	\$ 1,117,100	\$ 254,500		\$ 4,142,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
F. IDAHO MAXIMUM SECURITY INSTITUTION - BOISE:					
FROM:					
General					
Fund	\$ 4,382,700	\$ 1,125,100			\$ 5,507,800
G. ST. ANTHONY WORK CAMP:					
FROM:					
General					
Fund	\$ 988,900	\$ 253,000			\$ 1,241,900
Federal Grant					
Fund		22,400			22,400
Work Crews -					
Inmate Labor					
Fund	181,300	291,200	\$ 31,100		503,600
TOTAL	\$ 1,170,200	\$ 566,600	\$ 31,100		\$ 1,767,900
H. POCATELLO WOMENS CORRECTIONAL CENTER:					
FROM:					
General					
Fund	\$ 1,970,700	\$ 647,500	\$ 750,000		\$ 3,368,200
I. FIELD AND COMMUNITY SERVICES:					
FROM:					
General					
Fund	\$ 5,565,000	\$ 983,800	\$ 79,900		\$ 6,628,700
Parolee					
Supervision					
Fund	877,800	100,500	74,700		1,053,000
Federal Grant					
Fund	301,500	27,700			329,200
Miscellaneous					
Revenue					
Fund	12,000	16,000	2,000		30,000
Community					
Work Centers -					
Inmate Labor					
Fund		187,200			187,200
TOTAL	\$ 6,756,300	\$ 1,315,200	\$ 156,600		\$ 8,228,100
J. PAROLE COMMISSION:					
FROM:					
General					
Fund	\$ 224,400	\$ 82,800			\$ 307,200
K. INSTITUTIONAL SUPPORT:					
FROM:					
General					
Fund	\$ 3,059,900	\$ 2,286,600			\$ 5,346,500
Federal					
Grant					
Fund	278,500	20,100			298,600
Work Crews -					
Inmate Labor					
Fund	204,000	96,600	\$ 62,000		362,600
TOTAL	\$ 3,542,400	\$ 2,403,300	\$ 62,000		\$ 6,007,700
GRAND					
TOTAL	\$33,939,100	\$11,966,600	\$1,313,100	\$1,666,400	\$48,885,200

Approved March 31, 1993.

CHAPTER 326
(H.B. No. 436)

AN ACT

APPROPRIATING MONEYS FROM THE GENERAL FUND TO THE OFFICE OF THE GOVERNOR FOR DEPOSIT IN THE GOVERNOR'S EMERGENCY FUND.

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

SECTION 1. There is hereby appropriated from the General Fund to the Office of the Governor the following amount for deposit in the Governor's Emergency Fund to be expended according to Section 57-1601, Idaho Code:

FOR:

Trustee and Benefit Payments	\$40,000
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FROM:

General Fund	\$40,000
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Approved March 31, 1993.

CHAPTER 327
(H.B. No. 439)

AN ACT

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 67-429, IDAHO CODE, TO PROVIDE ADDITIONAL POWERS AND DUTIES TO THE LEGISLATIVE COUNCIL; AMENDING CHAPTER 4, TITLE 67, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 67-457, 67-458, 67-459, 67-460, 67-461, 67-462, 67-463 AND 67-464, IDAHO CODE, TO CREATE THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE, TO DEFINE TERMS, TO PROVIDE MEMBERSHIP AND ORGANIZATION OF THE COMMITTEE, TO PROVIDE POWERS OF THE COMMITTEE, TO PROVIDE FOR CONDUCT OF AND ISSUANCE OF PERFORMANCE EVALUATION REPORTS, TO PROVIDE FOR RECORDING TESTIMONY UNDER OATH, TO PROVIDE FOR ASSISTANCE TO THE COMMITTEE AND TO PROVIDE FOR A QUORUM; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE REFERENCES TO THE LEGISLATIVE COUNCIL, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 20-408, IDAHO CODE, TO PROVIDE REFERENCES TO THE LEGISLATIVE COUNCIL; AMENDING SECTION 22-1209, IDAHO CODE, TO PROVIDE REFERENCES TO THE LEGISLATIVE COUNCIL, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 22-2919, 22-3319, 22-3607, 22-3707, 22-4010, 25-2507, 25-3112, 31-1701, 33-701, 33-2114, 33-2726 AND 36-414, IDAHO CODE, TO PROVIDE REFERENCES TO THE LEGISLATIVE COUNCIL; AMENDING SECTION 38-1517, IDAHO CODE, TO PROVIDE REFERENCES TO THE LEGISLATIVE COUNCIL, AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 39-414A, 42-3115, 42-4416, 50-1010 AND 50-2707, IDAHO CODE, TO PROVIDE REFERENCES TO THE LEGISLATIVE COUNCIL; AMENDING SECTION 56-130, IDAHO CODE, TO PROVIDE REFERENCES TO THE LEGISLATIVE COUNCIL, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 56-450, 59-501, 67-450A, 67-1010, 67-1104, 67-3502, 67-3503, 67-3508,

67-4129A, 67-6102 AND 67-6220, IDAHO CODE, TO PROVIDE REFERENCES TO THE LEGISLATIVE COUNCIL; AMENDING SECTION 67-7450, IDAHO CODE, TO PROVIDE REFERENCE TO THE LEGISLATIVE COUNCIL AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-7604, IDAHO CODE, TO PROVIDE REFERENCES TO THE LEGISLATIVE COUNCIL; REPEALING SECTIONS 67-441, 67-442, 67-443, 67-444, 67-445, 67-446, 67-447, 67-448, 67-449 AND 67-450, IDAHO CODE; AND AMENDING SECTION 67-435, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE JOINT FINANCE-APPROPRIATIONS COMMITTEE, AND TO PROVIDE FOR TRANSFER OF EMPLOYEES, AND ENCUMBERED AND APPROPRIATED MONEYS OF THE JOINT FINANCE-APPROPRIATIONS COMMITTEE, THE LEGISLATIVE AUDITOR AND THE LEGISLATIVE BUDGET OFFICE TO THE LEGISLATIVE COUNCIL.

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

SECTION 1. The purpose of this act is to modernize the provision of professional staff services to the legislature, to provide a performance evaluation function within the legislative branch of government, to provide legislative committees and legislators with professional staff support, to increase communication and efficiency and enhance productivity within the legislative branch of government of this state.

SECTION 2. That Section 67-429, Idaho Code, be, and the same is hereby amended to read as follows:

67-429. POWERS AND DUTIES. (1) It shall be the duty of the council to collect and compile information, to draft bills and to conduct research upon any subject which the legislature may authorize or direct or upon any subject which it may determine, provided that all activities of the council must be reasonably related to a legislative purpose. The legislature may make specific assignments to the council by a concurrent resolution approved by both houses.

(2) The council may hold public hearings and it may authorize or direct any of its committees to hold public hearings on any matters within the jurisdiction of the council.

(3) The council shall establish and maintain a legislative reference library.

(4) For the purpose of conducting any study within the jurisdiction of the council, by resolution adopted by the affirmative vote of two-thirds (2/3) of the entire membership of the council, the chairman of the council may subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence or other documents or records which the council deems relevant or material to any matter on which the council or any committee is conducting a study.

(5) It shall be the duty of the council to superintend and administer the legislative space in the capitol building at all times, and to prepare such space when required for the sessions of the legislature, which shall include the provision of furniture and equipment.

(6) The legislative council shall review and make recommendations to the personnel commission on all aspects of the personnel system, including policies, wages and salaries.

(7) The council has authority to appoint committees and hire staff or contract for services to implement the provisions of this section. In addition to the duties provided above, the council has authority to:

(a) Provide the legislature with research and analysis of current and projected state revenue, state expenditure and state tax expenditures;

(b) Provide the legislature with a report analyzing the governor's proposed levels of revenue and expenditures for budgets and supplemental budget requests submitted to the legislature;

(c) Provide an analysis of the impact of the governor's proposed revenue and expenditure plans for the next fiscal year;

(d) Conduct research on matters of economic and fiscal policy and report to the legislature on the result of the research;

(e) Provide economic reports and studies on the state of the state's economy including trends and forecasts for consideration by the legislature;

(f) Conduct budget and tax studies and provide general fiscal and budgetary information;

(g) Review and make recommendations on the operation of state programs in order to appraise the implementation of state laws regarding the expenditure of funds and to recommend means of improving their efficiency;

(h) Recommend to the legislature changes in the mix of revenue sources for programs, in the percentage of state expenditures devoted to major programs, and in the role of the legislature in overseeing state government expenditures and revenue projections;

(i) Make a continuing study and investigation of the building needs of the government of the state of Idaho, including, but not limited to, the following: the current and future requirements of new buildings, the maintenance of existing buildings, rehabilitating and remodeling of old buildings, the planning of administrative offices, and exploring the methods of financing building and related costs; and

(j) Conduct a study of state-local finance, analyzing and making recommendations to the legislature on issues including levels of state support for political subdivisions, basic levels of local need, balances of local revenues and options, relationship of local taxes to individuals' ability to pay and financial reporting by political subdivisions.

(8) In performing its duties under subsection (7) of this section, the council and its employees may consider, among other things:

(a) The relative dependence on state tax revenues, federal funds and user fees to support state-funded programs, and whether the existing mix of revenue sources is appropriate given the purpose of the programs;

(b) The relative percentages of state expenditures that are devoted to major programs such as education, assistance to local government, aid to individuals, state agencies and institutions and debt service; and

(c) The role of the legislature in overseeing state government expenditures, including legislative appropriation of money from the general account, legislative appropriation of money from funds

other than the general account, state agency receipt of money into revolving and other dedicated funds and expenditure of money from these funds and state agency expenditure of federal funds.

(9) The council's recommendations shall consider the long-term needs of the state. The recommendations must not duplicate work done by standing committees of the senate and house of representatives.

(10) The council may, after consultation with the governor and with the chairs of the standing committees of the legislature, select mandates and state programs for review. When selecting mandates, state aids or state programs to be reviewed, the council may consider those that involve payments to local units of government. Staff from affected agencies, staff from the division of financial management and legislative staff shall participate in the reviews.

(11) The following state aids and associated state mandates may be reviewed:

(a) Local government aid, ad valorem property tax credits, tax increment financing and fiscal disparities;

(b) Human service aids;

(c) Educational support dollars utilized for school district general fund aids, school district capital expenditure fund aids, and school district debt service fund aids;

(d) General government aids including natural resource aids, environmental protection aids, transportation aids, economic development aids and general infrastructure aids.

(12) At the direction of the council, the reviews of state aids and state mandates involving state financing of local government activities listed in subsection (11) of this section may include:

(a) The employment status, wages and benefits of persons employed in administering the programs;

(b) The desirable applicability of state procedural laws or rules;

(c) Methods for increasing political subdivision options in providing their share, if any, of program costs;

(d) Desirable redistributions of funding responsibilities for the program and the time period during which any recommended funding distribution should occur;

(e) Opportunities for reducing program mandates and giving political subdivisions more flexibility in meeting program needs;

(f) Comparability of treatment of similar units of government;

(g) The effect of the state aid or mandate on the distribution of tax burdens among individuals based upon ability to pay;

(h) Coordination of the payment or allocation formula with other state aid programs;

(i) Incentives that have been created for local spending decisions, and whether the incentives should be changed;

(j) Ways in which political subdivisions have changed their revenue-raising behavior since receiving these grants;

(k) An assessment of the accountability of all government agencies that participate in the administration of the program.

(13) The legislative council may provide for a complete audit of any and every fund in the state treasury and other state moneys at least once in every two (2) fiscal years and is hereby authorized:

(a) To supervise and examine the accounts and expenditures of the

several departments and public institutions of the state and to prescribe rules and regulations necessary to assure the adequacy and timeliness of all audits performed for or on behalf of all political subdivisions thereof;

(b) To inspect securities held by the several departments and public institutions of the state and the political subdivisions thereof;

(c) To examine, at any and all times, the accounts of every private corporation, institution, association, or board receiving appropriations from the legislature or contracting for health and welfare services with the state of Idaho;

(d) To demand and receive reports from the state treasurer, state auditor, state commissioner of finance, and any other officer or agency, and from the several state depositories;

(e) To publish, from time to time, for the information of the several departments and of the general public, bulletins of the works of government;

(f) To be the official depository of all audits of the several departments and public institutions of the state and its political subdivisions; the filing of an audit with the official depository shall satisfy all requirements for the filing of an audit with the state, any other provision of law notwithstanding;

(g) To review or have reviewed the work papers or other documentation utilized in the audit of a state department or public institution of the state and its political subdivisions, and to reject for filing in the official depository any report based upon unsatisfactory work papers or inadequately supported documentation;

(h) To review and approve the terms and conditions or other statement of services to be provided on any or all contracts or agreements by state government agencies for audits or audit type services; and

(i) To report to the attorney general, for such action, civil or criminal, as the attorney general may deem necessary, all facts showing illegal expenditure of the public money or misappropriation of the public money or misappropriation of the public property. The governor and state auditor shall also be notified when the report is made to the attorney general pursuant to this subsection.

All reports, findings and audits of the legislative council pursuant to this subsection shall be submitted to the legislature and to the governor.

SECTION 3. That Chapter 4, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 67-457, 67-458, 67-459, 67-460, 67-461, 67-462, 67-463 and 67-464, Idaho Code, and to read as follows:

67-457. JOINT LEGISLATIVE OVERSIGHT COMMITTEE -- CREATION. There is hereby created the joint legislative oversight committee which shall be appointed as follows: the president pro tempore of the senate shall appoint majority party members of the senate, the senate minority leader shall appoint minority party members of the senate, the

speaker of the house of representatives shall appoint majority party members of the house of representatives and the minority leader of the house of representatives shall appoint minority party members of the house of representatives. Membership on the committee shall be evenly divided between the house of representatives and the senate and shall be evenly divided between the two (2) largest political parties represented in the legislature. The cochairmen of the joint finance-appropriations committee, or their designees, shall be members of the joint legislative oversight committee. The joint legislative oversight committee is hereby created under the jurisdiction of the legislative council for the purpose of conducting performance audits or evaluations, and reviewing all records related thereto, of any state agency at any time as the committee deems necessary. The legislative council shall appoint cochairmen who shall be from different houses of the legislature and who shall be from different political parties and shall determine the size of the committee. The committee shall submit its findings, conclusions and reports to the legislative council, the legislature and to the governor no later than the first day of the second week of each regular session of the legislature. The legislative council, by a seventy-five percent (75%) vote, shall appoint a legislative management systems analyst for the purpose of conducting performance audits or evaluations pursuant to sections 67-457 through 67-464, Idaho Code. The legislative management systems analyst shall serve at the pleasure of the joint legislative oversight committee. The legislative council shall initially establish the compensation of the legislative management systems analyst and thereafter the compensation of the legislative management systems analyst shall be established by the joint legislative oversight committee.

67-458. DEFINITIONS. For the purposes of sections 67-457 through 67-464, Idaho Code:

(1) "Committee" means the joint legislative oversight committee.

(2) "Performance audit or evaluation" shall mean an examination of the effectiveness of the administration, the sufficiency and the adequacy of such administration in terms of the programs of the state agency authorized by law to be performed. Such examinations shall include, but not be limited to:

(a) How effectively the programs are administered;

(b) Benefits of each program in relation to the expenditures;

(c) Goals of the programs;

(d) Development of indicators by which the success or failure of a program may be gauged;

(e) Conformity of programs with legislative intent;

(f) Assistance to legislative committees dealing with specific programs;

(g) Impact of federal grant-in-aid programs on agency programs.

(3) "State agency" means each state board, commission, department, office or institution, educational or otherwise, of the state of Idaho. State agency shall also mean any city, county, district or other political subdivision of the state created by statute which has the authority to levy, collect and spend tax moneys.

67-459. TERM OF MEMBERSHIP AND ORGANIZATION OF COMMITTEE. All

members appointed to the joint legislative oversight committee shall serve for a term as provided by the legislative council. The committee shall meet no later than thirty (30) days after appointment by the legislative council for the purpose of organizing the committee. A chairman and cochairman shall be appointed by the legislative council and shall be from different houses of the legislature and from different political parties. Actual and necessary expenses and per diem shall be allowed as provided by the legislative council and shall be paid from the legislative account.

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

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

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

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

(4) To contract with private individuals or entities for the conduct of performance evaluations or portions thereof.

(5) To examine witnesses, to require the appearance of any person and the production of any paper or document, and to order the appearance of any person for the purpose of producing any paper or document, as is provided other legislative committees.

(6) To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee deems the administration of an oath necessary and advisable as provided by law.

(7) To determine that a witness has perjured himself by testifying falsely before the committee, and to direct the attorney general to institute legal proceedings as provided by law.

67-461. CONDUCT OF AND ISSUANCE OF PERFORMANCE EVALUATION REPORTS. (1) Prior to any performance evaluation, the legislative management systems analyst shall conduct a survey to obtain an overview of the operations of the agency or program. The survey will develop background information, including roles and identities of key personnel, identify actual and potential financial, managerial and operational problem areas and determine whether and to what extent detailed audit tests may be required in each specific area. In consultation with the agency or program, the legislative management systems analyst will develop a performance evaluation work plan.

(2) Prior to the presentation of any performance evaluation to the committee, the evaluated agency, the governor and the state auditor shall have an opportunity to review the performance evaluation findings and issue a response. The response of the agency, the gover-

nor and the state auditor to the performance evaluation shall be included in the performance evaluation when it is presented to the committee. All documents, writings and information transmitted pursuant to this subsection shall be deemed confidential and shall not be released to the public prior to the time the committee issues its performance evaluation report pursuant to subsection (3) of this section. Any person violating the provisions of this subsection regarding confidentiality shall be guilty of a misdemeanor.

(3) The committee shall issue performance evaluation reports, favorable or unfavorable, of any state agency, and such reports shall be a public record. Prior to the release of a performance evaluation report, all papers, physical and electronic records and correspondence and other supporting materials comprising the work papers in the possession of the legislative council employee or other entity charged with the preparation of a performance evaluation report shall be confidential and exempt from disclosure pursuant to chapter 3, title 9, Idaho Code. Additionally, all other records or materials in the possession of the legislative council or other entity charged with the preparation of a performance evaluation report that would otherwise be confidential or exempt from disclosure shall be exempt from disclosure pursuant to the provisions of chapter 3, title 9, Idaho Code. A copy of the report signed by the cochairmen of the committee, including committee recommendations, shall be submitted to the governor, to the state auditor, to each member of the legislature, and to the official, officer or person in charge of the state agency examined.

67-462. RECORDING TESTIMONY UNDER OATH. Whenever making a performance evaluation, the committee may require that testimony be given under oath, which may be administered by the chairman or by a person authorized by law to administer oaths, and may require that the testimony be recorded by an official court reporter or by some other competent person, under oath, which report when written, certified and approved by the person as being the direct transcript of the testimony, proceedings, documents, expenditure review or performance evaluation, shall be prima facie a correct statement of the testimony, proceedings, documents, expenditure review or performance evaluation provided that the person's signature to the certificate shall be duly acknowledged by him before a notary public.

67-463. ASSISTANCE. The office of the attorney general, the office of the state auditor and the administrator of the division of financial management are authorized to assist the joint legislative oversight committee in its conduct of performance evaluations if the committee and the legislative management systems analyst deems that such offices may be helpful.

67-464. QUORUM. There shall be no business transacted, including adoption of a rule or procedure, without the presence of a quorum of the committee and no action shall be valid unless approved by the majority of those members present and voting and entered upon the minutes of the committee.

SECTION 4. That Section 9-340, Idaho Code, be, and the same is

hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

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

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section mean information, including a formula, pattern, compilation, program, computer program, device, method, technique or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

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

(e) Vital statistics records.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

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

(14) Any personal records, other than names and addresses, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(15) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

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

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

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

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery

retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment.

(27) Records of a person maintained pursuant to chapter 18, title 16, Idaho Code.

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

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision making.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submit-

ted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative auditor council prior to release of the related final audit and all other records or materials in the possession of the office of the legislative auditor council that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

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

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

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

(378) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

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

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(379) 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.

SECTION 5. That Section 20-408, Idaho Code, be, and the same is hereby amended to read as follows:

20-408. DUTIES OF BOARD. The board of correction shall:

(a) Recommend productive enterprises in the penal institutions under the jurisdiction of the department of correction, in such volume and of such kinds as to eliminate unnecessary idleness among the inmates and to provide diversified work activities which will serve as a means of vocational education and rehabilitation, as well as financial support;

(b) Determine the advisability and suitability of establishing, expanding, diminishing, or discontinuing any enterprise;

(c) Hold hearings and make rules for conducting such hearings. The board may, in its discretion, hold public hearings on any subject within its jurisdiction;

(d) Conduct programs of research, education and publicity for correctional industries products;

(e) Secure new markets for correctional industries products;

(f) Enter into such contracts and agreements as may be necessary or advisable pursuant to the provisions of this act;

(g) Appoint and employ all necessary officers, agents and other personnel, including any experts in any correctional industries enterprise pursuit, prescribe their duties and fix their compensation;

(h) Cooperate with any local, state or national organization or agency and to enter into contracts and agreements with such agencies for carrying on and promoting the purposes of this act;

(i) Adopt, rescind, modify and amend all necessary and proper orders, rules and regulations for the exercise of its powers and the performance of its duties herein;

(j) Keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all collections, receipts, deposits, withdrawals, disbursements, paid-outs, moneys, and other financial transactions made and done pursuant to this act. Such records, books and accounts shall be audited subject to lawful, sound procedures and methods of accounting at least annually and a copy of such audit shall be delivered within thirty (30) days after completion thereof to the board of correction. The books, records and accounts shall be open to inspection and audit by the legislative auditor council and the public at all times.

SECTION 6. That Section 22-1209, Idaho Code, be, and the same is hereby amended to read as follows:

22-1209. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative budget-office council, the state auditor, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state audi-

tor and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 7. That Section 22-2919, Idaho Code, be, and the same is hereby amended to read as follows:

22-2919. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative budget-office council, the state auditor, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state auditor and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 8. That Section 22-3319, Idaho Code, be, and the same is hereby amended to read as follows:

22-3319. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of

this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative budget-office council, the state auditor, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state auditor and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 9. That Section 22-3607, Idaho Code, be, and the same is hereby amended to read as follows:

22-3607. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative budget-office council, the state auditor, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated

income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state auditor and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 10. That Section 22-3707, Idaho Code, be, and the same is hereby amended to read as follows:

22-3707. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative budget-office council, the state auditor, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1990, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state auditor and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 11. That Section 22-4010, Idaho Code, be, and the same is hereby amended to read as follows:

22-4010. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all grants, donations and gifts of funds from any source for

expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift, and all of the revenues received under the provisions of section 22-4017, Idaho Code, shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative budget-office council, the state auditor, and the division of financial management, a report showing the annual income to the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current fiscal year and a projection of anticipated expenses by category for the current fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state auditor and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 12. That Section 25-2507, Idaho Code, be, and the same is hereby amended to read as follows:

25-2507. BONDING -- RECORDS -- AUDITS. The person or persons who receive and disburse the moneys of the board shall be bonded by and in an amount to be determined by the board.

Accurate records of all receipts and disbursements shall be kept and audited by the legislative auditor council, whose report shall be filed in the board office and made available upon request to any person.

SECTION 13. That Section 25-3112, Idaho Code, be, and the same is hereby amended to read as follows:

25-3112. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such

banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative budget-office council, the state auditor, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state auditor and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 14. That Section 31-1701, Idaho Code, be, and the same is hereby amended to read as follows:

31-1701. AUDIT OF COUNTY FINANCES -- FILING. The board of county commissioners of every county shall cause to be made, annually, a full and complete audit of the financial transactions of the county. Such audit shall be made by and under the direction of the board of county commissioners by an independent auditor, in accordance with generally accepted auditing standards and procedures.

The board of county commissioners shall include in the annual county budget all necessary expense for carrying out the provisions of this section.

The board of county commissioners shall file one (1) copy of such completed audit report with the legislative auditor council within ten (10) days after its delivery by the contracting auditor.

SECTION 15. That Section 33-701, Idaho Code, be, and the same is hereby amended to read as follows:

33-701. FISCAL YEAR -- PAYMENT AND ACCOUNTING OF FUNDS. The fiscal year of each school district shall be a period of twelve (12) months commencing on the first day of July in each year.

The board of trustees of each school district shall have the following powers and duties:

1. To determine and order paid all lawful expenses for salaries, wages and purchases, whether or not there be money in the treasury for payment of warrants drawn against any fund of the district. Warrants shall be signed by the treasurer of the district and countersigned by the chairman or vice chairman of the board of trustees.

Whenever any school district has sufficient funds on deposit so to do, it may pay any allowed claim for salaries, wages or purchases by regular bank check signed by the treasurer or assistant treasurer of the district and countersigned by the chairman, or vice-chairman, of the board of trustees.

The total amount of warrants or orders for warrants drawn on any fund, together with disbursements from such fund in any other manner made, shall not exceed ninety-five percent (95%) of the estimated income and revenue accrued or accruing to such fund for the same school year, until such income and revenue shall have been paid into the treasury to the credit of the district;

2. To invest all or part of any plant facilities reserve fund, or any fund accumulated for the payment of interest on, and the redemption of, outstanding bonds, or other obligations of the district in bonds or certificates of indebtedness of the United States of America, or in bonds or warrants of the state of Idaho, or in warrants or tax anticipation notes of any county or school district of the state of Idaho, when such investments shall be due and payable on or before the date any plant facilities reserve fund shall be required to be expended or any bonds or other obligations, or interest thereon, of the investing district shall become payable.

Whenever in the judgment of the board of trustees, the proceeds of any bond issue should be temporarily invested pending the expenditure of such proceeds for the purposes for which such bonds were issued, the proceeds may be invested in the manner and form hereinabove prescribed. Any interest, or profits accruing from such investments shall be used for the purposes for which the bonds were issued. Unless otherwise provided by law, any interest or profits accruing from the investment of any funds shall be credited to the general fund of the district;

3. To insure any school house and other property, and the district, against any loss by fire, casualty, or liability, and the board, its officers and employees, and to preserve its property for the benefit of the district. In case of loss of any insured property, any proceeds from insurance:

(a) may be expended in constructing a temporary or permanent structure, but no sum greater than the insurance proceeds shall be so expended except upon approval of a majority of the school district electors voting in an election called for that purpose; or

(b) may be placed in and made a part of the school plant facilities reserve fund of the district, if the district has such a fund; or

(c) may be placed in a separate account in the bond interest and redemption fund of the district to repay any kind of obligation incurred by the district in replacing or restoring the property for which the insurance proceeds were received, and shall not be included in the computations of bond and bond interest levies as provided in section 33-802A, Idaho Code.

If the proceeds of any insurance received by a school district by reason of loss on real property shall be less than five thousand dollars (\$5,000), such proceeds may be credited to the general fund of the district;

4. To pay from the general fund of the district the expense of any member of the board incurred while traveling on the business of the board, or attending any meeting called by the state board of education or by the state superintendent of public instruction, or attending any annual or special meetings of the state school trustees association, and to pay the membership fee of the board of trustees in said association. Whenever any member of the board of trustees resides at such distance from the meeting place of the board as to require, in the judgment of the board, such member to incur extraordinary expense in traveling from his home to and from said meeting place, the board may approve payment to such member of the extraordinary expense incurred in attending any meeting of the board.

For the purpose of this paragraph, the term "expense" or "extraordinary expense" shall include allowance for mileage or actual travel expense incurred;

5. To prepare, or cause to be prepared and published, in the manner hereinafter prescribed, within one hundred twenty (120) days from the last day of each fiscal year, an annual statement of financial condition and report of the school district as of the end of such fiscal year in a form prescribed by the state superintendent of public instruction. Such annual statement shall include, but not be limited to the amounts of money budgeted and received and from what sources, and the amounts budgeted and expended for salaries and other expenses by category. Salaries may be reported in gross amount. Each school district shall have available at the administrative office, upon request, a full and complete list of vendors and the amount paid to each and a list of the number of teachers paid at each of the several stated gross salary levels in effect in the district.

Nothing herein provided shall be construed as limiting any school district as to any additional or supplementary statements and reports it may elect to make for the purpose of informing the public of its financial operations, either as to form, content, method, or frequency; and if all the information required herein to be published shall have been published as provided herein at regular intervals during the fiscal year covering successive portions of the fiscal year, then such information may be omitted from the annual statement of financial condition and report for such portions of the fiscal year as already have been reported.

The annual statement of financial condition and report shall be published within the time above prescribed in one (1) issue of a newspaper printed and published within the district, or, if there be none, then 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, in the county in which the school district is located, or, if more than one (1) newspaper is published in said district or county, then in the newspaper most likely to give best general notice of the contents of such annual statement of financial condition and report to the residents of said district; provided, that if no newspaper is published in the district or county,

then such statement of financial condition and report shall be published in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the contents to the residents of said district.

The chairman, clerk and treasurer of each school district shall certify the annual statement of financial condition and report to be true and correct, and the certification shall be included in each published statement.

In the event the board of trustees of any school district shall fail to prepare or cause to be prepared or to publish the annual statement of financial condition and report as herein required, the state superintendent of public instruction shall cause the same to be prepared and published, and the cost thereof shall be an obligation of the school district. One (1) copy of the annual statement of financial condition and report shall be retained in the office of the clerk of the board of school trustees, where the same shall be open at all times to examination and inspection by any person;

6. To cause to be made each year, a full and complete audit of all of the financial transactions of the district, and of the activity or student body funds, except that in elementary school districts such audit shall be made at intervals of not more than two (2) years. Any audit shall be made by and under the direction of the board of trustees by an independent auditor, in accordance with generally accepted auditing standards and procedures.

The auditor shall be employed on written contract.

One (1) copy of the report of the audit shall be filed with the legislative auditor council, and one (1) copy shall be filed with the state department of education, after its acceptance by the board of trustees, but not later than October 15;

7. To file annually with the state department of education such financial and statistical reports as said state superintendent of public instruction may require;

8. To order and have destroyed any canceled check or warrant, or any form of claim or voucher which has been paid, at any time after five (5) years from the date the same was canceled and paid;

9. To review the school district budget periodically and make appropriate budget adjustments to reflect the availability of funds and the requirements of the school district. Revenue derived from maintenance and operation levies made pursuant to section 33-802 2, Idaho Code, shall be excluded from budget adjustments as provided in this paragraph. Any person or persons proposing a budget adjustment under this section shall notify in writing each member of the board of trustees one (1) week prior to the meeting at which such proposal will be made. Prior to the final vote on such a proposal, notice shall be posted and published once, as prescribed in section 33-402, Idaho Code. A budget adjustment shall not be approved unless voted affirmatively by sixty percent (60%) of the members of the board of trustees. Such amended budgets shall be submitted to the state superintendent of public instruction;

10. To invest any money coming into the hands of the school district in investments permitted by section 67-1210, Idaho Code. Unless otherwise provided by law, any interest or profits accruing from the investment of any funds shall be credited to the general fund of the

district.

SECTION 16. That Section 33-2114, Idaho Code, be, and the same is hereby amended to read as follows:

33-2114. REPORTS OF JUNIOR COLLEGE DISTRICTS. The board of trustees of each junior college district shall cause to be made, annually, a full and complete audit of the financial transactions of the district. Such audit shall be made by and under the direction of the board of trustees by an independent auditor in accordance with generally accepted auditing standards and procedures. The auditor shall be employed on written contract.

One (1) copy of the audit report shall be filed with the legislative ~~auditor~~ council, and one (1) copy with the state board of education, not more than ten (10) days after its acceptance by the board of trustees.

The state board of education may at its discretion direct the board of trustees of any junior college district to cause to be made an examination of the books and accounts of their district, as provided for public school districts.

The board of trustees shall submit to the state board of education such other reports as the state board may from time to time require.

SECTION 17. That Section 33-2726, Idaho Code, be, and the same is hereby amended to read as follows:

33-2726. FISCAL YEAR -- ANNUAL REPORTS -- AUDIT. The fiscal year of each library district shall commence on the first day of October of each year. The board of trustees of each library district shall annually, not later than the first day of January, file with the state library board a report of the operations of the district for the fiscal year just ended. The report shall be of such form and contain such information as the state library board may require, but in all cases must include a complete accounting of all financial transactions for the fiscal year being reported.

At intervals of not more than two (2) years the board of trustees of each library district shall cause to be made a full and complete audit of the books and accounts of the district. The audit shall be made by and under the direction of the library board by an independent auditor, in accordance with the generally accepted industry audit guide, generally accepted audit standards, or generally accepted governmental audit standards, as applicable. Within ten (10) days of acceptance of the audit report by the board a copy thereof shall be filed with the legislative ~~auditor~~ council.

SECTION 18. That Section 36-414, Idaho Code, be, and the same is hereby amended to read as follows:

36-414. MIGRATORY WATERFOWL STAMP -- PRINTS -- MIGRATORY WATERFOWL ART COMMITTEE. (1) As used in this section:

- (a) "Migratory waterfowl" means members of the family Anatidae, including brants, ducks and geese.
- (b) "Migratory waterfowl art committee" means the committee cre-

ated in subsection (5) of this section.

(c) "Migratory waterfowl stamp" means the stamp that is required pursuant to this section to be in the possession of persons over sixteen (16) years of age to hunt migratory waterfowl.

(d) "Prints and artwork" mean replicas of the original stamp design that are sold to the general public. Prints and artwork are not to be construed to be the migratory waterfowl stamp that is required pursuant to this section. Artwork may be any facsimile of the original stamp design, including color renditions, metal duplications or any other kind of design.

(2) A state migratory waterfowl stamp is required to hunt migratory waterfowl. The fee for the stamp is five dollars (\$5.00). The migratory waterfowl stamp shall be required in the hunting season starting not later than the fall of 1987. The migratory waterfowl stamp shall be validated by the signature of the licensee written across the face of the stamp. The stamp shall be sold pursuant to the procedures contained in chapter 3, title 36, Idaho Code. All persons authorized to sell migratory waterfowl stamps may charge a commission of fifty cents (50¢) upon each stamp, to be retained by them as compensation for the sale of the migratory waterfowl stamp. This shall be in addition to the five dollar (\$5.00) charge.

(3) No person over sixteen (16) years of age shall hunt any migratory waterfowl without first obtaining a migratory waterfowl stamp as required in this section.

(4) The migratory waterfowl stamp to be produced by the department shall use the design as provided by the migratory waterfowl art committee. All revenue derived from the sale of the stamps by the department shall be deposited in the fish and game set-aside account and shall be used only for the cost of printing and production of the stamp and for those migratory waterfowl projects specified by the director of the department for the acquisition and development of migratory waterfowl habitat in the state. Acquisition shall include, but not be limited to, the acceptance of gifts of real property or any interest therein or the rental, lease or purchase of real property or any interest therein. If the department acquires any fee interest, leasehold or rental interest in real property under this section, it shall allow the general public reasonable access to that property and shall, if appropriate, insure that the deed or other instrument creating the interest allows this access to the general public. If the department obtains a covenant in real property in its favor or an easement or any other interest in real property under this section, it shall exercise its best efforts to insure that the deed or other instrument creating the interest grants to the general public in the form of a covenant running with the land reasonable access to the property. The private landowner from whom the department obtains such a covenant or easement shall retain the right of granting access to the lands by written permission.

The department may produce migratory waterfowl stamps in any given year in excess of those necessary for sale in that year. The excess stamps may be sold to the migratory waterfowl art committee for sale to the public.

(5) There is hereby created a migratory waterfowl art committee which shall be composed of seven (7) members. The committee shall con-

sist of one (1) member appointed by the governor, four (4) members appointed by the director of the department, one (1) member appointed by the Idaho commission on the arts, and one (1) member appointed by the director of the department of agriculture. The member appointed by the Idaho commission on the arts shall be knowledgeable in the area of fine art reproduction. The member appointed by the director of the department of agriculture shall represent statewide farming interest. The members appointed by the governor and the director of the department shall be knowledgeable about waterfowl and waterfowl management. The four (4) members appointed by the director of the department shall also represent respectively:

- (a) A northern Idaho sports group;
- (b) A southern Idaho sports group;
- (c) A group with a major interest in the conservation and propagation of migratory waterfowl; and
- (d) A statewide conservation organization.

(6) The members of the committee shall serve three (3) year staggered terms and at the expiration of their terms shall serve until qualified successors are appointed. Of the seven (7) members, two (2) shall serve initial terms of four (4) years, two (2) shall serve initial terms of three (3) years, and three (3) shall serve initial terms of two (2) years. The appointees of the governor and the director of the department of agriculture shall serve the initial terms of four (4) years. The appointees of the commission on the arts and one (1) of the appointees of the director of the department of fish and game shall serve the initial terms of two (2) years. Vacancies shall be filled for unexpired terms consistent with this subsection. A chairman shall be elected annually by the committee. The committee shall review the director's expenditures of the previous year of both the stamp money and the prints and related artwork money. Members of the committee shall be compensated as provided in section 59-509(a), Idaho Code.

(7) The committee is responsible for the selection of the annual migratory waterfowl stamp design and shall provide the design to the department. If the committee does not perform this duty within the time frame necessary to achieve proper and timely distribution of the stamps to license vendors, the director shall initiate the artwork selection for that year. The committee shall create collector art prints and related artwork, utilizing the same design as provided to the department. The administration, sale, distribution and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the migratory waterfowl art committee.

(8) The total amount of moneys brought in from the sale of prints, stamps, and related artwork shall be deposited in the fish and game set-aside account. The costs of producing and marketing of prints and related artwork, including administrative expenses mutually agreed upon by the committee and the director shall be paid out of the total amount of moneys brought in from sale of those same items. Net funds derived from the sale of prints and related artwork shall be expended as follows:

- (a) Twenty percent (20%) of the funds shall be provided by the director of the department to an appropriate nonprofit entity or wildlife conservation agency for the development of migratory

waterfowl propagation projects within the provinces of Alberta and British Columbia in Canada.

(b) Eighty percent (80%) of the funds shall be used by the director of the department for the acquisition and development of waterfowl propagation projects within Idaho.

(c) The migratory waterfowl art committee shall have a periodic audit of its finances conducted by the legislative ~~auditor~~ council or its successor agency and shall furnish a copy of the audit to the fish and game commission and the senate resources and environment committee and the house of representatives resources and conservation committee.

SECTION 19. That Section 38-1517, Idaho Code, be, and the same is hereby amended to read as follows:

38-1517. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission when the amount of such payments exceeds two thousand dollars (\$2,000). Such designees may include the members of the staff of the commission.

(3) The right is reserved to the state of Idaho to audit the funds to the commission at anytime.

(4) On or before January 15 of each year, the commission shall file with the senate and house committees responsible for natural resources, the legislative ~~budget-office~~ council, the state auditor, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission for the preceding year. The report shall also include an estimate of income of the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1994, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding year.

(5) All moneys received or expended by the commission shall be audited annually be by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state auditor. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 20. That Section 39-414A, Idaho Code, be, and the same is hereby amended to read as follows:

39-414A. AUDIT OF HEALTH DISTRICT FINANCES. It shall be the duty

of each district board of health to cause to be made a full and complete audit of all the financial transactions of the health district no less frequently than every two (2) years. Such audit shall be made by or under the direction of the legislative auditor council, in accordance with generally accepted auditing standards and procedures. The district board of health shall include all necessary expenses for such audit in its budget.

SECTION 21. 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 three (3) mills for each dollar of assessed valuation, provided however that a higher levy may be approved and ratified by the qualified voters at an election to be held 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 assessed valuation of the real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the flood control district to the board, or boards, of county commissioners on or before September 1 of each year.

Such levies shall be levied and collected in the manner provided by law, and the moneys collected shall be turned over to the treasurer or treasurers, of the county, or counties, in which said district is located.

Said moneys shall be public funds and subject to the provisions of the public depository laws of the state.

2. To employ such personnel as may be necessary to carry out the purposes and objects of this act, with the full power to bind said district for the compensation of such personnel.

3. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its power and to promulgate, amend and repeal rules and regulations not consistent with the provisions of this act.

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 five thousand dollars (\$5,000), without first advertising for sealed competitive bids as herein provided. However, where it is determined by order of the board that there is an existing emergency, or where it is determined that the district is in a flood fight resulting from unanticipated conditions, the requirement for sealed competitive bids shall not apply.

6. To prescribe the duties of officers, agents and employees as may be required.

7. To establish the fiscal year of the district and to keep records of all business transactions of the district.

8. To prepare a statement of the financial condition of the district at the end of each fiscal year, in a form to be prescribed by the director or by the legislative auditor, 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 auditor on or before February 2 of each year.

9. To have an audit, by an independent public accounting firm, of the financial affairs of the district. The audit shall be made at intervals of not more than two (2) years for districts having an annual expense of more than three thousand dollars (\$3,000) and shall be made at intervals of not more than three (3) years for districts having an annual expense of three thousand dollars (\$3,000) or less. A certified copy of said audit shall be filed with the director and with the legislative auditor council 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 act; to lease any of its property or interest therein in furtherance of the purposes and provisions of this act, 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 act.

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 act, 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 for that purpose, according to the provisions of this act.

16. To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided herein.

17. To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of this act, any flood control project within or without the boundaries of the district undertaken in cooperation with the United States or any of its agencies, or with the state of Idaho or any of its agencies, or any combinations thereof.

18. To accept donations, gifts and contributions in money, services, or materials, or otherwise, from the United States or any of its agencies, or the state of Idaho or any of its agencies or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations.

19. To exercise all other powers necessary, convenient or incidental to carrying out the purposes and provisions of the act.

SECTION 22. 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 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. 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 in a form to be prescribed by the legislative auditor council, 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 and the legislative auditor council on or before February 2 of each year.

(9) To have an audit, by an independent public accounting firm, of the financial affairs of the district. The audit shall be made at intervals of not more than two (2) years for districts having an annual expense of more than three thousand dollars (\$3,000) and shall be made at intervals of not more than three (3) years for districts

having an annual expense of three thousand dollars (\$3,000) or less. A certified copy of said audit shall be filed with the legislative auditor 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 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 voting at an election to be held 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 23. That Section 50-1010, Idaho Code, be, and the same is hereby amended to read as follows:

50-1010. AUDIT OF CITY FINANCES -- AUDIT TO BE FILED. It shall be the duty of the council in every city to cause to be made a full and complete audit of all the financial transactions of such city every year; however, lacking more stringent requirements by contract or government law, rule, or regulation, any city whose annual budget for all purposes does not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial transactions audited on a biennial basis and may continue biennial auditing cycles in subsequent years provided that the city's annual budget does not exceed two hundred fifty thousand dollars (\$250,000) during any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit and the permissible cycle shall include two (2) fiscal years, which combined, commence and end on odd-numbered years. Such audit shall be made by and under the direction of said council by an independent auditor, in accordance with generally accepted auditing standards and procedures.

The council shall be required to include all necessary expenses for carrying out the provisions of this section in its annual budget.

The council is hereby required to file one (1) copy of such completed audit report with the legislative auditor council within ten (10) days after its delivery by the contracting auditor.

SECTION 24. That Section 50-2707, Idaho Code, be, and the same is hereby amended to read as follows:

50-2707. PUBLIC CORPORATIONS -- AUDIT BY STATE. The finances of any public corporation are subject to examination by the legislative auditor's-office council.

SECTION 25. That Section 56-130, Idaho Code, be, and the same is hereby amended to read as follows:

56-130. DEVELOPMENT OF PAYMENT, ADJUSTMENT, AUDIT AND SETTLEMENT MECHANISMS. (a) Not later than seventy-five (75) days after the effective date of this section, the legislative auditor council shall develop and transmit to the director recommendations for promulgation by rule, as specified in sections 56-104 through 56-107, Idaho Code, to include the following:

(1) A statistical model and appropriate indices for an annual combined inflator index, to include at least measures of cost

increases in malpractice insurance, food, labor and other variable nonproperty cost categories;

(2) Uniform definitions, standards, and procedures for adjustments to prospective rates established by the director for facilities in the manner specified in this chapter, which take into account at least the following:

1. Unforeseen increases or decreases in cost categories greater or lesser than forecasted by the annual combined inflator index which are outside the control of any individual facility;

2. Unanticipated expenses required to prevent or correct conditions specified in section 39-4908(c), Idaho Code; and

3. Such other circumstances or emergencies which may be identified and agreed upon pursuant to subsection (b) of this section;

(3) Regulatory accounting, reporting, and auditing provisions which may be required; and

(4) Regulatory settlement provisions which may be required.

(b) The legislative auditor council will develop the items specified in subsection (a) of this section;

(1) In cooperation with an advisory committee, appointed by the legislative auditor council, to be composed of representatives of the director, the Idaho society of certified public accountants, and free-standing skilled care, free-standing intermediate care, and hospital-based facilities; and

(2) In a manner which will achieve the principles of prospective reimbursement as stated in parts A, B, and C of this chapter.

SECTION 26. That Section 56-450, Idaho Code, be, and the same is hereby amended to read as follows:

56-450. HEALTH AND WELFARE TRUST ACCOUNT. The director of the department of health and welfare may receive, on behalf of the department, any money or real or personal property donated, bequeathed, devised, or conditionally granted to the department. Such moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in a special account to be known as the "Health and Welfare Trust Account", which is hereby established, reserved, set aside, appropriated and made available until expended, used, and administered to carry out the terms or conditions of such donation, bequest, devise, or grant. Pending such expenditure or use, surplus moneys in the health and welfare trust account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the health and welfare trust account.

The director shall provide annually, to the legislative auditor council, an accounting of the health and welfare trust account setting forth the sources, applications and balance of moneys within the account.

SECTION 27. That Section 59-501, Idaho Code, be, and the same is hereby amended to read as follows:

59-501. SALARIES OF STATE ELECTIVE OFFICERS -- REGULAR PAYMENT -- TRAVELING EXPENSES -- FEES PROPERTY OF STATE. The governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction shall, during their continuance in office, and commencing on the first Monday in January, 1991 receive for their services compensation as follows:

Governor, \$75,000 per annum;

Lieutenant governor, \$20,000 per annum;

Secretary of state, \$62,500 per annum;

State auditor, \$62,500 per annum; said salary to be audited by the legislative auditor council;

Attorney general, \$67,500 per annum;

State treasurer, \$62,500 per annum; and

State superintendent of public instruction, \$62,500 per annum.

Such compensation shall be paid on regular pay periods as due out of the state treasury, and shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office; but no increase of compensation shall affect the salaries of such officers during their present terms of office; provided, however, that the actual and necessary expenses of the governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, and superintendent of public instruction while traveling within the state, or between points within the state, in the performance of official duties, shall be allowed and paid by the state; not however, exceeding such sum as shall be appropriated for such purpose.

Actual and necessary subsistence expenses of the governor while traveling in connection with the performance of official duties are hereby expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. (Standard Travel Pay and Allowance Act of 1949).

No officer named in this section shall receive, for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them, of any official duty, shall be collected in advance and deposited with the state treasurer to the credit of the state.

SECTION 28. That Section 67-450A, Idaho Code, be, and the same is hereby amended to read as follows:

67-450A. CHARGES FOR AUDIT. The annual appropriation to the office of legislative auditor council from the general fund shall provide for authorized audits and services to general fund departments, agencies, commissions, or institutions without charge to the unit receiving such services. The cost and expenses incurred by the legislative auditor's office council in conducting audits or in carrying out other work authorized by law in dedicated funds, shall be paid from the appropriation to the office, department, board, commission, or institution and/or the dedicated funds under the control of the office, department, board, commission, or institution for whom the work is done. The audit fee or costs of work performed in such dedicated fund agencies shall be based on an hourly rate computed by the legislative auditor council and shall be sufficient to defray all costs and expenses incurred, including but not limited to related sal-

ary, travel and office overhead expenses. The legislative auditor's office council may require partial payments, during the course of the audit, for services rendered and expenses incurred. All charges shall be paid within thirty (30) days after billing is received.

All moneys received from the various dedicated fund agencies shall be added to the legislative auditor's council's appropriation from the general fund and are hereby appropriated to the legislative auditor council, providing that the legislative auditor's council's expenditures shall not exceed the amount appropriated by the legislature.

SECTION 29. That Section 67-1010, Idaho Code, be, and the same is hereby amended to read as follows:

67-1010. VOUCHERS AND ACCOUNTS PRESERVED. All accounts, vouchers, and documents settled, or to be settled, by the auditor or board of examiners must be preserved in his office for not less than two (2) years, and copies thereof, authenticated by the official seal of the auditor, shall be given to any person interested therein who requires the same. After the legislative auditor council has indicated no further need, such records may be disposed of unless a specific written request for further retention has been made to the auditor.

SECTION 30. That Section 67-1104, Idaho Code, be, and the same is hereby amended to read as follows:

67-1104. ANNUAL REPORTS. The auditor shall prepare, annually on a fiscal year basis, exhibits showing the proper detailed classification of all receipts and warrant disbursements, respectively, of each office, department, bureau and institution of the state of Idaho, followed by a recapitulation of receipts from general sources and a recapitulation of disbursements by general class as follows.

REVENUE RECEIPTS

- A. Taxes.
- B. Licenses and Permits.
- C. Charges for Services and Fees.
- D. Interest and Penalties.
- E. Rentals.
- F. Fines, Forfeitures, Escheats, including surety bond adjustments
- G. Miscellaneous Sales.
- H. Matched Funds and Contributions.

NONREVENUE RECEIPTS

- A. Sale of Capital Assets.
- B. Sale of State Obligations.
- C. Insurance Adjustment to Capital Assets.
- D. Trust Accounts.
- E. Revolving Fund Reimbursements.
- F. Refunds of Erroneous Payments.

DISBURSEMENTS

- A. Maintenance and Operation.
- B. Capital Outlay.
- C. Relief and Pensions.
- D. Refunds of Erroneous Receipts.
- E. Payments as Agent.

One (1) of such exhibits shall be delivered to the division of financial management and one (1) to the legislative budget--office council, two (2) to the office, department or governing board referred to in the exhibit (one (1) of which shall be for the use of the executive head of the particular bureau, institution or other unit covered by such exhibit), and the fourth shall be permanently filed in the auditor's office.

SECTION 31. That Section 67-3502, Idaho Code, be, and the same is hereby amended to read as follows:

67-3502. **BLANKS TO BE FURNISHED.** In the preparation of a state budget, the administrator of the division of financial management shall, not later than the fifteenth day of July distribute to all departments and to all offices and institutions of the state government (including the elective officers in the executive department, the judicial department, the legislative department and the state board of education) the proper blanks necessary to the preparation of budget estimates. Such blanks shall be in such form as shall be prescribed by the administrator of the division and the ~~director-of-the~~ legislative budget-office council, to procure the following information:

1. The revenues from all sources including appropriations for the preceding fiscal year and an estimate of the receipts for the current fiscal year. Receipts shall be segregated to show source of income.

2. A statement of expenditures made from appropriations during the preceding fiscal year and an estimate of the amounts to be expended during the current fiscal year. The expenditures to be itemized according to the standard classification set forth in this chapter.

3. A statement of expenditures made of revenues from other sources during the preceding fiscal year and an estimate of the amounts of such revenues to be expended during the current fiscal year. These expenditures to be itemized according to the standard classification set forth in this chapter.

4. An estimate of the revenues anticipated during the succeeding fiscal year from sources other than appropriations by the legislature, such anticipated revenues to be segregated as to source.

5. A statement of the purposes for which it is expected to expend the revenues anticipated from sources other than appropriations, said statement to show purposes classified according to the standard classification where possible and where not so classified, an explanation of the reasons for failure to so classify.

6. An estimate of appropriations needed for the succeeding fiscal year, said estimate to show each primary program or major objective as a separate item of the request as required by the blanks provided by the administrator of the division, said primary program or major objective to be further itemized according to the standard classification.

7. A report concerning the condition and management of programs, program performance, and progress toward accomplishing program objectives.

SECTION 32. That Section 67-3503, Idaho Code, be, and the same is

hereby amended to read as follows:

67-3503. PREPARATION AND RETURN OF ESTIMATES. Each department, office and institution (including elective officers in the executive department and including the state board of education) shall, not later than the fifteenth day of August, except with special permission and agreement of the administrator of the division of financial management and the ~~director of the legislative budget office~~ council, prepare and file in the office of the administrator of the division upon the blanks described in section 67-3502, Idaho Code, its report of receipts from all sources including appropriations made by the legislature, its expenditures of all sums received from all sources, segregated as provided for in the blanks, and its estimates of receipts and expenditures for the current and succeeding fiscal years. The legislative and judicial departments shall, as early as practicable and in any event no later than the first day of November, prepare and file in the office of the governor upon the blanks described in section 67-3502, Idaho Code, a report of receipts from all sources including appropriations made by the legislature; expenditures of all sums received from all sources, segregated as provided for in the blanks, and estimates of receipts and expenditures for the succeeding fiscal year.

SECTION 33. That Section 67-3508, Idaho Code, be, and the same is hereby amended to read as follows:

67-3508. STANDARD CLASSIFICATION. (1) Excepting where the legislature expressly departs from the classification hereinafter set forth in any appropriation bill, all appropriations made by the legislature, and all estimates hereafter made for budget purposes, and all expenditures hereinafter made from appropriations or funds received from other sources, shall be classified and standardized by items as follows:

- (a) Personnel costs, which shall include the salaries or wage expenses of employees and officers, including the monetary value of unused sick leave, as provided by section 67-5339, Idaho Code, whether full-time, part-time, or other irregular or seasonal help and including compensation or honorarium of members of boards or commissions, and shall also include the employer's share of contributions related to those employees and officers, such as retirement, health and life insurance, workmen's compensation, employment security and social security.
- (b) Operating expenditures, which shall include all expenses for services, travel, consumable supplies, and minor items of equipment that have an estimated life of less than two (2) years and not otherwise classified under personnel costs or capital outlay, and shall include the governmental overhead charge, including all payments made in the way of refunds of receipts and overpayments erroneously deposited in the state treasury.
- (c) Capital outlay, which, when used in an appropriation act, shall include all expenditures for land, highways, buildings including appurtenances, fixtures and fixed equipment, structures, which also includes additions, replacements, major repairs, and

renovations to, which materially extends the capital assets' useful life or materially improves or increases its capacity, and shall include salaries and wages of nonagency personnel in connection therewith. Automobiles, domestic animals, machinery, apparatus, equipment and furniture including additions thereto, which will have a useful life or service substantially more than two (2) years, shall also be included.

(d) Trustee and benefit payments, which shall include the cash payments of welfare or retirement benefits to individuals and payments to individuals, persons, or political entities, and not otherwise classified under personnel costs, operating expenditures or capital outlay.

(2) The state auditor is hereby authorized and directed to implement such subclassifications of the standard classifications herein set forth which are necessary for preparation of the state budget, as supplied by the administrator of the division of financial management, ~~the legislative auditor and the director--of--the~~ legislative budget office council.

An annual review of the subclassifications shall be made by the administrator of the division, ~~the legislative auditor and the director of the legislative budget office~~ and the legislative council.

The state auditor shall be supplied the changes desired by the administrator, ~~the legislative auditor and the director of the legislative budget office~~ and the legislative council in the subclassifications which are necessary for the preparation of the state budget or the identification and distribution of expenditures from appropriations no later than sixty (60) days prior to the beginning of any fiscal year to be effective for that fiscal year.

SECTION 34. That Section 67-4129A, Idaho Code, be, and the same is hereby amended to read as follows:

67-4129A. HISTORICAL SOCIETY ACCOUNT. The director of the Idaho state historical society may receive, on behalf of the society, any money or real or personal property donated, bequeathed, devised, or conditionally granted to the society. "Donated," as used in this section, shall include moneys paid by the public for admission to historical facilities operated by the society, and shall include moneys derived from retail sales related to the society's programs.

Such moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in a special account in the agency asset fund to be known as the "Historical Society Account," which is hereby established, reserved, set aside and administered to carry out the terms or conditions of such donation, bequest, devise, or grant. Pending such expenditure or use, surplus moneys in the historical society account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the historical society account.

The director shall provide annually, to the legislative auditor council, an accounting of the historical society account, setting forth the sources, applications and balance of moneys within the

account.

SECTION 35. That Section 67-6102, Idaho Code, be, and the same is hereby amended to read as follows:

67-6102. AWARDS COMMITTEE -- CREATION -- MEMBERSHIP. There is hereby created in the office of the governor the state employees incentive award committee. The committee shall consist of the governor, or his representative, who shall serve as chairman, the director of the legislative auditor council or his designee, and three (3) private citizens who represent business, management or industry. The three (3) citizen members shall be appointed by the governor to serve two (2) year terms.

SECTION 36. That Section 67-6220, Idaho Code, be, and the same is hereby amended to read as follows:

67-6220. AUDITS -- ANNUAL REPORTS. (1) The legislative auditor council is authorized to conduct a post audit of the books and records of the Idaho housing agency on the same basis as audits are conducted of state agencies.

(2) The agency shall file its financial report for the year then ended with the secretary of state within one hundred twenty (120) days after the close of its fiscal year describing its activities during the preceding year. In such report it may make recommendations regarding additional legislation or other action it deems necessary to permit it to carry out the purposes of this act.

SECTION 37. That Section 67-7450, Idaho Code, be, and the same is hereby amended to read as follows:

67-7450. AUDIT OF FUNDS -- REPORTS. (1) The right is reserved to the state of Idaho to audit funds of the commission at any time.

(2) On or before January 15 of each year, the director shall file with the senate state affairs committee, the house state affairs committee, the legislative budget-office council, the state auditor, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal years and a projection of anticipated expenses by category for the current and next fiscal years. From and after January 15, 1990, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(3) In addition to the reports required in subsection (2) of this section, the director shall also file the same report with the joint finance-appropriations committee. Notwithstanding any other provision of this chapter, the joint-finance-appropriations committee may, by this appropriation measure, limit or modify proposed expenditures of the commission.

SECTION 38. That Section 67-7604, Idaho Code, be, and the same is hereby amended to read as follows:

67-7604. ANNUAL AUDIT. Following the close of each fiscal year, the board of directors of the Idaho heritage trust shall select an accounting firm to perform an annual fiscal audit. Copies of the audit shall be provided to the state auditor and the legislative auditor council.

SECTION 39. That Sections 67-441, 67-442, 67-443, 67-444, 67-445, 67-446, 67-447, 67-448, 67-449 and 67-450, Idaho Code, be, and the same are hereby repealed.

SECTION 40. That Section 67-435, Idaho Code, be and the same is hereby amended to read as follows:

67-435. POWERS AND DUTIES. The joint finance-appropriations committee shall have the following powers and duties:

(1) ~~To make a continuing study and review of the management, operations, programs and fiscal needs of the departments, agencies and institutions of the state government of Idaho and of any units of local government and other agencies and institutions receiving state funds.~~

(2) To review the executive budget and the budget requests of each state department, agency and institution, including requests for construction of capital improvements, as well as other requests for appropriations submitted to the legislature.

(3) ~~To conduct such audit as it may deem necessary and proper of the accounts of the state government and all units of government and other agencies and institutions receiving state funds, including school districts; to conduct such audit, the committee may request the cooperation of the division of public accounts, or may appoint a certified public accountant, public accountant, or other person whom it deems qualified.~~

(4) ~~To make a continuing study and review of the state's financial condition, fiscal organization and procedures for budgeting, accounting, reporting, personnel management and purchasing and the procedures for accounting for, controlling and providing the safe custody of and verifying the existence and condition of property of the state of Idaho and of property charged to or held in the custody of any department, agency or institution of state government.~~

(52) To conduct such hearings as it may deem necessary and proper.

(63) To submit a report to each session of the legislature covering its activities during the preceding period and setting forth its findings and recommendations and to make such recommendations to the appropriate legislative committees as it may deem proper concerning the budget and other proposed legislation.

(7) ~~To coordinate other agencies in the design, installation and continuing review of a uniform modern accounting system for all state agencies and all other agencies receiving state funds.~~

(84) To require copies of all audit reports issued by the division of public accounts, whether the audits are initiated by the com-

~~mittee or the division of public accounts~~ legislative council employ-
ees or contractors or the state auditor, and to require access to all
 audit working papers and other records of the ~~division of public~~
~~accounts employees or contractors of the legislative council or the~~
~~state auditor.~~

(95) To perform such other duties as the legislature or legisla-
 tive council may by appropriate resolution direct.

~~{10}--To--appoint--a--legislative--auditor--and--such--other--employees~~
~~and engage the services of such persons and agencies as may be neces-~~
~~sary or desirable in the performance of its duties.~~

SECTION 41. All employees employed by the Joint Senate Finance-
 House Appropriations Committee, the Legislative Auditor or Legislative
 Budget Office on June 30, 1993, shall be transferred to the Legisla-
 tive Council and shall be deemed to be employees of the Legislative
 Council on July 1, 1993. All moneys which have been appropriated to
 and been encumbered by the Joint Senate Finance-House Appropriations
 Committee, the Legislative Budget Office and the Legislative Auditor
 on June 30, 1993, shall be transferred to the Legislative Council and
 shall be deemed to be encumbered by that body. All moneys appropriated
 to the Joint Senate Finance-House Appropriations Committee for the
 Legislative Auditor and the Legislative Budget Office are deemed
 appropriated to the Legislative Council for the same period and pur-
 pose.

Approved March 31, 1993.

CHAPTER 328
 (H.B. No. 448)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR FISCAL YEAR
 1994; AND EXPRESSING LEGISLATIVE INTENT.

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

SECTION 1. There is hereby appropriated to the Office of the Gov-
 ernor the following amounts, to be expended for the designated pro-
 grams according to the designated expense classes from the listed
 funds, for the period July 1, 1993, through June 30, 1994:

	FOR	FOR	FOR	TRUSTEE AND	
	PERSONNEL	OPERATING	CAPITAL	BENEFIT	
	COSTS	EXPENDITURES	OUTLAY	PAYMENTS	TOTAL
I. GOVERNOR'S OFFICE ADMINISTRATION:					
FROM:					
General Fund	\$ 813,800	\$266,100			\$1,079,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. GOVERNOR'S RESIDENCES	\$ 10,000				\$ 10,000
FROM:					
General Fund					
III. GOVERNOR'S EXPENSE ALLOWANCE:					
To be expended pursuant to Section 67-808d, Idaho Code:					
FROM:					
General Fund	\$ 8,000				\$ 8,000
IV. SOCIAL SERVICES:					
FROM:					
Federal Grant					
Fund	\$ 5,900	\$ 5,000		\$ 95,000	\$ 105,900
V. JUVENILE JUSTICE AND DELINQUENCY PREVENTION:					
FROM:					
General					
Fund	\$ 56,100	\$ 8,200			\$ 64,300
Federal Grant					
Fund	28,700	91,400		\$214,200	334,300
TOTAL	\$ 84,800	\$ 99,600		\$214,200	\$ 398,600
VI. EARLY CHILDHOOD:					
FROM:					
Federal Grant					
Fund	\$ 79,000	\$ 52,200		\$4,705,000	\$4,836,200
VII. ENERGY:					
FROM:					
Federal Grant					
Fund	\$ 12,800	\$ 17,600			\$ 30,400
VIII. STATE EMERGENCY RESPONSE COMMISSION:					
FROM:					
Hazardous Materials/ Waste Enforcement					
Fund		\$ 61,800			\$ 61,800
Hazardous Waste Training, Emergency and Monitoring					
Fund	\$ 113,500	111,700	\$180,000		405,200
Federal Grant					
Fund		37,200			37,200
TOTAL	\$ 113,500	\$210,700	\$180,000		\$ 504,200
IX. ACTING GOVERNOR PAY:					
FROM:					
General					
Fund		\$ 6,700			\$ 6,700
GRAND					
TOTAL	\$1,109,800	\$675,900	\$180,000	\$5,014,200	\$6,979,900

SECTION 2. It is legislative intent that all unexpended and unencumbered balances of moneys appropriated in Section 2, Chapter 258, Laws of 1991, to the Office of the Governor from the Public Utilities

Commission Fund for the Columbia Basin/Endangered Species Issues be transferred to the Public Utilities Commission Fund.

Approved March 31, 1993.

CHAPTER 329
(H.B. No. 379)

AN ACT

RELATING TO FIRE PROTECTION DISTRICTS; AMENDING CHAPTER 14, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-1424A, IDAHO CODE, TO AUTHORIZE THE BOARD OF COMMISSIONERS OF A FIRE PROTECTION DISTRICT TO CARRY OVER FUNDS FOR EQUIPPING AND MAINTAINING THE DISTRICT, AND DEFINING FUND BALANCE.

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

SECTION 1. That Chapter 14, 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 31-1424A, Idaho Code, and to read as follows:

31-1424A. CARRY OVER -- FUND BALANCE. The board of commissioners of a fire protection district may accumulate fund balances at the end of a fiscal year and carry over those fund balances into the ensuing fiscal year budget for equipping and maintaining the district. A "fund balance" is the excess of the assets of a fund over its liabilities and reserves.

Approved March 31, 1993.

CHAPTER 330
(H.B. No. 399)

AN ACT

RELATING TO PRINTING AND REPRODUCTION OF PUBLIC DOCUMENTS; REPEALING SECTION 67-2509, IDAHO CODE.

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

SECTION 1. That Section 67-2509, Idaho Code, be, and the same is hereby repealed.

Approved March 31, 1993.

CHAPTER 331
(S.B. No. 1004, As Amended)

AN ACT

RELATING TO THE TERMS FOR WHICH STATE LANDS MAY BE LEASED; AMENDING SECTION 58-307, IDAHO CODE, TO PROVIDE THAT SELECTED ENDOWMENT LANDS OTHER THAN PUBLIC SCHOOL ENDOWMENT LANDS MAY BE LEASED FOR UP TO FORTY-NINE YEARS FOR COMMERCIAL PURPOSES, TO PROVIDE FOR GRANTING A PREFERENTIAL RIGHT TO RENEW SELECTED COMMERCIAL LEASES WHOSE TERM IS TEN YEARS OR LESS UPON PAYMENT OF GOOD AND VALUABLE CONSIDERATION, TO PROVIDE FOR HEARINGS IN THE COMMUNITY, TO DEFINE THE TERM "COMMERCIAL PURPOSES," TO PROVIDE FOR REVERSION OF IMPROVEMENTS, AND TO PROVIDE THAT CONFLICTING APPLICATIONS FOR LEASES WHICH CONTAIN A PREFERENTIAL RIGHT TO RENEW CLAUSE SHALL BE REJECTED.

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

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

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

(2) Notwithstanding any other provisions of law, only the state lands described below may be leased for a period of up to forty-nine (49) years for commercial purposes, under such terms and conditions as may be set by the board, provided that the board consults with the county commissioners of the county in which the lands are located before leasing the lands described below, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. The department shall hold a hearing, on each of the parcels described below, in the community in which the parcel is located.

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

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

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

(d) Three (3) parcels - SWSW, Section 28; Pt. SESE, Section 29 (east of the Railroad R/W, now a bikepath); W1/2NW, Section 33, all in T3N, R1BE, Boise Meridian, all containing one hundred

twenty-five (25) acres, more or less, located two (2) miles northerly of Hailey, Idaho, excepting therefrom, a parcel of land, containing twenty (20) acres, more or less, at a location to be determined with access to the sheep driveway located on the county road.

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

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

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

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

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

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

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

(8) All applications to lease or to renew an existing lease which expires December thirty-first of any year, shall be filed in the office of the director of the department of lands by the thirtieth day of September preceding the date of such expiration. Such applications will be considered by the state land board after November first following and be disposed of in the manner provided by law; except that the board may reject conflicting applications for a lease for commer-

cial purposes if the lessee exercises the preference right to renew clause. Where conflicts appear upon leases which do not contain a preferential right to renew clause, such applications filed between said dates shall be considered as having been filed simultaneously. However, nothing herein shall be construed to prevent the state board of land commissioners from accepting and considering applications for new leases at any time: provided, in case improvements have been made on land while under lease which is expiring, and the former lessee is not the successful bidder, but the land is leased to another, the amount of such improvements shall be paid to the former lessee. The following shall be considered improvements: plowing done within one (1) year, provided no crop has been raised on the plowed land after such plowing, fencing, buildings, cisterns, wells, growing crops and any other asset which shall be considered an improvement by the director.

Approved April 1, 1993.

CHAPTER 332
(S.B. No. 1049)

AN ACT

RELATING TO THE DEPARTMENT OF FISH AND GAME; AMENDING SECTION 36-715, IDAHO CODE, TO EXTEND THE AUTHORITY OF THE DEPARTMENT TO PARTICIPATE IN PREPARATION OF A WOLF ENVIRONMENTAL IMPACT STATEMENT THROUGH MAY 13, 1994.

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

SECTION 1. That Section 36-715, Idaho Code, be, and the same is hereby amended to read as follows:

36-715. DUTIES OF THE DEPARTMENT OF FISH AND GAME REGARDING THE ENDANGERED SPECIES ACT. (1) Since wolf/dog hybridizations are known to exist within Idaho and these hybrids are not protected by the United States endangered species act, a biological evaluation shall be required of the animal to determine species priority before the department of fish and game may take any action in accordance with the United States endangered species act.

(2) The department of fish and game shall not be authorized to expend funds, transfer assets or enter into a cooperative agreement with any agency, department or entity of the United States government concerning wolves unless expressly authorized by state statute except that the department is authorized to provide a representative to participate on the northern rocky mountain wolf recovery team and to participate in activities regarding nuisance wolves.

(3) If a wolf is sighted, the burden of proof concerning the reported presence of the wolf within Idaho shall rest with the observer and the department of fish and game shall take no action to enforce the United States endangered species act regarding wolves in absence of that proof.

(4) From the effective date of this act through May 13, 1993⁴, the department of fish and game is authorized to enter into cooperative agreements with the United States fish and wildlife service and the United States forest service to receive and expend federal funds for the purpose of participating in the preparation of an environmental impact statement regarding wolf recovery in Idaho per the wolf environmental impact statement participation plan dated February, 1992.

Approved April 1, 1993.

CHAPTER 333
(S.B. No. 1060, As Amended in the House)

AN ACT

RELATING TO THE COUNTY OPTION KITCHEN AND TABLE WINE ACT; AMENDING SECTION 23-1306, IDAHO CODE, TO CLARIFY THAT A LICENSED WINERY IS NOT RESTRICTED TO SELLING DOMESTICALLY-PRODUCED PRODUCTS; AMENDING SECTION 23-1308A, IDAHO CODE, TO STRIKE REFERENCE TO IMPORTERS OF DOMESTIC PRODUCED PRODUCTS; AND AMENDING SECTION 23-1328, IDAHO CODE, TO STRIKE REFERENCE TO DOMESTICALLY PRODUCED PRODUCTS.

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

SECTION 1. That Section 23-1306, Idaho Code, be, and the same is hereby amended to read as follows:

23-1306. LICENSES REQUIRED -- APPLICATION -- ISSUANCE OR REFUSAL. Before any person shall manufacture, import into this state, manufacture, bottle or broker for resale within this state, possess for resale, or distribute or sell wine within the state of Idaho, he shall apply to the director for a license to so do. The application form shall be prescribed and furnished by the director and require that the applicant therein show that he possesses all of the qualifications and none of the disqualifications of a licensee. A person may apply for and receive a license as both a distributor and importer, if otherwise qualified therefor, and shall pay the license fee required pursuant to this chapter for each license. A winery licensed under this chapter shall also be considered as holding, for the purposes of selling a ~~domestic-produced~~ product processed and bottled by or for that winery, a current wine distributor's license, without further application or fee. If the director is satisfied that the applicant possesses the qualifications and none of the disqualifications for such license, he shall issue a license for each classification applied for, subject to the restrictions of and upon the conditions specified in this act. The license or licenses issued shall be at all times prominently displayed in the place of business of the licensee. If the director determines that the applicant is not properly qualified, he shall refuse to issue a license and shall forthwith so notify the applicant and shall return to the applicant with such notification, three-fourths (3/4) of the license fee remitted with the application. A separate retail wine by

the drink license, and wine distributor's license shall be required for each premises. Provided, however, nothing herein shall prohibit a distributor or retailer or wine by the drink licensee from possessing licenses for more than one (1) premises.

SECTION 2. That Section 23-1308A, Idaho Code, be, and the same is hereby amended to read as follows:

23-1308A. QUALIFICATIONS FOR WINERY LICENSE. No winery license shall be issued to an applicant who at the time of making the application:

(a) Has not executed an agreement in writing with the director that such winery and every person employed by it or acting as its agents other than distributors and retailers, will faithfully comply with and observe all the provisions of the laws of the state of Idaho relating to the manufacturing, sale and distribution of wine and all rules and regulations adopted by the director pursuant to this act;

(b) Has had a winery license, a wine distributor's license, retail wine license, wine by-the-drink license or wine importer's license, revoked by the director within three (3) years from the date of making such application;

(c) ~~is licensed to import wine other than a domestic produced product processed and bottled by or for that winery;~~

(d) Has been convicted of a violation of the laws of this state or of the United States governing the sale of alcoholic beverages, wine, or beer, within three (3) years from the date of making such application;

(e) Has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of making such application.

SECTION 3. That Section 23-1328, Idaho Code, be, and the same is hereby amended to read as follows:

23-1328. RETAILER'S NAME ON LABELS PROHIBITED -- DISCRIMINATION AMONG RETAILERS PROHIBITED. No label on a wine container shall be used or placed thereon which indicates that a retailer is the producer or the bottler thereof or which contains the name of a retailer in any manner, except in the case of wineries licensed under this chapter, in which case such winery may sell a domestic-produced product processed and bottled by or for that winery upon satisfaction of all terms and conditions of this chapter relating to licensure for retail sale of wine. No distributor shall restrict the sale of wine for which the distributor has filed a price schedule in accordance with the provisions of this act to one retailer or to retail premises under common ownership or associated together in, by, or through a buying organization or agency which represents a common identity to the public; nor shall such distributor refuse to sell or distribute wine to a retailer on terms and conditions different from those terms and conditions upon which said distributor sells or distributes wine to other retailers.

CHAPTER 334
(S.B. No. 1065)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-102, IDAHO CODE, TO REDEFINE AUTO TRANSPORTER; AMENDING SECTION 49-121, IDAHO CODE, TO REDEFINE TRUCK; AMENDING SECTION 49-1001, IDAHO CODE, TO REVISE SPECIFIC MAXIMUM LOADS AT SPECIFIC AXLE GROUP SPACINGS, AND TO CORRECT A CODIFIER ERROR; AND AMENDING SECTION 49-1010, IDAHO CODE, TO PROVIDE PROPER TERMINOLOGY.

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

SECTION 1. That Section 49-102, Idaho Code, be, and the same is hereby amended to read as follows:

49-102. DEFINITIONS -- A.

(1) "Abandon" means to leave a vehicle on private property without the permission of the person having rights to the possession of the property, or on a highway or other property open to the public for the purposes of vehicular traffic or parking, or upon or within the right-of-way of any highway, for twenty-four (24) hours or longer.

(2) "Abandoned vehicle" means any vehicle observed by an authorized officer or reported by a member of the public to have been left within the limits of any highway or upon the property of another without the consent of the property owner for a period of twenty-four (24) hours or longer, except that a vehicle shall not be considered abandoned if its owner-operator is unable to remove it from the place where it is located and has notified a law enforcement agency and requested assistance.

(3) "Accident" means any event that results in an unintended injury or property damage attributable directly or indirectly to the motion of a motor vehicle or its load, a snowmobile or special mobile equipment.

(4) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or the vehicle moving.

(5) "Administrator" means the federal highway administrator, the chief executive of the federal highway administration, an agency within the U.S. department of transportation.

(6) "Age of a motor vehicle" means the age determined by subtracting the manufacturer's year designation of the vehicle from the year in which the designated registration fee is paid. If the vehicle has the same manufacturer's year designation as the year in which the fee is paid, or if a vehicle has a manufacturer's year designation later than the year in which the fee is paid, the vehicle shall be deemed to be one (1) year old.

(7) "Air-conditioning equipment" means mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.

(8) "Alcohol or alcoholic beverage" means:

(a) Beer as defined in 26 U.S.C. 5052(a), of the internal revenue code;

(b) Wine of not less than one-half of one per cent (.005%) of alcohol by volume; or

(c) Distilled spirits as defined in section 5002(a)(8), of the internal revenue code.

(9) "Alley" means a public way of limited use intended only to provide access to the rear or side of lots or buildings in urban districts.

(10) "All terrain vehicle" or "ATV" means any recreation vehicle with two (2) or more tires, weighing under six hundred fifty (650) pounds, less than forty-eight (48) inches in width, traveling on low pressure tires of less than five (5) psi, and designed to be ridden by one (1) person. Such vehicles shall be registered under the provisions of section 49-402, Idaho Code, for operation on public highways, unless exempted under the provisions of section 49-426, Idaho Code.

(11) "Amateur radio operator." (See "Radio operator, amateur", section 49-119, Idaho Code)

(12) "Ambulance" means a motor vehicle designed and used primarily for the transportation of injured, sick, or deceased persons, on stretchers, cots, beds, or other devices for carrying persons in a prone position.

(13) "Applicant" means an individual who applies to obtain, transfer, upgrade, or renew a driver's license.

(14) "Approved driver training course" means a training course from a school licensed under the provisions of chapter 21 of this title.

(15) "Approved testing agency" means a person, firm, association, partnership or corporation approved by the director of the department of law enforcement which is:

(a) In the business of testing equipment and systems;

(b) Recognized by the director as being qualified and equipped to do experimental testing; and

(c) Not under the jurisdiction or control of any single manufacturer or supplier for an affected industry.

(16) "Armed forces" mean the army, navy, marine corps, coast guard and the air force of the United States.

(17) "Authorized emergency vehicle." (See "Vehicle", section 49-123, Idaho Code)

(18) "Authorized officer" means any member of the Idaho state police, or any regularly employed and salaried deputy sheriff, or other county employee designated to perform the function of removing abandoned vehicles or junk vehicles by the board of county commissioners of the county in which a vehicle is located, or any regularly employed and salaried city peace officer or other city employee designated to perform the function of removing abandoned vehicles or junk vehicles by the city council, or a qualified person deputized or appointed by the proper authority as reserve deputy sheriff or city policeman, authorized within the jurisdiction in which the abandoned vehicle or junk vehicle is located.

(19) "Authorized transportation department employee" means any employee appointed by the board to perform duties relating to enforcement of vehicle laws as have been specifically defined and approved by order of the board (see section 40-510, Idaho Code).

(20) "Auto transporter" means a vehicle combination constructed

for the purpose of transporting motor vehicles.

SECTION 2. That Section 49-121, Idaho Code, be, and the same is hereby amended to read as follows:

49-121. DEFINITIONS -- T.

(1) "Temporary supplemental lot" means a location other than the principal place of business, or supplemental lot within the same or adjacent county as the principal place of business, or where a licensed dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten (10) days for a specific purpose such as auto shows, auctions, shopping center promotions, tent sales, etc. Temporary supplemental lots shall meet all local zoning and building codes for the type of business being conducted. The requirements for a principal place of business shall not be applicable to temporary supplemental lot locations.

(2) "Tires" mean:

(a) Metal. Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(b) Pneumatic. Every tire in which compressed air is designed to support the load.

(c) Snow tire. Every rubber tire with tread design or material embedded in the tire to improve winter traction except studded tires.

(d) Solid rubber. Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(e) Studded tire. Every tire with built-in lugs of tungsten carbide or other suitable material designed to contact the road surface for improved winter traction.

(3) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purposes of travel.

(4) "Traffic lane" or "lane of travel" means that portion of the roadway for movement of a single line of vehicles.

(5) "Traffic-control device" means any device, whether manually, electrically or mechanically operated, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

(6) "Trailer" means:

(a) General. Every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(b) Fifth-wheel trailer. A vehicular unit equipped in the same manner as a travel trailer but constructed with a raised forward section that allows a bi-level floor plan. This style is designed to be towed by a vehicle equipped with a device known as a fifth-wheel hitch, which is typically installed in the bed of a pickup truck.

(c) Fold down camping trailer. A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls,

which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters, for recreational, camping or travel use.

(d) Park trailer. A trailer designed to be towed by a motorized vehicle, and of such size and weight as not to require a special highway movement permit. It is designed for seasonal or temporary living quarters and may be connected to utilities necessary for operation of installed fixtures and appliances. It is built on a single permanent chassis and constructed to permit set up by persons without special skills.

(e) Pole trailer. Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(f) Semitrailer. Every vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

(g) Travel trailer. A vehicular unit, mounted on wheels designed to provide temporary living quarters for recreational, camping, travel or emergency use and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle.

(h) Utility trailer. (See "Utility Trailer", section 49-122, Idaho Code)

(7) "Transportation", for the purposes of chapter 22 of this title, means the movement of any regulated quantity of hazardous material or hazardous waste within, through, or to any destination in this state upon the highways of this state.

(8) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer, except in chapter 22, where it means any person who transports a hazardous material or hazardous waste within, through, or to any destination upon the highways of this state.

(9) "Truck" means:

(a) General. Every motor vehicle exceeding eight thousand (8,000) pounds gross weight designed, used or maintained primarily for the transportation of property.

(b) Pickup truck. Every motor vehicle eight thousand (8,000) pounds gross weight or less which is designed, used or maintained primarily for the transportation of property.

~~(c) Fractor. Every motor vehicle designed and used primarily for drawing other vehicles but not so constructed as to carry a load other than part of the weight of the vehicle and load so drawn.~~

(d) Truck camper. A portable unit constructed to provide temporary living quarters for recreational, travel or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pickup truck.

(ed) Truck tractor. Every motor vehicle designed and used pri-

marily for drawing other vehicles but not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(10) "True mileage driven" means the mileage of the vehicle as registered by the odometer within the manufacturer's designed tolerance.

SECTION 3. That Section 49-1001, Idaho Code, be, and the same is hereby amended to read as follows:

49-1001. ALLOWABLE GROSS LOADS. The gross load imposed on the highway by any vehicle or combination of vehicles shall not exceed the limits in this section. The maximum single axle gross weight shall be twenty thousand (20,000) pounds, the maximum single wheel gross weight shall be ten thousand (10,000) pounds and the maximum gross vehicle or combination weight shall be one hundred five thousand five hundred (105,500) pounds, provided that maximum gross vehicle or combination weight on United States federal interstate and defense highways of this state shall not exceed eighty thousand (80,000) pounds, except as permitted under the provisions of section 49-1004, Idaho Code.

(1) The total gross weight imposed on the highway by any group of consecutive axles shall be determined by the following formula:

$$W=500((LN/N-1)+12N+36)$$

Where W is the maximum weight in pounds (to the nearest 500 pounds) carried on any group of two (2) or more consecutive axles. L is the distance in feet between the extremes of any group of two (2) or more consecutive axles, and N is the number of axles under consideration.

The formula is modified as illustrated in the following table:

Distance in feet between the extremes of any group of 2 or more consecutive axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
4	34,000							
5	34,000							
6	34,000							
7	34,000							
8	34,000							
8+	34,000	42,000						
9	39,000	42,500						
10	40,000	43,500						
11		44,000						
12		45,000	50,000					
13		45,500	50,500					
14		46,500	51,500					
15		47,000	52,000					
16		48,000	52,500	58,000				
17		48,500	53,500	58,500				
18		49,500	54,000	59,000				
19		50,000	54,500	60,000				
20		51,000	55,500	60,500	66,000			
21		51,500	56,000	61,000	66,500			

WHEN NO ALLOWABLE WEIGHT IS LISTED FOR ANY AXLE SPACING, APPLY THE ALLOWABLE WEIGHT AS LISTED IN THE FIRST COLUMN TO THE LEFT

22	52,500	56,500	61,500	67,000			
23	53,000	57,500	62,500	68,000			
24	54,000	58,000	63,000	68,500	74,000		
25	54,500	58,500	64,500	69,000	74,500		
26	55,500	59,500	65,000	69,500	75,000		
27	56,000	60,000	65,000	70,000	75,500		
28	57,000	60,500	65,500	71,500	76,500	82,000	
29	57,500	61,500	66,000	71,500	77,000	82,500	
30	58,500	62,000	66,500	72,000	77,500	83,000	
31	59,000	62,500	67,500	72,500	78,000	83,500	
32	60,000	63,500	68,000	73,000	78,500	84,500	90,000
33		64,000	68,500	74,000	79,000	85,000	90,500
34		64,500	69,000	74,500	80,000	85,500	91,000
35		65,500	70,000	75,000	80,500	86,000	91,500
36		66,000	70,500	75,500	81,000	86,500	92,000
37		66,500	71,000	76,000	81,500	87,000	93,000
38		67,500	72,000	77,000	82,000	87,500	93,500
39		68,000	72,500	77,500	82,500	88,500	94,000
40		68,500	73,000	78,000	83,500	89,000	94,500
41		69,500	73,500	78,500	84,000	89,500	95,000
42		70,000	74,000	79,000	84,500	90,000	95,500
43		70,500	75,000	80,000	85,000	90,500	96,000
44		71,500	75,500	80,500	85,500	91,000	96,500
45		72,000	76,000	81,000	86,000	91,500	97,500
46		72,500	76,500	81,500	87,000	92,500	98,000
47		73,500	77,500	82,000	87,500	93,000	98,500
48		74,000	78,000	83,000	88,000	93,500	99,000
49		74,500	78,500	83,500	88,500	94,000	99,500
50		75,500	79,000	84,000	89,000	94,500	100,000
51		76,000	80,000	84,500	89,500	95,000	100,500
52		76,500	80,500	85,000	90,500	95,500	101,000
53		77,500	81,000	86,000	91,000	96,500	102,000
54		78,000	81,500	86,500	91,500	97,000	102,500
55		78,500	82,500	87,000	92,000	97,500	103,000
56		79,500	83,000	87,500	92,500	98,000	103,500
57		80,000	83,500	88,000	93,000	98,500	104,000
58			84,000	89,000	94,000	99,000	104,500
59			85,000	89,500	94,500	99,500	105,000
60			85,500	90,000	95,000	100,500	105,500
61			86,000	90,500	95,500	101,000	
62			87,000	91,000	96,000	101,500	
63			87,500	92,000	96,500	102,000	
64			88,000	92,500	97,500	102,500	
65			88,500	93,000	98,000	103,000	
66			89,500	93,500	98,500	103,500	
67			90,000	94,000	99,000	104,500	
68			90,500	95,000	99,500	105,000	
69			91,000	95,500	100,000	105,500	
70			92,000	96,000	101,000		
71			92,500	96,500	101,500		
72			93,000	97,000	102,000		
73			93,500	98,000	102,500		
74			94,500	98,500	103,000		
75			95,000	99,000	103,500		
76			95,500	99,500	104,500		
77			96,000	100,000	105,000		
78			97,000	101,000	105,500		

79	97,500	101,500
80	98,000	102,000
81	98,500	102,500
82	99,000	103,000
83	100,000	104,000
84		104,500
85		105,000
86 or more		105,500

(a) The board may limit the application of the weights authorized in this section as to certain highways which it determines have limited structural capacity of pavements, bridges, or other appurtenances. In designating such highways, it may specify a minimum wheelbase for combinations to be operated thereon. It may also designate specific highways or portions on which operation of a combination of vehicles with seven (7), eight (8) or nine (9) axle vehicles will be subject to specified lesser allowable gross weights.

(b) Notwithstanding the figures shown in the above table, two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more.

(2) The weight limitations set forth in the table above shall not apply to any vehicle, or combination of vehicles when a greater allowed weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state, the following table of allowable weights shall apply only to vehicles engaged in the transportation of logs, pulp wood, stull, rough lumber, poles or piling; or to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel and aggregates thereof, in bulk; or to any such vehicle engaged in the transportation of agricultural commodities, including livestock:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Allowed Load in Pounds	
	Vehicles with Three or Four axles	Vehicles with Five or more axles
3 through 12	37,800	37,800
13	56,470	56,470
14	57,940	57,940
15	59,400	59,400
16	60,610	60,610
17	61,820	61,820
18	63,140	63,140
19	64,350	64,350
20	65,450	65,450
21	66,000	66,330
22	66,000	67,250
23	66,000	67,880
24	66,000	68,510
25	66,000	69,150

26	66,000	69,770
27	66,000	70,400
28	66,000	70,950
29	66,000	71,500
30	66,000	72,050
31		72,600
32		73,150
33		73,700
34		74,250
35		74,800
36		75,350
37		75,900
38		76,450
39		77,000
40		77,550
41		78,100
42		78,650
43 and over		79,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles exceeds seventy-nine thousand (79,000) pounds.

(3) In determining the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles under subsections (1) or (2) of this section, the total gross weight of the vehicle or combination of vehicles or the gross weight of any two (2) or more consecutive axles shall be the sum of the axle weights.

(4) In applying the weight limitations imposed in this section, a vehicle or combination of vehicles must comply exclusively with the weight limitations in either subsection (1) or (2) of this section.

(5) In applying the weight limitations imposed in this section, the distance between axles shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

(6) The limitations imposed in this section are in addition and supplemental to all other laws imposing limitations upon the size and weight of vehicles.

(7) Notwithstanding the other provisions of this chapter, no vehicle, motor vehicle, trailer and/or semitrailer, or combination thereof, may be operated on the public highways of the state under loads which would result in the withholding of funds by operation of controlling federal law as provided in the Federal Aid Highway Act of 1956, as amended.

(8) Except as provided herein, no vehicle or combination of vehicles may proceed past the place of weighing at temporary or permanent ports of entry or checking stations when: the weight of a single axle exceeds the maximum limitations set forth herein by two thousand (2,000) pounds or more; the weight of a combination of axles, or gross vehicle weight exceeds the maximum allowable weight as set forth herein by seven percent (7%) or more. Vehicles or combinations of vehicles which exceed the weight limitations set forth herein shall be required to be brought into compliance with applicable weight limitations contained within this subsection at the place of weighing prior to continuing, except those vehicles or combinations of vehicles which

are transporting loads which, in the determination of the board or other proper authorities in charge of or having jurisdiction over a highway, are deemed unsafe or impractical to bring into compliance at the place of weighing. Vehicles or combinations of vehicles transporting loads in this latter category shall obtain a travel authorization to the nearest place of safe unloading, load adjustment or other means of legalization.

(a) Neither the state of Idaho or its employees, nor any authority and its employees in charge of or having jurisdiction over a highway, shall be held liable for personal injury or property damage resulting from the requirements of section 49-1001(8), Idaho Code.

(b) The fee for a travel authorization as set forth above shall be fifty dollars (\$50.00) and shall be on a form prescribed by the board or other proper authorities.

(c) The board or other proper authorities in charge of or having jurisdiction over a highway shall adopt and enforce administrative rules and regulations as may be necessary to carry out the provisions of this section.

SECTION 4. 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, 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 not proceed at a speed in excess of twenty-five (25) miles per hour, must display one (1) eighteen (18) by eighteen (18) inch red flag on the outermost left projection of the tractor or implement being transported, except that the speed restriction of twenty-five (25) miles per hour shall not apply when such tractor or implement of husbandry is being hauled on legal width highway vehicles equipped as required by law.

(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.

(c) When a motor vehicle and one or more trailers, except as noted in (3)(b) and (3)(d) 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 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.

(f) When a dromedary tractor with semitrailer, not meeting the stinger-steer requirement as defined in (e) above 65 feet.

(g) When an auto transporter or boat transporter, stinger-steered as defined in (e) above, excluding front and rear overhang of load 75 feet.

(h) When an auto transporter or boat transporter, not meeting the stinger-steer requirement as defined in (e) above, excluding front and rear overhang of load 65 feet.

(i) 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, more than 15 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 saddle-mount combination 75 feet.

(7) Vehicle combinations consisting of not more than four (4) vehicle units may be operated by permit, with an overall length in excess of the limits of subsection (3) of this section, on routes designated for such operations by the board with an overall combination length not to exceed one hundred and five (105) feet.

Approved April 1, 1993.

CHAPTER 335

(S.B. No. 1066, As Amended, As Amended in the House)

AN ACT

RELATING TO THE WITHHOLDING OF INCOME FOR PAYMENT OF CHILD SUPPORT; AMENDING SECTION 32-1202, IDAHO CODE, TO REDEFINE "SUPPORT ORDER"; AMENDING SECTION 32-1205, IDAHO CODE, TO PROVIDE THAT SUPPORT ORDERS ISSUED OR MODIFIED AFTER DECEMBER 31, 1993, SHALL CONTAIN A PROVISION FOR IMMEDIATE INCOME WITHHOLDING; AMENDING SECTION 32-1206, IDAHO CODE, TO PROVIDE A PROCEDURE FOR REQUESTING AN ORDER FOR IMMEDIATE INCOME WITHHOLDING; AMENDING SECTION 32-1207, IDAHO CODE, TO PROVIDE A PROCEDURE FOR THE CLERK OF THE COURT TO ISSUE AN ORDER FOR IMMEDIATE INCOME WITHHOLDING; AMENDING SECTION 32-1209, IDAHO CODE, TO ADD A FORM FOR IMMEDIATE INCOME WITHHOLDING ORDERS; AMENDING SECTION 7-1202, IDAHO CODE, TO REDEFINE "CHILD SUPPORT" AND "DELINQUENCY"; AMENDING SECTION 7-1204, IDAHO CODE, TO ALLOW THE BUREAU OF CHILD SUPPORT ENFORCEMENT TO WITHHOLD INCOME TO RECOVER FEES AND COSTS ORDERED BY A COURT, AND TO PROVIDE ADDITIONAL NOTICE REQUIREMENTS; AMENDING SECTION 32-1202, IDAHO CODE, TO REDEFINE "SUPPORT ORDER"; AMENDING SECTION 32-1205, IDAHO CODE, TO STRIKE THE PROVISION THAT SUPPORT ORDERS ISSUED OR MODIFIED AFTER DECEMBER 31, 1993, SHALL CONTAIN A PROVISION FOR IMMEDIATE INCOME WITHHOLDING; AMENDING SECTION 32-1206, IDAHO CODE, TO STRIKE THE PROCEDURE FOR REQUESTING AN ORDER FOR IMMEDIATE INCOME WITHHOLDING; AMENDING SECTION 32-1207, IDAHO CODE, TO STRIKE THE PROCEDURE FOR THE CLERK OF THE COURT TO ISSUE AN ORDER FOR IMMEDIATE INCOME WITHHOLDING; AMENDING SECTION 32-1209, IDAHO CODE, TO DELETE THE FORM FOR IMMEDIATE INCOME WITHHOLDING ORDERS; AMENDING SECTION 7-1202, IDAHO CODE, TO REDEFINE "CHILD SUPPORT" AND "DELINQUENCY"; AMENDING SECTION 7-1204, IDAHO CODE, TO STRIKE AUTHORIZATION FOR THE BUREAU OF CHILD SUPPORT ENFORCEMENT TO WITHHOLD INCOME TO RECOVER FEES AND COSTS ORDERED BY A COURT, AND TO STRIKE PROVISIONS FOR ADDITIONAL NOTICE REQUIREMENTS; AND TO PROVIDE EFFECTIVE DATES.

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

SECTION 1. That Section 32-1202, Idaho Code, be, and the same is hereby amended to read as follows:

32-1202. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Current support" means the present month's required support

pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.

(2) "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.

(3) "Disposable earnings" mean that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(4) "Duty of support" means the duty to provide for the needs of a dependent child, which may include the costs of necessary food, clothing, shelter, education, and health care. The duty includes any obligation to make monetary payment, to pay expenses or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

(5) "Earnings" mean any form of payment to an individual, regardless of source, including, but not limited to, wages, salary, bonus, commission, compensation for services rendered or goods sold, compensation as an independent contractor; and not withstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

(a) Payments made under chapter 13, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-1365, Idaho Code, and chapter 12, title 7, Idaho Code;

(b) Payments made under chapter 8, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-802, Idaho Code, and chapter 12, title 7, Idaho Code;

(c) Payments made under title 56, Idaho Code, shall be exempt from the provisions of this chapter.

(6) "Employer" includes the United States government, a state or local unit of government, and any person or entity who pays or owes income to the obligor.

(7) "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary, bonus, commission, compensation for services rendered or goods sold, compensation as an independent contractor; and not withstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

(a) Payments made under chapter 13, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-1365, Idaho Code, and chapter 12, title 7, Idaho Code;

(b) Payments made under chapter 8, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-802, Idaho Code, and chapter 12, title 7, Idaho Code;

(c) Payments made under title 56, Idaho Code, shall be exempt from the provisions of this chapter.

(8) "Obligee" means any person, state agency or bureau entitled by order to receive child support payments or child and spousal support payments, or the person or agency to whom the right to receive or collect support has been assigned.

(9) "Obligor" means any person obligated by order to pay child or spousal support.

(10) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(11) "Support order" means a judgment, decree, or order issued by a magistrate or district court of the state of Idaho ~~directing a person or persons to pay money for creating a duty of support of for a minor child, spouse or to pay spousal support former spouse,~~ as herein defined; or a judgment, decree, order or administrative ruling issued by a court or agency of competent jurisdiction in another state or country, ~~directing a person or persons to pay money for creating a duty of support of for a minor child, spouse or to pay spousal support former spouse,~~ as herein defined, which has been registered or otherwise made enforceable in this state.

SECTION 2. That Section 32-1205, Idaho Code, be, and the same is hereby amended to read as follows:

32-1205. MANDATORY INCOME WITHHOLDING. (1) Any support order or decree issued or modified after July 1, 1986, shall include a provision allowing the obligee to enforce the order or decree by income withholding if arrearages at least equal to the support payable for one (1) month accumulate under the order or decree; and shall include a statement in substantially the following form:

NOTICE OF INCOME WITHHOLDING

This support order is enforceable by income withholding under chapter 12, title 32, Idaho Code. Whenever there are arrearages at least equal to the support payment for one (1) month, a mandatory income withholding order may be issued by the court to your employer or other person who pays you income, without prior notice to you.

It is not necessary for the obligee to apply for support enforcement services under title IV-D of the social security act (42 U.S.C. 651 et seq.) to obtain enforcement of this support order by means of income withholding.

(2) Any support order or decree issued or modified at the request of the department of health and welfare after July 1, 1990, and any other support order or decree issued or modified after December 31, 1993, shall provide for automatic and immediate income withholding by the department obligee as of the effective date of the order or decree except where:

(a) One (1) of the parties demonstrates and the court finds makes a specific written finding that there is good cause not to require immediate income withholding. A finding of good cause by the court must be based on, at a minimum:

(i) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; and

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders; or

(b) A written agreement is reached between the parties obligor and obligee and the state of Idaho, department of health and welfare, bureau of child support enforcement in cases where the department is providing child support enforcement services, which provides for an alternative arrangement, and such agreement is determined by the court to be in the best interests of the child.

The order or decree shall include a statement in substantially the following form:

NOTICE OF AUTOMATIC AND IMMEDIATE INCOME WITHHOLDING

This support order is enforceable by automatic and immediate income withholding as of the effective date of this order under chapter 12, title 32, Idaho Code. This automatic and immediate income withholding order shall be issued by the department of health and welfare or other obligee to your employer or other person who pays your income, without additional notice to you.

(3) Failure to include these provisions does not affect the validity of the support order or decree. If the social security number of the person obligated to make child support payments under the support order or decree is available, the court shall require that the social security number of the obligor be included in the order or decree.

(4) If one of the exceptions to immediate income withholding pursuant to the provisions of subsection (2)(a) or (2)(b) of this section are met, the order shall nevertheless include a provision allowing the obligee to enforce the order or decree by income withholding if arrearages at least equal to the support payable for one (1) month accumulate under the order or decree; and shall include a statement in substantially the form of the "Notice of Income Withholding" specified in subsection (1) of this section.

SECTION 3. That Section 32-1206, Idaho Code, be, and the same is hereby amended to read as follows:

32-1206. REQUEST FOR MANDATORY INCOME WITHHOLDING. (1) A petition or motion seeking a mandatory income withholding order in an action under section 32-1204, Idaho Code, may be filed by an obligee whenever there are arrearages at least equal to the child support payment for one (1) month. The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, including:

(a) That the obligor, stating his or her name, residence, and social security number, is in arrears under a support order in an amount equal to or greater than the support payable for one (1) month;

(b) A description of the terms of the support order requiring the payment of support, and the amount past due;

(c) The name and address of the obligor's employer;

(d) That the support order includes a provision which complies with section 32-1205, Idaho Code, allowing enforcement by income withholding, and that a copy of the order is attached; and

(e) In cases not filed by the state, whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

(2) Effective January 1, 1994, a petition or motion seeking an immediate income withholding order in an action under section 32-1204, Idaho Code, may be filed by an obligee or obligor regardless of whether arrearages have accrued under the support order. The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, including:

(a) That the obligor, stating his or her name, residence, and social security number, owes a duty of support under a support order;

(b) A description of the terms of the support order requiring the payment of support, and the amount past due, if any;

(c) The name and address of the obligor's employer;

(d) That the support order includes a provision which complies with section 32-1205, Idaho Code, allowing enforcement by immediate income withholding, and that a copy of the order is attached; and

(e) In cases not filed by the state, whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

SECTION 4. That Section 32-1207, Idaho Code, be, and the same is hereby amended to read as follows:

32-1207. ISSUANCE OF WITHHOLDING ORDER -- CLERK TO NOTIFY THE BUREAU OF CHILD SUPPORT ENFORCEMENT. (1) Upon receipt of a petition or motion seeking a mandatory income withholding order that complies with section 32-1206(1), Idaho Code, the court shall issue an income withholding order, as provided in section 32-1209, Idaho Code, and including the information required in section 32-1208(1), Idaho Code, directed to the employer, and commanding the employer to answer the order within ten (10) days after service of the order upon the employer, on the forms served with the order that comply with section 32-1211, Idaho Code. The bureau shall supply each county with forms for income withholding orders and answers which comply with the provisions of this chapter.

(2) Upon receipt of a petition or motion seeking an immediate income withholding order that complies with section 32-1206(2), Idaho Code, the court shall issue an immediate income withholding order, as provided in section 32-1209, Idaho Code, and including the information required in section 32-1208(1), Idaho Code. The order shall be directed to the employer and shall instruct the employer to remit the amount withheld to the clerk of the court within ten (10) days of the date the obligor is paid.

(3) If said petition or motion indicates that the obligee has received public assistance from any source on behalf of the minor child, the clerk shall immediately forward a copy of the petition or

(c) Fifty percent (50%) of the disposable earnings of the obligor.

(2) In addition to the amount specified above, you may collect and retain up to five dollars (\$5.00) per collection from the obligor's income to reimburse you for your costs. The amount actually withheld for support and other purposes, including your fee, may not be in excess of fifty percent (50%) of the obligor's disposable earnings.

(3) The total amount withheld above is subject to the income withholding order, and all other sums may be disbursed to the obligor.

You shall continue to withhold the ordered amounts from nonexempt earnings of the obligor until notified by the court that the income withholding order has been modified or terminated. You shall promptly notify the court if and when the employee is no longer employed by or entitled to receive income from you, and of his last known address and the name and address of his new employer, if known.

You shall deliver the withheld earnings to the clerk of the court that issued this order at each regular pay interval, or, if the Bureau of Child Support Enforcement is providing support enforcement services:

The State of Idaho
Department of Health and Welfare
Bureau of Child Support Enforcement
450 W. State, 5th Floor
Boise, Idaho 83720-5005

but the first delivery shall occur no-sooner--than within ten (10) working days after your receipt of this order of the date the obligor is paid. You shall notify the Bureau of Child Support Enforcement of the date the amount was withheld from the obligor. You may combine amounts withheld from various employees for a particular entity in a pay period into a single payment for that pay period, as long as the portion thereof which is attributable to each individual employee is separately designated.

You shall deliver a copy of this order to the obligor as soon as is reasonably possible. This order has priority over any other withholding or garnishment, except for another withholding order or garnishment for child support.

~~If the above named obligor is subject to two (2) or more withholding orders for child support on account of different obligees and the nonexempt portion of the obligor's earnings is not sufficient to respond fully to all the withholding orders, you shall apportion the obligor's nonexempt disposable earnings between or among the various obligees to pay current support for each obligee, and then apply any remaining nonexempt disposable earnings equally between or among the various obligees for arrears.~~

If you fail to comply with this order, you will be liable for the accumulated amount you should have withheld from the obligor's income. You are further notified that if you refuse to employ or if you take disciplinary action against the obligor named above, because of this income withholding order, you will be subject to a fine of up to three hundred dollars (\$300).

You are required to notify the Bureau of Child Support Enforcement promptly if the obligor named above leaves your employment, of his/her

was withheld from the obligor's wages.

Income withholding for child support shall have priority over any other attachment of the same income. You must continue to withhold and remit the sum specified until you receive further order from the Bureau of Child Support Enforcement or order of the court.

If the obligor is paid more than once per month, the support obligation stated above must be satisfied from the earliest available income each month. In addition to the amount specified above, you may collect and retain up to five dollars (\$5.00) per collection from the obligor's income to reimburse you and your costs. The amount actually withheld for support and other purposes, including your fees, may not be in excess of the maximum amounts permitted under Section 303(B) of the Consumer Credit Protection Act (15 USC 1673(B)).

You may combine withheld amounts from absent parent's wages in a single payment to each appropriate agency requesting withholding as long as you separately identify the portion of the single payment which is attributable to each individual parent.

If you fail to comply with this order, you will be liable for the accumulated amount you should have withheld from the obligor's income. You are further notified that if you refuse to employ or if you take disciplinary action against the obligor named above, because of this income withholding order, you will be subject to a fine of up to three hundred dollars (\$300).

You are required to notify the Bureau of Child Support Enforcement promptly if the obligor named above leaves your employment, of his/her last known address and the name and address of his/her new employer, if known.

By: _____

Date: _____

SECTION 6. That Section 7-1202, Idaho Code, be, and the same is hereby amended to read as follows:

7-1202. DEFINITIONS. As used in this chapter:

(1) "Bureau" means the bureau of child support enforcement, department of health and welfare of the state of Idaho.

(2) "Child support" means a legally enforceable obligation assessed against an individual for the support of a child which shall include any amount owing under an order for reimbursement of support during a period in which public assistance was expended.

(3) "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.

(4) "Delinquency" means unpaid support for a minor child or spouse which has accrued under an order, ~~the amount of which is at least equal to the support payable for one (1) month or any unreimbursed amount owed under an order for reimbursement of public assistance.~~

(5) "Obligee" means any person, state agency or bureau entitled by order to receive child support payments or child and spousal support payments.

(6) "Obligor" means any person obligated by order to pay child or spousal support.

(7) "Order" means a judgment, decree, order, or administrative

ruling directing a person or persons to pay money for support of a minor child or a spouse.

(8) "Income" means any form of payment to an individual, regardless of source, including, but not limited to, wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, veteran's annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district or any entity created by a public act.

(9) "Withholding order" means any order issued by the bureau ordering an employer to retain an amount of the obligor's income for child support or spousal support.

(10) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(11) "Employer" means any person, private entity, federal or state government, unit of local government, school district, or any entity created by a public act who pays income to an individual.

SECTION 7. That Section 7-1204, Idaho Code, be, and the same is hereby amended to read as follows:

7-1204. WITHHOLDING OF INCOME -- APPLICATION, NOTICE AND HEARING.

(1) Any obligee may apply to the bureau to seek withholding of the obligor's income by the obligor's employer for payment of the delinquency, and current support, and costs and/or fees pursuant to an order, as defined herein. Additionally, any obligor who is required by order to pay child or spousal support may request that the bureau obtain withholding of the obligor's income by the obligor's employer for payment of current support and delinquency, if any.

(2) (a) If the order or decree under which the obligor is required to pay child or spousal support does not contain a notice of automatic and immediate income withholding pursuant to section 32-1205, Idaho Code, and if an obligor is employed in the state of Idaho, the bureau shall give notice to the obligor by certified mail that an application has been made to withhold from the obligor's income any delinquency and/or current support due and owing to the obligee. Such notice shall inform the obligor that if the notice contains a mistake of fact, which for purposes of this chapter means an error in the amount of current or overdue support or the identity of the alleged absent parent, he/she has fourteen (14) days from the day the notice was mailed to make a written request for a hearing before the department of health and welfare to resolve that mistake of fact. No issues at that hearing may be considered that have been litigated previously. Such notice shall also inform the absent parent:

(i) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;

(ii) That the provision for withholding applies to any current or subsequent employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withhold-

ing is a mistake of fact;

(iv) Of the period within which the absent parent must contact the state in order to contest the withholding and that failure to contact the state within the specified time limit will result in the state notifying the employer to begin withholding; and

(v) Of the actions the state will take if the individual contests the withholding.

(b) If the obligor requests a hearing, in writing, postmarked or received by the department of health and welfare within fourteen (14) days after such notice has been mailed (not to include Saturday, Sunday or holidays as the 14th day) to protest the withholding of income for the benefit of the obligee, and the basis for contesting the withholding is a mistake of fact as defined above, the department of health and welfare shall hold a hearing within thirty-five (35) days after the initial notice to the obligor. Additionally, the department of health and welfare shall immediately notify the obligee of the date, time and place of hearing and of the obligee's right to attend the hearing. The issues to be considered at the hearing shall be limited to mistakes of fact. The department of health and welfare shall issue its decision within forty-five (45) days of the initial notice. The decision may confirm, modify or deny the amount of any delinquency to be withheld.

(c) If the obligor files no timely protest, or after a hearing is held and decision is entered, the obligor is found to be delinquent in child or spousal support payments, the bureau shall send an order by certified mail to the employer of the obligor. The employer shall immediately begin withholding the sum specified in the order from the obligor's income and shall remit the amount withheld to the entity designated on the notice at the same time the obligor is paid. The employer shall continue to withhold the sum specified in the order until the order is either released or modified by written order of the bureau.

(3) If the order or decree under which the obligor is required to pay child or spousal support contains a notice of automatic and immediate income withholding pursuant to section 32-1205, Idaho Code, the bureau shall send an order by certified mail to the employer of the obligor. The employer shall immediately begin withholding the sum specified in the order from the obligor's income and shall remit the amount withheld to the person or entity designated in the order at the same time the obligor is paid. The employer shall continue to withhold the sum specified in the order until the order is either released or modified by written order of the bureau.

(4) If the obligor is employed in any other state, the bureau shall forward to the state agency which has the responsibility for the administration of income withholding in the state in which the obligor is employed, all information required by that state agency to enable withholding of the obligor's income.

(5) The employer may combine all amounts withheld for a particular entity in a pay period into a single payment for that pay period, as long as the portion thereof which is attributable to each individual employee is separately designated. The employer may deduct a fee,

not to exceed five dollars (\$5.00), to cover costs of each withholding. Such fee is to be withheld from the obligor's income in addition to the amount to be withheld to satisfy the withholding order.

(6) Income withholding for child support shall have priority over any other attachment against the same income.

(7) In no event shall the amount to be withheld from the income of the obligor exceed the amount specified in section 11-207, Idaho Code.

SECTION 8. That Section 32-1202, Idaho Code, be, and the same is hereby amended to read as follows:

32-1202. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.

(2) "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.

(3) "Disposable earnings" mean that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(4) "Duty of support" means the duty to provide for the needs of a dependent child, which may include the costs of necessary food, clothing, shelter, education, and health care. The duty includes any obligation to make monetary payment, to pay expenses or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

(5) "Earnings" mean any form of payment to an individual, regardless of source, including, but not limited to, wages, salary, bonus, commission, compensation for services rendered or goods sold, compensation as an independent contractor; and not withstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

(a) Payments made under chapter 13, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-1365, Idaho Code, and chapter 12, title 7, Idaho Code;

(b) Payments made under chapter 8, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-802, Idaho Code, and chapter 12, title 7, Idaho Code;

(c) Payments made under title 56, Idaho Code, shall be exempt from the provisions of this chapter.

(6) "Employer" includes the United States government, a state or local unit of government, and any person or entity who pays or owes income to the obligor.

(7) "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary,

bonus, commission, compensation for services rendered or goods sold, compensation as an independent contractor; and notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

(a) Payments made under chapter 13, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-1365, Idaho Code, and chapter 12, title 7, Idaho Code;

(b) Payments made under chapter 8, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-802, Idaho Code, and chapter 12, title 7, Idaho Code;

(c) Payments made under title 56, Idaho Code, shall be exempt from the provisions of this chapter.

(8) "Obligee" means any person, state agency or bureau entitled by order to receive child support payments or child and spousal support payments, or the person or agency to whom the right to receive or collect support has been assigned.

(9) "Obligor" means any person obligated by order to pay child or spousal support.

(10) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(11) "Support order" means a judgment, decree, or order issued by a magistrate or district court of the state of Idaho ~~creating a duty of directing a person or persons to pay money for support for~~ of a minor child, spouse or to pay spousal support former spouse, as herein defined; or a judgment, decree, order or administrative ruling issued by a court or agency of competent jurisdiction in another state or country, directing a person or persons to pay money for creating a duty of support of for a minor child, spouse or to pay spousal support former spouse, as herein defined, which has been registered or otherwise made enforceable in this state.

SECTION 9. That Section 32-1205, Idaho Code, be, and the same is hereby amended to read as follows:

32-1205. MANDATORY INCOME WITHHOLDING. (1) Any support order or decree issued or modified after July 1, 1986, shall include a provision allowing the obligee to enforce the order or decree by income withholding if arrearages at least equal to the support payable for one (1) month accumulate under the order or decree; and shall include a statement in substantially the following form:

NOTICE OF INCOME WITHHOLDING

This support order is enforceable by income withholding under chapter 12, title 32, Idaho Code. Whenever there are arrearages at least equal to the support payment for one (1) month, a mandatory income withholding order may be issued by the court to your employer or other person who pays you

income, without prior notice to you.

It is not necessary for the obligee to apply for support enforcement services under title IV-D of the social security act (42 U.S.C. 651 et seq.) to obtain enforcement of this support order by means of income withholding.

(2) Any support order or decree issued or modified at the request of the department of health and welfare after July 1, 1990, and any other support order or decree issued or modified after December 31, 1993, shall provide for automatic and immediate income withholding by the department obligee as of the effective date of the order or decree except where:

(a) One (1) of the parties demonstrates and the court finds makes a specific written finding that there is good cause not to require immediate income withholding. A finding of good cause by the court must be based on, at a minimum:

(i) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; and

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders; or

(b) A written agreement is reached between the parties obligor and obligee and the state of Idaho, department of health and welfare, bureau of child support enforcement in cases where the department is providing child support enforcement services, which provides for an alternative arrangement, and such agreement is determined by the court to be in the best interests of the child.

The order or decree shall include a statement in substantially the following form:

NOTICE OF AUTOMATIC AND IMMEDIATE INCOME WITHHOLDING

This support order is enforceable by automatic and immediate income withholding as of the effective date of this order under chapter 12, title 32, Idaho Code. This automatic and immediate income withholding order shall be issued by the department of health and welfare or other obligee to your employer or other person who pays your income, without additional notice to you.

(3) Failure to include these provisions does not affect the validity of the support order or decree. If the social security number of the person obligated to make child support payments under the support order or decree is available, the court shall require that the social security number of the obligor be included in the order or decree.

(4) If one of the exceptions to immediate income withholding pursuant to the provisions of subsection (2)(a) or (2)(b) of this section are met, the order shall nevertheless include a provision allowing the obligee to enforce the order or decree by income withholding if arrearages at least equal to the support payable for one (1) month accumulate under the order or decree, and shall include a statement in substantially the form of the "Notice of Income Withholding" specified in subsection (1) of this section.

SECTION 10. That Section 32-1206, Idaho Code, be, and the same is hereby amended to read as follows:

32-1206. REQUEST FOR MANDATORY INCOME WITHHOLDING. (1) A petition or motion seeking a mandatory income withholding order in an action under section 32-1204, Idaho Code, may be filed by an obligee whenever there are arrearages at least equal to the child support payment for one (1) month. The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, including:

- (a) That the obligor, stating his or her name, residence, and social security number, is in arrears under a support order in an amount equal to or greater than the support payable for one (1) month;
- (b) A description of the terms of the support order requiring the payment of support, and the amount past due;
- (c) The name and address of the obligor's employer;
- (d) That the support order includes a provision which complies with section 32-1205, Idaho Code, allowing enforcement by income withholding, and that a copy of the order is attached; and
- (e) In cases not filed by the state, whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

~~(2) Effective January 1, 1994, a petition or motion seeking an immediate income withholding order in an action under section 32-1204, Idaho Code, may be filed by an obligee or obligor regardless of whether arrearages have accrued under the support order. The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, including:~~

- ~~(a) That the obligor, stating his or her name, residence, and social security number, owes a duty of support under a support order;~~
- ~~(b) A description of the terms of the support order requiring the payment of support, and the amount past due, if any;~~
- ~~(c) The name and address of the obligor's employer;~~
- ~~(d) That the support order includes a provision which complies with section 32-1205, Idaho Code, allowing enforcement by immediate income withholding, and that a copy of the order is attached; and~~
- ~~(e) In cases not filed by the state, whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s);~~

SECTION 11. That Section 32-1207, Idaho Code, be, and the same is hereby amended to read as follows:

32-1207. ISSUANCE OF WITHHOLDING ORDER -- CLERK TO NOTIFY THE BUREAU OF CHILD SUPPORT ENFORCEMENT. (1) Upon receipt of a petition or motion seeking a mandatory income withholding order that complies with section 32-1206(1), Idaho Code, the court shall issue an income withholding order, as provided in section 32-1209, Idaho Code, and including the information required in section 32-1208(1), Idaho Code, directed to the employer, and commanding the employer to answer the order within ten (10) days after service of the order upon the employer, on the forms served with the order that comply with section

32-1211, Idaho Code. The bureau shall supply each county with forms for income withholding orders and answers which comply with the provisions of this chapter.

(2) Upon receipt of a petition or motion seeking an immediate income withholding order that complies with section 32-1206(2), Idaho Code, the court shall issue an immediate income withholding order, as provided in section 32-1209, Idaho Code, and including the information required in section 32-1208(1), Idaho Code. The order shall be directed to the employer and shall instruct the employer to remit the amount withheld to the clerk of the court within ten (10) days of the date the obligor is paid.

(3) If said petition or motion indicates that the obligee has received public assistance from any source on behalf of the minor child, the clerk shall immediately forward a copy of the petition or motion to the bureau of child support enforcement, statehouse mail, Boise, Idaho 83720.

SECTION 12. That Section 32-1209, Idaho Code, be, and the same is hereby amended to read as follows:

32-1209. FORM OF WITHHOLDING ORDER. The income withholding order issued pursuant to this chapter shall be in substantially the following form:
When withholding income based upon accrual of arrearages at least equal to one (1) month's support obligation--

IN THE DISTRICT COURT OF THE)	JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF)	
)	
,)	Case No.
Obligee,)	
)	
vs.)	INCOME WITHHOLDING ORDER
)	FOR CHILD SUPPORT
)	PURSUANT TO CHAPTER 12,
,)	TITLE 32, IDAHO CODE
SS#)	
,)	
Obligor,)	
)	
,)	
Employer.)	
)	

THE STATE OF IDAHO TO: Employer
AND TO: Employee:

The above-named obligee claims that the above-named obligor is delinquent in support payments in an amount equal to or greater than the support payable for one (1) month. The amount of the accrued support debt as of this date is _____ dollars, the amount of arrearage payments specified in the support order (if applicable) is _____ dollars per _____, and the amount of the current and continuing support obligation under the support order is _____ dollars per _____.

YOU ARE HEREBY COMMANDED to answer this order by filling in the attached form according to the instructions, and you must mail or deliver the original of the answer to the court, one (1) copy to the obligee or obligee's attorney, and one (1) copy to the obligor within ten (10) days after service of this income withholding order on you. The fourth copy of the answer may be retained by you for your records.

If you possess any earnings (income) due and owing to the obligor, then you shall do as follows:

(1) Withhold from the obligor's earnings each month, or from each regular earnings disbursement, the lesser of:

(a) The sum of the current support obligation and the accrued support debt;

(b) The sum of the current support obligation and the specified arrearage payment amount; or

(c) Fifty percent (50%) of the disposable earnings of the obligor.

(2) In addition to the amount specified above, you may collect and retain up to five dollars (\$5.00) per collection from the obligor's income to reimburse you for your costs. The amount actually withheld for support and other purposes, including your fee, may not be in excess of fifty percent (50%) of the obligor's disposable earnings.

(3) The total amount withheld above is subject to the income withholding order, and all other sums may be disbursed to the obligor.

You shall continue to withhold the ordered amounts from nonexempt earnings of the obligor until notified by the court that the income withholding order has been modified or terminated. You shall promptly notify the court if and when the employee is no longer employed by or entitled to receive income from you, and of his last known address and the name and address of his new employer, if known.

You shall deliver the withheld earnings to the clerk of the court that issued this order at each regular pay interval, ~~or, if the Bureau of Child Support Enforcement is providing support enforcement services~~

~~The State of Idaho
Department of Health and Welfare
Bureau of Child Support Enforcement
450 West State, 5th Floor
Boise, Idaho 83720-5005~~

but the first delivery shall occur no sooner than within ten (10) working days after your receipt of this order of the date the obligor is paid. ~~You shall notify the Bureau of Child Support Enforcement of the date the amount was withheld from the obligor.~~ You may combine amounts withheld from various employees for a particular entity in a pay period into a single payment for that pay period, as long as the portion thereof which is attributable to each individual employee is separately designated.

You shall deliver a copy of this order to the obligor as soon as is reasonably possible. This order has priority over any other withholding or garnishment, except for another withholding order or garnishment for child support.

If the above-named obligor is subject to two (2) or more withholding orders for child support on account of different obligees and the

per-----; Within ten (10) working days from the date the obligor is paid, you must remit the amount withheld to the clerk of the court of the county where the order was entered. If the Bureau of Child Support Enforcement is providing support enforcement services you must within ten (10) working days from the date the obligor is paid, remit the amount withheld to:

The State of Idaho
Department of Health and Welfare
Bureau of Child Support Enforcement
450 W. State, 5th Floor
Boise, Idaho 83720-5005

If the Bureau of Child Support Enforcement is providing support enforcement services for the obligor or obligee, you must report to the Bureau of Child Support Enforcement the date on which the amount was withheld from the obligor's wages.

Income withholding for child support shall have priority over any other attachment of the same income. You must continue to withhold and remit the sum specified until you receive further order from the Bureau of Child Support Enforcement or order of the court.

If the obligor is paid more than once per month, the support obligation stated above must be satisfied from the earliest available income each month. In addition to the amount specified above, you may collect and retain up to five dollars (\$5.00) per collection from the obligor's income to reimburse you and your costs. The amount actually withheld for support and other purposes, including your fees, may not be in excess of the maximum amounts permitted under Section 303(B) of the Consumer Credit Protection Act (15-896-1673(B)).

You may combine withheld amounts from absent parent's wages in a single payment to each appropriate agency requesting withholding as long as you separately identify the portion of the single payment which is attributable to each individual parent.

If you fail to comply with this order, you will be liable for the accumulated amount you should have withheld from the obligor's income. You are further notified that if you refuse to employ or if you take disciplinary action against the obligor named above, because of this income withholding order, you will be subject to a fine of up to three hundred dollars (\$300).

You are required to notify the Bureau of Child Support Enforcement promptly if the obligor named above leaves your employment, of his/her last known address and the name and address of his/her new employer, if known.

By:----- Date:-----

SECTION 13. That Section 7-1202, Idaho Code, be, and the same is hereby amended to read as follows:

7-1202. DEFINITIONS. As used in this chapter:

(1) "Bureau" means the bureau of child support enforcement, department of health and welfare of the state of Idaho.

(2) "Child support" means a legally enforceable obligation assessed against an individual for the support of a child which shall include any amount owing under an order for reimbursement of support during a period in which public assistance was expended.

(3) "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.

(4) "Delinquency" means unpaid support for a minor child or spouse which has accrued under an order, the amount of which is at least equal to the support payable for one (1) month or any unreimbursed amount owed under an order for reimbursement of public assistance.

(5) "Obligee" means any person, state agency or bureau entitled by order to receive child support payments or child and spousal support payments.

(6) "Obligor" means any person obligated by order to pay child or spousal support.

(7) "Order" means a judgment, decree, order, or administrative ruling directing a person or persons to pay money for support of a minor child or a spouse.

(8) "Income" means any form of payment to an individual, regardless of source, including, but not limited to, wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, veteran's annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district or any entity created by a public act.

(9) "Withholding order" means any order issued by the bureau ordering an employer to retain an amount of the obligor's income for child support or spousal support.

(10) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse ~~who is living with a child or children for whom the individual also owes support.~~

(11) "Employer" means any person, private entity, federal or state government, unit of local government, school district, or any entity created by a public act who pays income to an individual.

SECTION 14. That Section 7-1204, Idaho Code, be, and the same is hereby amended to read as follows:

7-1204. WITHHOLDING OF INCOME -- APPLICATION, NOTICE AND HEARING.

(1) Any obligee may apply to the bureau to seek withholding of the obligor's income by the obligor's employer for payment of the delinquency, and current support,~~and costs and/or fees pursuant to an order, as defined herein.~~ Additionally, any obligor who is required by order to pay child or spousal support may request that the bureau obtain withholding of the obligor's income by the obligor's employer for payment of current support and delinquency, if any.

(2) (a) If the order or decree under which the obligor is required to pay child or spousal support does not contain a notice of automatic and immediate income withholding pursuant to section 32-1205, Idaho Code, and if an obligor is employed in the state of Idaho, the bureau shall give notice to the obligor by certified mail that an application has been made to withhold from the obligor's income any delinquency and/or current support due and owing to the obligee. Such notice shall inform the obligor that if

the notice contains a mistake of fact, which for purposes of this chapter means an error in the amount of current or overdue support or the identity of the alleged absent parent, he/she has fourteen (14) days from the day the notice was mailed to make a written request for a hearing before the department of health and welfare to resolve that mistake of fact. No issues at that hearing may be considered that have been litigated previously. ~~Such notice shall also inform the absent parent:~~

- ~~(i) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;~~
- ~~(ii) That the provision for withholding applies to any current or subsequent employer or period of employment;~~
- ~~(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;~~
- ~~(iv) Of the period within which the absent parent must contact the state in order to contest the withholding and that failure to contact the state within the specified time limit will result in the state notifying the employer to begin withholding; and~~
- ~~(v) Of the actions the state will take if the individual contests the withholding.~~

(b) If the obligor requests a hearing, in writing, postmarked or received by the department of health and welfare within fourteen (14) days after such notice has been mailed (not to include Saturday, Sunday or holidays as the 14th day) to protest the withholding of income for the benefit of the obligee, and the basis for contesting the withholding is a mistake of fact as defined above, the department of health and welfare shall hold a hearing within thirty-five (35) days after the initial notice to the obligor. Additionally, the department of health and welfare shall immediately notify the obligee of the date, time and place of hearing and of the obligee's right to attend the hearing. The issues to be considered at the hearing shall be limited to mistakes of fact. The department of health and welfare shall issue its decision within forty-five (45) days of the initial notice. The decision may confirm, modify or deny the amount of any delinquency to be withheld.

(c) If the obligor files no timely protest, or after a hearing is held and decision is entered, the obligor is found to be delinquent in child or spousal support payments, the bureau shall send an order by certified mail to the employer of the obligor. The employer shall immediately begin withholding the sum specified in the order from the obligor's income and shall remit the amount withheld to the entity designated on the notice at the same time the obligor is paid. The employer shall continue to withhold the sum specified in the order until the order is either released or modified by written order of the bureau.

(3) If the order or decree under which the obligor is required to pay child or spousal support contains a notice of automatic and immediate income withholding pursuant to section 32-1205, Idaho Code, the bureau shall send an order by certified mail to the employer of the obligor. The employer shall immediately begin withholding the sum

specified in the order from the obligor's income and shall remit the amount withheld to the person or entity designated in the order at the same time the obligor is paid. The employer shall continue to withhold the sum specified in the order until the order is either released or modified by written order of the bureau.

(4) If the obligor is employed in any other state, the bureau shall forward to the state agency which has the responsibility for the administration of income withholding in the state in which the obligor is employed, all information required by that state agency to enable withholding of the obligor's income.

(5) The employer may combine all amounts withheld for a particular entity in a pay period into a single payment for that pay period, as long as the portion thereof which is attributable to each individual employee is separately designated. The employer may deduct a fee, not to exceed five dollars (\$5.00), to cover costs of each withholding. Such fee is to be withheld from the obligor's income in addition to the amount to be withheld to satisfy the withholding order.

(6) Income withholding for child support shall have priority over any other attachment against the same income.

(7) In no event shall the amount to be withheld from the income of the obligor exceed the amount specified in section 11-207, Idaho Code.

SECTION 15. The provisions of Sections 1 through 7 of this act shall be in full force and effect on and after July 1, 1993. The provisions of Sections 8 through 14 of this act shall be in full force and effect on and after April 1, 1994.

Approved April 1, 1993.

CHAPTER 336
(S.B. No. 1125)

AN ACT

RELATING TO STATE EMPLOYEES; AMENDING CHAPTER 53, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5342, IDAHO CODE, TO PROHIBIT THE PAYING OF SEVERANCE PAY TO CLASSIFIED OR EXEMPT STATE EMPLOYEES.

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

SECTION 1. That Chapter 53, 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 67-5342, Idaho Code, and to read as follows:

67-5342. SEVERANCE PAY FOR STATE EMPLOYEES. Upon termination from state service, no classified or exempt employee shall be eligible for severance pay and no employer shall provide or pay severance pay to such an employee or former employee. As used in this section, "severance pay" shall mean money, exclusive of wages or salary, paid

to a classified or exempt employee who resigns from state service of his own volition and not under duress.

Approved April 1, 1993.

CHAPTER 337
(S.B. No. 1137, As Amended)

AN ACT

RELATING TO CHILD SUPPORT; AMENDING CHAPTER 12, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-1216, IDAHO CODE, TO PROVIDE PROCEDURES FOR ENFORCEMENT OF COURT ORDERS PROVIDING FOR PROVISION OF HEALTH INSURANCE COVERAGE FOR A DEPENDENT CHILD.

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

SECTION 1. That Chapter 12, Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 32-1216, Idaho Code, and to read as follows:

32-1216. HEALTH INSURANCE COVERAGE -- ENFORCEMENT. (1) Whenever an obligor parent who has been ordered to provide health insurance coverage for a dependent child fails to provide such coverage or lets it lapse, the department of health and welfare or other obligee may seek enforcement of the coverage order as provided under this section, except as provided in subsection (13) of this section.

(2) (a) If the obligor parent's order to provide health insurance coverage contains language notifying the obligor that failure to provide such coverage may result in direct enforcement of the order and orders payments through, or has been submitted to, the department of health and welfare for enforcement, then the department of health and welfare may, without further notice to the obligor, send a notice of intent to enroll to the obligor's employer by certified mail, return receipt requested. The notice shall require the employer to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(b) If the obligor parent's order to provide health insurance coverage does not order payments through, and has not been submitted to, the department of health and welfare:

(i) The obligee may, without further notice to the obligor, send a certified copy of the order requiring health insurance coverage to the obligor's employer by certified mail, return receipt requested; and

(ii) The obligee shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court and require the employer to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(3) Upon receipt of an order that provides for health insurance coverage, or a notice of intent to enroll:

(a) The obligor's employer shall answer the party who sent the order or notice within thirty (30) days and confirm that the child:

- (i) Has been submitted in the health insurance plan;
- (ii) Will be enrolled in the next open enrollment period; or
- (iii) Cannot be covered, stating the reasons why such coverage cannot be provided.

(b) The employer shall withhold any required premium for the obligor's dependents from the obligor's income or wages;

(c) If more than one (1) plan is offered by the employer, and each plan may be extended to cover the child, then the child shall be enrolled in the obligor's plan. If the obligor's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the obligor parent;

(d) The employer shall provide the name of the health insurance coverage provider or insurer, the extent of coverage available and other necessary information to the department of health and welfare or other obligee and shall make available any necessary claim forms or enrollment membership cards.

(4) If the order for coverage contains no language notifying the obligor that failure to provide health insurance coverage may result in direct enforcement of the order, the department of health and welfare or other obligee may serve a written notice of intent to enforce the order on the obligor by certified mail, return receipt requested, or by personal service. If the obligor fails to provide written proof that such coverage has been obtained or applied for within thirty (30) days of service of the notice, or within thirty (30) days of coverage becoming available, the department of health and welfare or other obligee may proceed to enforce the order directly as provided in subsection (2) of this section.

(5) If the obligor ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the department of health and welfare or other obligee may serve a written notice of intent to enroll the child in health insurance coverage on the obligor by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.

(6) If the department of health and welfare serves a notice under subsection (5) of this section, the obligor shall, within thirty (30) days of the date of service:

(a) File an application for an administrative hearing; or

(b) Provide written proof to the department of health and welfare that the obligor has either applied for, or obtained coverage accessible to the child.

(7) If an obligee other than the department of health and welfare serves a notice under subsection (5) of the section, within thirty (30) days of the date of service, the obligor shall provide written proof to the obligee that the obligor has either applied for, or obtained, coverage accessible to the child.

(8) If the obligor fails to respond to a notice served under subsection (5) of this section to the party who served the notice, the

party who served the notice may enroll the obligor's child in the health insurance coverage specified in the notice directly. The amount of the premium shall be withheld from the obligor's wages. The employer shall forward the amount of premium withheld to the insurance provider.

(9) If the coverage is terminated or amended, the employer shall mail a notice of termination or amendment to the department of health and welfare or other obligee at the obligee's last known address within forty-five (45) days of the termination date.

(10) This section shall not be construed to limit the right of the obligor or the obligee to bring an action in court at any time to enforce, modify or clarify the original support order.

(11) Nothing in this section shall be construed to require a health maintenance organization, or health facility, to extend coverage to a child who resides outside its service area.

(12) If the amount of the obligor's income or wages which are withheld under subsection (3)(b) of this section is insufficient to pay the premium for the dependents, the obligor shall, nevertheless, be responsible for payment of the premium.

(13) Nothing in this section shall be construed to require an employer to enroll a dependent in any health insurance coverage if the following circumstances exist:

(a) The insurance coverage provided by the employer does not extend coverage to dependents; or

(b) The dependent sought to be covered under the employer's plan has a medical condition which would result in an increase in premium to the employers or to other employees under the employers insurance plan.

(12) The department of health and welfare is authorized to adopt reasonable rules to implement the provisions of chapter 12, title 32, Idaho Code, pursuant to chapter 52, title 67, Idaho Code.

Approved April 1, 1993.

CHAPTER 338

(S.B. No. 1139, As Amended in the House)

AN ACT

RELATING TO THE SECRETARY OF STATE; AMENDING SECTION 30-1-128, IDAHO CODE, TO INCREASE FEES FOR FILING CORPORATE DOCUMENTS AND ISSUING CERTIFICATES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 30-329, IDAHO CODE, TO INCREASE FEES FOR FILING ARTICLES OF INCORPORATION AND APPLICATIONS FOR A CERTIFICATE OF AUTHORITY FOR NON-PROFIT CORPORATIONS; AMENDING SECTION 53-262, IDAHO CODE, TO INCREASE FILING FEES FOR PARTNERSHIP DOCUMENTS; AND AMENDING SECTION 67-910, IDAHO CODE, TO INCREASE FEES FOR CERTAIN SERVICES PERFORMED BY THE SECRETARY OF STATE.

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

SECTION 1. That Section 30-1-128, Idaho Code, be, and the same is

hereby amended to read as follows:

30-1-128. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES. The Secretary of State shall charge and collect for:

(a) Filing articles of incorporation and issuing a certificate of incorporation, sixty one hundred dollars (\$6100-00) if typed, or one hundred twenty dollars (\$120) if not typed or if attachments are included.

(b) Filing articles of amendment and issuing a certificate of amendment, twenty thirty dollars (\$230.00).

(c) Filing restated articles of incorporation, twenty thirty dollars (\$230.00).

(d) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty thirty dollars (\$230.00).

(e) Filing an application to reserve a corporate name, ten twenty dollars (\$120.00).

(f) Filing a notice of transfer of a reserved corporate name, ten twenty dollars (\$120.00).

(g) Filing a statement of change of address of registered office or change of registered agent, or both, or for filing a notice of resignation of registered agent, no fee.

(h) Filing a statement of cancellation of shares, twenty thirty dollars (\$230.00).

(i) Filing a statement of reduction of stated capital, twenty thirty dollars (\$230.00).

(j) Filing articles of dissolution, twenty thirty dollars (\$230.00).

(k) Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, or-for-filing-a-certified-copy-of-the-articles-of-incorporation-of-a-foreign-insurance-company, sixty one hundred dollars (\$6100-00) if the form is typed and has no attachments, or one hundred twenty dollars (\$120) if not typed or if attachments are included.

(l) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, twenty thirty dollars (\$230.00).

(m) Filing an application for withdrawal of a foreign corporation, ten twenty dollars (\$120.00).

(n) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, ten twenty dollars (\$120.00).

(o) Filing any document relating to a corporation organized for profit, when the filing party requires the certificate therefor to be returned within eight (8) working hours, a surcharge of ten twenty dollars (\$120.00).

SECTION 2. That Section 30-329, Idaho Code, be, and the same is hereby amended to read as follows:

30-329. FEES FOR FILING ARTICLES OF INCORPORATION AND APPLICATION FOR CERTIFICATE OF AUTHORITY. The secretary of state shall charge and

collect for:

(a) Filing articles of incorporation of a nonprofit corporation and issuing a certificate of incorporation, twenty thirty dollars (\$230.00).

(b) Filing an application of a foreign nonprofit corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, or for filing a certified copy of the articles of incorporation of a foreign mutual insurer and a foreign fraternal benefit society, twenty thirty dollars (\$230.00).

SECTION 3. That Section 53-262, Idaho Code, be, and the same is hereby amended to read as follows:

53-262. FILING FEES. The secretary of state shall charge and collect for:

(a) Filing a certificate of limited partnership, sixty one hundred dollars (\$6100+00);

(b) Filing a certificate of amendment or a restated certificate of limited partnership, twenty thirty dollars (\$230.00);

(c) Filing a certificate of cancellation, twenty thirty dollars (\$230.00);

(d) Filing a judicial decree of amendment or cancellation, twenty thirty dollars (\$230.00);

(e) Filing an application for registration as a foreign limited partnership, sixty one hundred dollars (\$6100+00) if the form is typed and has no attachments, and otherwise one hundred twenty dollars (\$120);

(f) Filing a certificate of change or correction of an application for registration of a foreign limited partnership, twenty thirty dollars (\$230.00);

(g) Filing a statement of change of registered agent of a foreign limited partnership or its address, ten twenty dollars (\$120.00);

(h) Filing an application for withdrawal of a foreign limited partnership from the state, ten twenty dollars (\$120.00);

(i) Filing an application for a name reservation, or transfer thereof, ten twenty dollars (\$120.00);

(j) Filing any other statement, ten twenty dollars (\$120.00);

(k) Filing any document relating to a limited partnership, when the filing party requires the evidence thereof to be returned within eight (8) working hours, a surcharge of ten twenty dollars (\$120.00).

SECTION 4. That Section 67-910, Idaho Code, be, and the same is hereby amended to read as follows:

67-910. FEES OF SECRETARY OF STATE. The secretary of state, for services performed in his office, shall charge and collect the following fees:

For a copy of any law, resolution, record or other document or paper on file in his office, twenty-five cents (25c) per page.

For affixing certificate and seal of the state, two ten dollars (\$210.00).

But no member of the legislature or state officer can be charged for any search relative to matters appertaining to the duties of their

offices; nor must they be charged any fee for a certified copy of any law or resolution passed by the legislature relative to their official duties.

In his discretion, the secretary of state may grant to persons, without charge, access to files in his office for the purpose of making copies if a benefit to his office will thereby be obtained.

For filing and indexing any map or other paper where the fee for the same is not already fixed by law, four dollars (\$4.00).

For searching legislative journals for records of enacted and reenacted laws, and certifying to the same, ten dollars (\$10.00).

For certifying and attaching certificate to any state law, published in pamphlet form, which shall include comparing the same with the enrolled act, six ten dollars (\$610.00).

For any other certificate required of the secretary of state, the fee for which is not hereinbefore prescribed, six ten dollars (\$610.00).

For provision of electronic access to data bases and provision of other automated data services, such fees as the secretary of state may by administrative rule provide. Every rule promulgated within the authority conferred in this section shall be subject to review by the legislature at the regular session first following its adoption. The rules may be rejected or amended by the legislature by enactment of a statute. If the legislature rejects or amends a new rule by statute and if the new rule repealed or amended an already existing rule, the previous rule shall be reinstated or modified in accordance with the statute.

For all services not hereinbefore provided for, such fees therefor as may now be prescribed by law, or as may be prescribed by the state board of examiners.

Approved April 1, 1993.

CHAPTER 339

(S.B. No. 1144, As Amended in the House)

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING CHAPTER 13, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1333, IDAHO CODE, TO REQUIRE INSURANCE COMPANIES OR OTHER ENTITIES TO REFUND UNEARNED PREMIUMS ON CANCELED HEALTH INSURANCE POLICIES.

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 41-1333, Idaho Code, and to read as follows:

41-1333. REFUND OF UNEARNED HEALTH INSURANCE PREMIUMS. If an insured person, insured person's estate or entity cancels a health insurance policy for any reason, the insurer or other entity regulated

pursuant to the provisions of this title shall refund the pro rata portion of the unused collected premium to the beginning of the next monthly billing cycle. As used in this section the term "health insurance policy" shall refer to a contract entered into pursuant to the provisions of this title for which payment or reimbursement is rendered to a claimant or health care provider for the claimant's utilization of health care services which is any service rendered to an individual for diagnosis, relief or treatment of any injury, ailment or bodily condition. As used in this section "unused collected premium" shall mean that portion of any premium collected which is not used, on a pro rata basis to the beginning of the next monthly billing cycle at the time of cancellation, by the insurer or other entity regulated pursuant to this title to insure against loss as there is no risk of loss from the insured individual, or that portion of any collected premium which would have not been collected had the insured paid monthly.

Approved April 1, 1993.

CHAPTER 340

(S.B. No. 1148, As Amended in the House)

AN ACT

RELATING TO MOTOR VEHICLE SERVICE CONTRACTS; AMENDING TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 28, TITLE 49, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE SERVICE CONTRACT REIMBURSEMENT POLICY REQUIREMENTS, TO PROVIDE MOTOR VEHICLE SERVICE CONTRACT PROVISIONS, TO PROVIDE MOTOR VEHICLE SERVICE CONTRACT REQUIREMENTS, TO PROVIDE PROHIBITED ACTS, TO PROVIDE RECORD-KEEPING REQUIREMENTS, TO PROVIDE REGISTRATION OF MOTOR VEHICLE SERVICE CONTRACT PROVIDERS, TO PROVIDE A LICENSING EXEMPTION, AND TO EXCLUDE MOTOR VEHICLE SERVICE CONTRACTS FROM THE IDAHO INSURANCE AND GUARANTY ASSOCIATION.

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

SECTION 1. That Title 49, 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 49, Idaho Code, and to read as follows:

CHAPTER 28

MOTOR VEHICLE SERVICE CONTRACTS

49-2801. SHORT TITLE -- SCOPE. The provisions of this chapter shall be known as the "Idaho Motor Vehicle Service Contract Act." This act shall apply to all motor vehicle service contracts offered for sale in the state by any person other than the motor vehicle manufacturer and shall not apply to the customary and usual performance guarantees or warranties offered at no additional charge by motor vehicle manufacturers in connection with the sale of motor vehicles.

49-2802. DEFINITIONS. As used in this chapter:

(1) "Mechanical breakdown insurance" shall mean a policy, contract or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear and that is issued by an insurance company authorized to do business in this state.

(2) "Motor vehicle service contract" shall mean a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear but shall not include mechanical breakdown insurance. A motor vehicle service contract may provide full or partial reimbursement for other expenses incurred by the motor vehicle service contract holder as a direct and proximate result of an operational or structure failure or reduced operating efficiency if included in the contract coverage, including but not limited to, towing, rental car, lodging, motor club, maintenance benefits, roadside assistance and meal expenses.

(3) "Motor vehicle service contract holder" means a person who purchases a motor vehicle service contract, or a permitted transferee.

(4) "Motor vehicle service contract provider" shall mean a person or the assignee of such person who, as the manufacturer, distributor or seller of its product, or a person acting through or with the written consent of the manufacturer, distributor or seller of the product, offers to sell a motor vehicle service contract.

(5) "Liability insurance policy" shall mean a policy of insurance providing coverage for all contractual obligations incurred by a motor vehicle service contract provider under the terms of a motor vehicle service contract issued or sold by the motor vehicle service contract provider.

49-2803. SERVICE CONTRACT REIMBURSEMENT POLICY REQUIREMENTS. (1) Mandatory insurance.

(a) No motor vehicle service contract shall be issued, sold, or offered for sale in this state unless the motor vehicle service contract provider is insured under a service contract liability policy issued by an insurer admitted to do business in this state. The policy shall provide that the insurer will pay to, or on behalf of, the motor vehicle service contract provider all sums which the motor vehicle service contract provider is legally obligated to pay according to the motor vehicle service contract provider's contractual obligations under the motor vehicle service contracts issued or sold by the motor vehicle service contract provider.

(b) All service contract liability policies insuring motor vehicle service contracts issued, sold or offered for sale in this state must conspicuously state that, upon failure of the motor vehicle service contract provider to perform under the contract, the issuer of the policy shall pay on behalf of the provider any sums which the provider is legally obligated to perform, according to the provider's contractual obligations under the motor vehicle

service contracts issued or sold by the provider.

(2) Reserves. The reserve to be maintained on service contract liability policies issued:

(a) Covering new vehicles shall be one which generates an unearned premium reserve not less than the unearned premium reserve which is generated by applying the "reverse sum of the digits" earnings method to each policy issued;

(b) Covering used vehicles shall be a reserve of not less than the unearned premium reserve which is generated by the "straight line" or "prorated" earnings method; or

(c) Shall be by such other methods as are certified annually by a competent actuary who is a member of the American society of actuaries.

(3) Premiums. Premiums are defined as those funds paid by or on behalf of the motor vehicle service contract provider to the liability insurance policy issuer for such risks covered under such liability insurance policy. Such premiums or the method of developing such premiums shall be filed with the director of the department of insurance for approval.

(4) Cancellation of service contract liability insurance policy. The issuer of a service contract liability policy may not cancel the policy until a thirty (30) days' advance notice of cancellation has been mailed or delivered to the director of the department of insurance and to each motor vehicle service contract provider. The cancellation of a service contract liability policy shall not reduce the insurer's responsibility for motor vehicle service contracts issued by motor vehicle service contract providers prior to the date of the cancellation.

49-2804. MOTOR VEHICLE SERVICE CONTRACT PROVISIONS. The following provisions shall apply to the sale of motor vehicle service contracts in the state:

(1) A motor vehicle service contract may not be issued, sold or offered for sale in this state unless the contract contains a statement in substantially the following form: "Obligations of the motor vehicle service contract provider under this motor vehicle service contract are guaranteed under a service contract liability policy. Should the motor vehicle service contract provider fail to pay or provide service on any claim within sixty (60) days after proof of loss has been filed, the motor vehicle service contract holder is entitled to make a claim directly against the insurance company." The motor vehicle service contract shall also conspicuously state the name and address and a toll-free claim service number of the insurer.

(2) The motor vehicle service contract must identify the motor vehicle service contract provider, the seller and the motor vehicle service contract holder.

(3) The motor vehicle service contract must conspicuously state the total purchase price of the motor vehicle service contract.

(4) If prior approval of repair work is required, the motor vehicle service contract must conspicuously state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining reimbursement for emergency repairs performed outside of normal business

hours.

(5) The motor vehicle service contract must conspicuously state the existence of any deductible amount.

(6) The motor vehicle service contract must specify the merchandise and services to be provided and any limitations, exceptions or exclusions. Any preexisting conditions clause must specifically state which preexisting conditions are excluded from coverage.

(7) The motor vehicle service contract must state any terms, restrictions or conditions governing the transferability of the service contract.

(8) The motor vehicle service contract must state the terms, restrictions or conditions governing cancellation of the service contract by either the motor vehicle service contract holder or motor vehicle service contract provider.

(9) A motor vehicle service contract may not be issued, sold or offered for sale in this state unless the contract contains a statement in substantially the following form: "Coverage afforded under this motor vehicle service contract is not guaranteed by the Idaho Insurance Guarantee Association."

(10) Cancellation. No motor vehicle service contract may be issued, sold or offered in this state unless the service contract conspicuously states that the motor vehicle service contract holder is allowed to cancel the service contract:

(a) Within thirty (30) days of its purchase if no claim has been made and receive a full refund of the service contract retail price, less any cancellation fee stated in the service contract not exceeding fifty dollars (\$50.00); or

(b) At any other time and receive a pro rata refund of the service contract retail price for the unexpired term of the service contract, based on the number of the lapsed months, miles or such other measure which is clearly disclosed in the service contract, less any cancellation fees stated in the service contract not exceeding fifty dollars (\$50.00).

49-2805. MOTOR VEHICLE SERVICE CONTRACT REQUIREMENTS. Before the sale of any motor vehicle service contract, the motor vehicle service contract provider shall give written notice to the customer clearly disclosing that the purchase of the contract is not required either to purchase or to obtain financing for a motor vehicle. No motor vehicle service contract may be used in this state by any motor vehicle service contract provider if the contract:

(1) In any respect violates, or does not comply with, the laws of this state;

(2) Contains or incorporates by reference any inconsistent, ambiguous or misleading clauses or any exceptions and conditions that affect the risk assumed or to be assumed in the general coverage of the contract;

(3) Has any title, heading or other indication of its provisions that is misleading; or

(4) Is printed or otherwise reproduced in any manner that renders any material provision of the contract substantially illegible.

49-2806. PROHIBITED ACTS. (1) A motor vehicle service contract

provider may not use in its name, contracts or literature:

(a) Any of the words insurance, casualty, surety, mutual or any other words descriptive of the insurance, casualty or surety business; or

(b) A name deceptively similar to the name or description of any insurance or surety corporation, or any other motor vehicle service contract provider.

(2) A motor vehicle service contract provider or its representative may not make, permit or allow to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a motor vehicle service contract.

49-2807. RECORDKEEPING REQUIREMENTS. All motor vehicle service contract providers shall keep accurate accounts, books and records concerning transactions regulated under the provisions of this act. A motor vehicle service contract provider's accounts, books and records shall include:

(1) Copies of all motor vehicle service contracts issued;

(2) The name and address of each motor vehicle service contract holder; and

(3) Claim files.

All motor vehicle service contract providers shall retain all records pertaining to each motor vehicle service contract holder for at least three (3) years after the specified period of coverage has expired. It shall be the responsibility of the insurer issuing the liability policy to make an examination at least every two (2) years of each motor vehicle service contract provider which they insure to assure that each provider is in compliance with the recordkeeping requirements. Copies of these examinations shall be subject to review by the director of the department of insurance.

49-2808. REGISTRATION OF MOTOR VEHICLE SERVICE CONTRACT PROVIDERS. Each motor vehicle service contract provider shall file with the director of the department of insurance:

(1) A copy of the motor vehicle service contract provider's service contract liability policy;

(2) A form appointing the director of the department of insurance as its true and lawful attorney in the state of Idaho, upon whom all legal processes against said provider in any action or legal proceeding may be served; and

(3) Any additional information that the director of the department of insurance requires.

49-2809. LICENSING. Persons marketing, selling or offering to sell motor vehicle service contracts for motor vehicle service contract providers and motor vehicle service contract providers that comply with this act are exempt from the licensing requirements of chapter 10, title 41, Idaho Code. Motor vehicle service contracts issued by the motor vehicle manufacturer, importer, distributor, or by a wholly owned affiliate of the motor vehicle manufacturer which is not an insurance company, shall not be subject to regulation under title 41, Idaho Code.

49-2810. **GUARANTY.** The provisions of the Idaho insurance guaranty association act, chapter 36, title 41, Idaho Code, shall not apply to any motor vehicle service contract, mechanical breakdown insurance or motor vehicle service contract liability insurance policy, as defined in this act, and no claim under any motor vehicle service contract, mechanical breakdown insurance or motor vehicle service contract liability insurance policy shall be deemed to be a "covered claim" within the scope of section 41-3605(7), Idaho Code, as to which the Idaho insurance guaranty association has any obligation under section 41-3608, Idaho Code, or other provisions of chapter 36, title 41, Idaho Code.

Approved April 1, 1993.

CHAPTER 341

(S.B. No. 1160, As Amended in the House)

AN ACT

RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-102, IDAHO CODE, TO INCREASE THE MAXIMUM SUM FOR BURIAL EXPENSES TO SIX THOUSAND DOLLARS.

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

SECTION 1. That Section 72-102, Idaho Code, be, and the same is hereby amended to read as follows:

72-102. **DEFINITIONS.** Words and terms used in the workmen's compensation law, unless the context otherwise requires, are defined in the subsections which follow:

(1) "Alien" means a person who is not a citizen, a national or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(2) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this law.

(3) "Burial expenses" mean a sum, not to exceed three six thousand dollars (\$~~36~~,000) for funeral and burial or cremation, together with the actual expenses of transportation of the employee's body to his place of residence within the United States or Canada.

(4) "Commission" means the industrial commission.

(5) "Community service worker" means any person who has been convicted of a criminal offense, any juvenile who has been found to be within the purview of chapter 18, title 16, Idaho Code, and who has been informally diverted under the provisions of section 16-1807A, Idaho Code, or any person or youth who has been diverted from the criminal or juvenile justice system and who performs a public service for any department, institution, office, college, university, authority, division, board, bureau, commission, council, or other entity of the state, or any city, county, school district, irrigation district

or other taxing district authorized to levy a tax or an assessment or any other political subdivision.

(6) "Compensation" used collectively means any or all of the income benefits and the medical and related benefits and medical services.

(7) "Death" means death resulting from an injury or occupational disease.

(8) Dependency limitations.

(a) "Adopted" and "adoption" include cases where persons are treated as adopted as well as those of legal adoption unless legal adoption is specifically provided.

(b) "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption.

(c) "Child" includes adopted children, posthumous children, and acknowledged illegitimate children, but does not include stepchildren unless actually dependent.

(d) "Grandchild" includes children of legally adopted children and children of stepchildren, but does not include stepchildren of children, stepchildren of stepchildren, or stepchildren of adopted children unless actually dependent.

(e) "Parent" includes stepparents and parents by adoption.

(f) "Grandparent" includes parents of parents by adoption, but does not include parents of stepparents, stepparents of parents, or stepparents of stepparents.

(9) "Disability," for purposes of determining total or partial temporary disability income benefits, means a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

(10) "Employee" is synonymous with "workman" and means any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. It does not include any person engaged in any of the excepted employments enumerated in section 72-212, Idaho Code, unless an election as provided in section 72-213, Idaho Code, has been filed. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

(11) "Employer" means any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workmen there employed. If the employer is secured, it means his surety so far as applicable.

(12) "Gender and number." The masculine gender includes the feminine and neuter; "husband" or "wife" includes "spouse"; the singular number includes plural and the plural the singular.

(13) "Income benefits" mean payments provided for or made under the provisions of this law to the injured employee disabled by an

injury or occupational disease, or his dependents in case of death, excluding medical and related benefits.

(14) "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

(15) "Injury" and "accident."

(a) "Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by the workmen's compensation law.

(b) "Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.

(c) "Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.

(16) "Medical and related benefits" mean payments provided for or made for medical, hospital, burial and other services as provided in this law other than income benefits.

(17) "Medical services" mean medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, prostheses, and related services, facilities and supplies.

(18) "Occupational diseases."

(a) "Occupational disease" means a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment.

(b) "Contracted" and "incurred," when referring to an occupational disease, shall be deemed the equivalent of the term "arising out of and in the course of" employment.

(c) "Disablement," except in the case of silicosis, means the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, and "disability" means the state of being so incapacitated.

(d) "Disablement," in the case of silicosis, means the event of first becoming actually incapacitated, because of such disease, from performing any work in any remunerative employment; and "disability" means the state of being so incapacitated.

(e) "Silicosis" mean the characteristic fibrotic condition of the lungs caused by the inhalation of silicon dioxide (SiO₂) dust.

(19) "Outworker" means a person to whom articles or materials are furnished to be treated in any way on premises not under the control or management of the person who furnished them.

(20) "Person" means the state or any political subdivision thereof, or any individual, partnership, firm, association, trust, corporation, including the state insurance fund, or any representative

thereof.

(21) "Physician" means medical physicians and surgeons, ophthalmologists, otorhinolaryngologists, dentists, osteopaths, osteopathic physicians and surgeons, optometrists, podiatrists, chiropractic physicians, and members of any other healing profession licensed or authorized by the statutes of this state to practice such profession within the scope of their practice as defined by the statutes of this state and as authorized by their licenses.

(22) "Secretary" means the secretary of the commission.

(23) "Self-insurer" means an employer who has been authorized under the provisions of this law to carry his own liability to his employees covered by this law.

(24) "State" includes any state, district, commonwealth, zone or territory of the United States or any province of Canada.

(25) "Surety" means any insurer authorized to insure or guarantee payment of workmen's compensation liability of employers in any state; it also includes the state insurance fund, a self-insurer and an inter-insurance exchange.

(26) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone and the territories of the United States.

(27) "Wages" and "wage earning capacity" prior to the injury or disablement from occupational disease means the employee's money payments for services as calculated under section 72-419, Idaho Code, and shall additionally include the reasonable market value of board, rent, housing, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as part of his remuneration, and gratuities received in the course of employment from others than the employer. "Wages" shall not include sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

(28) "Wages" and "wage earning capacity" after the injury or disablement from occupational disease shall be presumed to be the actual earnings after the injury or disablement, which presumption may be overcome by showing that those earnings do not fairly and reasonably represent wage earning capacity; in such a case wage earning capacity shall be determined in the light of all factors and circumstances which may affect the worker's capacity to earn wages.

(29) "Work experience student" means any person enrolled in the public school districts of this state and who, as part of his instruction, is enrolled in a class or program for academic credit and for which the student is employed by, or works for, a private or governmental entity. The student need not receive wages from the private or governmental entity in order to be classified as a work experience student.

(30) "Workmen's compensation law" means and includes the workmen's compensation law of this state and any like or similar law of any state, United States, territory, or province of Canada.

Approved April 1, 1993.

CHAPTER 342
(S.B. No. 1165)

AN ACT

RELATING TO ADMINISTRATIVE RULES AND REGULATIONS; CONTINUING CERTAIN RULES IN FULL FORCE AND EFFECT UNTIL JULY 1, 1994; CONTINUING RULES APPROVED, MODIFIED OR AMENDED BY ADOPTION OF A CONCURRENT RESOLUTION OF THE SECOND REGULAR SESSION OF THE FIFTY-FIRST IDAHO LEGISLATURE IN FULL FORCE AND EFFECT UNTIL JULY 1, 1994; PROVIDING THAT RULES REJECTED BY CONCURRENT RESOLUTION SHALL BE NULL, VOID AND OF NO FORCE AND EFFECT; AUTHORIZING AGENCIES TO AMEND CERTAIN RULES PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT AND DECLARING THE EFFECT OF THIS ACT UPON ADMINISTRATIVE RULES; AND PROVIDING SEVERABILITY.

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

SECTION 1. Except as provided in Sections 2 and 3 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1993, pursuant to the provisions of Subsections (1) and (2) of Sections 67-5219 and 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1994, at which time they shall expire as provided in Sections 67-5219 and 67-5292, Idaho Code.

SECTION 2. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been affirmatively approved, modified or amended by the adoption of a Concurrent Resolution by both the Senate and House of Representatives in the First Regular Session of the Fifty-second Idaho Legislature shall continue in full force and effect in such approved, modified or amended language until July 1, 1994, at which time they shall expire as provided in Sections 67-5219 and 67-5292, Idaho Code.

SECTION 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the First Regular Session of the Fifty-second Idaho Legislature shall be null, void and of no force and effect as provided in Sections 67-5218 and 67-5291, Idaho Code.

SECTION 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending rules which have been continued in full force and effect until July 1, 1994, pursuant to Sections 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code. Nothing contained in this act shall endow any administrative rule continued in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the

rules whose force and effect has been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

SECTION 5. 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.

Approved April 1, 1993.

CHAPTER 343
(S.B. No. 1194, As Amended)

AN ACT

RELATING TO PLATS; AMENDING SECTION 50-1310, IDAHO CODE, TO DELETE REFERENCE TO THE USE OF WHITE OPAQUE FILM FOR COPIES OF PLATS AND TO PROVIDE FOR A PHOTOGRAPHIC PROCESS USING SILVER IMAGE EMULSION TO ENSURE ARCHIVAL PERMANENCE.

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

SECTION 1. That Section 50-1310, Idaho Code, be, and the same is hereby amended to read as follows:

50-1310. FILING AND RECORDING -- RECORD OF PLATS -- FILING OF COPY. All approved plats of subdivisions shall, upon the payment of the required fees, be filed by the county clerk or county recorder, and such filing with the date thereof shall be indorsed thereon. The plat or opaque copy thereof shall then be bound or filed with other plats of like character in a proper book or file designated as "Records of Plats."

At the time of filing such plat, the owner or his representative shall also file with the county clerk or county recorder one (1) copy thereof. The copy may shall be either upon white-opaque-film-with-a minimum-base-thickness-of-0.007-inches-or stable base drafting film with a minimum base thickness of 0.003 inches or other-material-as required-by-the-county-in-which-the-plat-is-recorded. The image thereon shall be by a photographic process using a silver image emulsion. The copy and image thereon shall be waterproof, tear-resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. The original plat shall be stored for safe keeping in a reproducible condition by the county. It shall be proper for the recorder to maintain for public reference a set of counter maps that are prints of the original maps. The original maps shall be produced for comparison upon demand. Full scale copies thereof shall be made available to the public, at the direct cost for reproduction, by the county recorder.

Approved April 1, 1993.

CHAPTER 344

(S.B. No. 1206, As Amended in the House)

AN ACT

RELATING TO THE CRIME OF DOMESTIC ASSAULT AND BATTERY; AMENDING CHAPTER 9, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-918, IDAHO CODE, TO DEFINE A TERM TO PROVIDE FOR THE CRIME OF DOMESTIC ASSAULT, TO PROVIDE FOR THE CRIME OF DOMESTIC BATTERY AND TO PROVIDE PENALTIES.

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

SECTION 1. That Chapter 9, 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 18-918, Idaho Code, and to read as follows:

18-918. DOMESTIC ASSAULT OR BATTERY.

(1) For the purpose of this section, "adult household member" means a person who is eighteen (18) years of age or older and is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or have lived together at any time.

(2) An adult household member who commits an assault, as defined in section 18-901, Idaho Code, against another adult household member is guilty of domestic assault.

(3) An adult household member who commits a battery, as defined in section 18-903, Idaho Code, against another adult household member is guilty of domestic battery.

(4) Upon a first conviction, the crime of domestic assault or battery is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in a county jail not to exceed six (6) months, or both. Upon a second conviction, within ten (10) years of the first conviction, the person so convicted shall be punished by imprisonment in the county jail for a term not to exceed one (1) year or by a fine not exceeding two thousand dollars (\$2,000) or by both fine and imprisonment. Upon a third or subsequent conviction, within fifteen (15) years of the first conviction, the person so convicted shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000) or by both fine and imprisonment.

Approved April 1, 1993.

CHAPTER 345

(S.B. No. 1247, As Amended)

AN ACT

RELATING TO ALLOWABLE GROSS LOADS AND MAXIMUM ALLOWABLE AXLE WEIGHTS OF INDIVIDUAL AXLES WITHIN GROUPS OF AXLES; AMENDING SECTION

49-1001, IDAHO CODE, TO SET CRITERIA WHEN INDIVIDUAL AXLES WITHIN GROUPS OF AXLES ON TRUCKS AND TRUCK COMBINATIONS MAY BE EVALUATED FOR LEGAL LOAD LIMITS SEPARATE FROM THE GROUP OF AXLES, TO MAKE TECHNICAL CORRECTIONS, AND TO CORRECT A CODIFIER'S ERROR.

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

SECTION 1. That Section 49-1001, Idaho Code, be, and the same is hereby amended to read as follows:

49-1001. ALLOWABLE GROSS LOADS. The gross load imposed on the highway by any vehicle or combination of vehicles shall not exceed the limits in this section. The maximum single axle gross weight shall be twenty thousand (20,000) pounds, the maximum single wheel gross weight shall be ten thousand (10,000) pounds and the maximum gross vehicle or combination weight shall be one hundred five thousand five hundred (105,500) pounds, provided that maximum gross vehicle or combination weight on United States federal interstate and defense highways of this state shall not exceed eighty thousand (80,000) pounds, except as permitted under the provisions of section 49-1004, Idaho Code.

(1) The total gross weight imposed on the highway by any group of consecutive axles shall be determined by the following formula:

$$W=500((LN/N-1)+12N+36)$$

Where W is the maximum weight in pounds (to the nearest 500 pounds) carried on any group of two (2) or more consecutive axles. L is the distance in feet between the extremes of any group of two (2) or more consecutive axles, and N is the number of axles under consideration.

The formula is modified as illustrated in the following table:

Distance in feet between the extremes of any group of 2 or more consecutive axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
4	34,000							
5	34,000							
6	34,000							
7	34,000							
8	34,000	42,000						
9	39,000	42,500						
10	40,000	43,500						
11		44,000						
12		45,000	50,000					
13		45,500	50,500					
14		46,500	51,500					
15		47,000	52,000					
16		48,000	52,500	58,000				
17		48,500	53,500	58,500				
18		49,500	54,000	59,000				
19		50,000	54,500	60,000				
20		51,000	55,500	60,500	66,000			
21		51,500	56,000	61,000	66,500			
22		52,500	56,500	61,500	67,000			

WHEN NO ALLOWABLE WEIGHT IS LISTED FOR ANY AXLE SPACING, APPLY THE ALLOWABLE WEIGHT AS LISTED IN THE FIRST COLUMN TO THE LEFT

23	53,000	57,500	62,500	68,000				
24	54,000	58,000	63,000	68,500	74,000			
25	54,500	58,500	64,500	69,000	74,500			
26	55,500	59,500	65,000	69,500	75,000			
27	56,000	60,000	65,000	70,000	75,500			
28	57,000	60,500	65,500	71,500	76,500	82,000		
29	57,500	61,500	66,000	71,500	77,000	82,500		
30	58,500	62,000	66,500	72,000	77,500	83,000		
31	59,000	62,500	67,500	72,500	78,000	83,500		
32	60,000	63,500	68,000	73,000	78,500	84,500	90,000	
33		64,000	68,500	74,000	79,000	85,000	90,500	
34		64,500	69,000	74,500	80,000	85,500	91,000	
35		65,500	70,000	75,000	80,500	86,000	91,500	
36		66,000	70,500	75,500	81,000	86,500	92,000	
37		66,500	71,000	76,000	81,500	87,000	93,000	
38		67,500	72,000	77,000	82,000	87,500	93,500	
39		68,000	72,500	77,500	82,500	88,500	94,000	
40		68,500	73,000	78,000	83,500	89,000	94,500	
41		69,500	73,500	78,500	84,000	89,500	95,000	
42		70,000	74,000	79,000	84,500	90,000	95,500	
43		70,500	75,000	80,000	85,000	90,500	96,000	
44		71,500	75,500	80,500	85,500	91,000	96,500	
45		72,000	76,000	81,000	86,000	91,500	97,500	
46		72,500	76,500	81,500	87,000	92,500	98,000	
47		73,500	77,500	82,000	87,500	93,000	98,500	
48		74,000	78,000	83,000	88,000	93,500	99,000	
49		74,500	78,500	83,500	88,500	94,000	99,500	
50		75,500	79,000	84,000	89,000	94,500	100,000	
51		76,000	80,000	84,500	89,500	95,000	100,500	
52		76,500	80,500	85,000	90,500	95,500	101,000	
53		77,500	81,000	86,000	91,000	96,500	102,000	
54		78,000	81,500	86,500	91,500	97,000	102,500	
55		78,500	82,500	87,000	92,000	97,500	103,000	
56		79,500	83,000	87,500	92,500	98,000	103,500	
57		80,000	83,500	88,000	93,000	98,500	104,000	
58			84,000	89,000	94,000	99,000	104,500	
59			85,000	89,500	94,500	99,500	105,000	
60			85,500	90,000	95,000	100,500	105,500	
61			86,000	90,500	95,500	101,000		
62			87,000	91,000	96,000	101,500		
63			87,500	92,000	96,500	102,000		
64			88,000	92,500	97,500	102,500		
65			88,500	93,000	98,000	103,000		
66			89,500	93,500	98,500	103,500		
67			90,000	94,000	99,000	104,500		
68			90,500	95,000	99,500	105,000		
69			91,000	95,500	100,000	105,500		
70			92,000	96,000	101,000			
71			92,500	96,500	101,500			
72			93,000	97,000	102,000			
73			93,500	98,000	102,500			
74			94,500	98,500	103,000			
75			95,000	99,000	103,500			
76			95,500	99,500	104,500			
77			96,000	100,000	105,000			
78			97,000	101,000	105,500			
79			97,500	101,500				

80	98,000	102,000
81	98,500	102,500
82	99,000	103,000
83	100,000	104,000
84		104,500
85		105,000
86 or more		105,500

(a) The board may limit the application of the weights authorized in this section as to certain highways which it determines have limited structural capacity of pavements, bridges, or other appurtenances. In designating such highways, it may specify a minimum wheelbase for combinations to be operated thereon. It may also designate specific highways or portions on which operation of a combination of vehicles with seven (7), eight (8) or nine (9) axle vehicles will be subject to specified lesser allowable gross weights.

(b) Notwithstanding the figures shown in the above table, two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more.

(2) The weight limitations set forth in the table above shall not apply to any vehicle, or combination of vehicles when a greater allowed weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state, the following table of allowable weights shall apply only to vehicles engaged in the transportation of logs, pulp wood, stull, rough lumber, poles or piling; or to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel and aggregates thereof, in bulk; or to any such vehicle engaged in the transportation of agricultural commodities, including livestock:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Allowed Load in Pounds	
	Vehicles with Three or Four axles	Vehicles with Five or more axles
3 through 12	37,800	37,800
13	56,470	56,470
14	57,940	57,940
15	59,400	59,400
16	60,610	60,610
17	61,820	61,820
18	63,140	63,140
19	64,350	64,350
20	65,450	65,450
21	66,000	66,330
22	66,000	67,250
23	66,000	67,880
24	66,000	68,510
25	66,000	69,150
26	66,000	69,770
27	66,000	70,400

28	66,000	70,950
29	66,000	71,500
30	66,000	72,050
31		72,600
32		73,150
33		73,700
34		74,250
35		74,800
36		75,350
37		75,900
38		76,450
39		77,000
40		77,550
41		78,100
42		78,650
43 and over		79,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles exceeds seventy-nine thousand (79,000) pounds.

(3) In determining the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles under subsections (1) or (2) of this section, the total gross weight of the vehicle or combination of vehicles or the gross weight of any two (2) or more consecutive axles shall be the sum of the axle weights.

(4) In applying the weight limitations imposed in this section, a vehicle or combination of vehicles must comply exclusively with the weight limitations in either subsection (1) or (2) of this section.

(5) In applying the weight limitations imposed in this section, the distance between axles shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

(6) The limitations imposed in this section are in addition and supplemental to all other laws imposing limitations upon the size and weight of vehicles. Further, single axles within groups of axles are subject to the provisions and limitations of this chapter. Single axles within groups of axles may be weighed and evaluated separately, or single axles may be prequalified in accordance with rules or ordinances established by the board or other public road jurisdiction, if any of the following conditions exist regarding the single axle within a group of axles:

(a) A suspension system common to all axles in the group of axles does not exist.

(b) One (1) or more axles in the group of axles is equipped with separate variable load suspension controls to regulate the weight carried by individual axles.

(c) One (1) or more axles in a group of axles is equipped with more or fewer tires than other axles in the group of axles.

(d) All tires in the group of axles are not the same size as determined by the manufacturer's sidewall rating.

(7) Notwithstanding the other provisions of this chapter, no vehicle, motor vehicle, trailer and/or semitrailer, or combination thereof, may be operated on the public highways of the state under loads which would result in the withholding of funds by operation of

controlling federal law as provided in the Federal Aid Highway Act of 1956, as amended.

(8) Except as provided herein, no vehicle or combination of vehicles may proceed past the place of weighing at temporary or permanent ports of entry or checking stations when: the weight of a single axle exceeds the maximum limitations set forth herein by two thousand (2,000) pounds or more; the weight of a combination of axles, or gross vehicle weight exceeds the maximum allowable weight as set forth herein by seven percent (7%) or more. Vehicles or combinations of vehicles which exceed the weight limitations set forth herein shall be required to be brought into compliance with applicable weight limitations contained within this subsection at the place of weighing prior to continuing, except those vehicles or combinations of vehicles which are transporting loads which, in the determination of the board or other proper authorities in charge of or having jurisdiction over a highway, are deemed unsafe or impractical to bring into compliance at the place of weighing. Vehicles or combinations of vehicles transporting loads in this latter category shall obtain a travel authorization to the nearest place of safe unloading, load adjustment or other means of legalization.

(a) Neither the state of Idaho or its employees, nor any authority and its employees in charge of or having jurisdiction over a highway, shall be held liable for personal injury or property damage resulting from the requirements of section 49-1001(8), Idaho Code.

(b) The fee for a travel authorization as set forth above shall be fifty dollars (\$50.00) and shall be on a form prescribed by the board or other proper authorities.

(c) The board or other proper authorities in charge of or having jurisdiction over a highway shall adopt and enforce administrative rules and regulations as may be necessary to carry out the provisions of this section.

Approved April 1, 1993.

CHAPTER 346

(S.B. No. 1253, As Amended in the House)

AN ACT

RELATING TO SCHOLARSHIPS; AMENDING CHAPTER 43, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-4302A, IDAHO CODE, TO PROVIDE SCHOLARSHIPS FOR DEPENDENTS OF POLICE OFFICERS OR FIREFIGHTERS WHO ARE KILLED OR DISABLED IN THE ACT OF POLICE OR FIRE PROTECTION; AMENDING SECTION 33-4307, IDAHO CODE, TO DELETE AN INELIGIBLE EDUCATION PROGRAM; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 43, 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 33-4302A, Idaho Code, and to read as

follows:

33-4302A. SCHOLARSHIPS -- STATE AID. Any dependent of a full-time police officer or firefighter employed in Idaho, which officer is a resident of the state of Idaho and which officer is killed or disabled in the act of police or fire protection on or after July 1, 1990, shall be admitted to attend any public institution of higher education or public vocational-technical school within the state of Idaho without the necessity of paying tuition and fees in an amount not to exceed eight hundred dollars (\$800) and shall be provided with books, equipment and supplies necessary for pursuit of their program of enrollment not to exceed three hundred dollars (\$300), per quarter, semester, intensified semester, or like education period. The dependent shall be required to meet the educational qualifications as such institution of higher education or vocational-technical school as established for other prospective students of this state.

Affected institutions shall, in their preparation of future budgets, include therein costs resulting from such tuition, fees, books, equipment and supplies for reimbursement thereof from appropriation of state funds.

For the purposes of this section, a police officer or firefighter, employed in Idaho, is considered disabled if he or she is unable to perform with reasonable continuity the material duties of any gainful occupation for which he or she is reasonably fitted by education, training and experience.

SECTION 2. That Section 33-4307, Idaho Code, be, and the same is hereby amended to read as follows:

33-4307. ELIGIBILITY -- MAXIMUM AMOUNTS -- CONDITIONS. A grant may be awarded to an eligible student for matriculation at an eligible postsecondary educational institution in the state of Idaho if:

(1) The individual is accepted for enrollment as a full-time undergraduate student, as follows:

(a) In the case of an individual beginning his first year or freshman year of postsecondary education, he has satisfied requirements for admission and has enrolled in an eligible postsecondary institution.

(b) In the case of an individual enrolled in an eligible postsecondary institution following the successful completion of the first term, he continues to meet the requirements of this act and has maintained such high standards of performance as may be required. Provided that high academic standards are maintained in accordance with requirements of this chapter, a student continues to be eligible when transferring from one major program to another.

(c) In the case of an individual transferring from one (1) eligible postsecondary institution in Idaho to another eligible postsecondary institution in Idaho, he continues to meet the requirements of this act, is accepted at the eligible postsecondary institution to which he is transferring, and has maintained such high standards of performance as may be required.

(2) The grant is in amounts as follows:

(a) The grant payment to an individual per educational year for attendance on a full-time basis is not in excess of an amount determined annually by the state board of education or in excess of the total educational costs as certified by an official of the eligible postsecondary institution to be attended by the individual receiving the grant, whichever is less.

(b) The total grant payments over a period of six (6) years to an individual may not exceed four (4) annual grants or the total educational costs for four (4) educational years completed as certified by an official of the eligible postsecondary institution or institutions attended by the individual receiving the grant, whichever is less.

(3) The individual receiving such a grant signs an affidavit stating that the grant will be used for educational costs only.

(4) The grant is awarded on the basis of extraordinary performance in standardized, unweighted competitive examination and high school record.

~~(5) The individual is not pursuing an educational program leading directly to a baccalaureate degree in theology or divinity.~~

~~(6)~~ The individual receiving the grant is not precluded from receiving other financial aids, awards, or scholarships, provided the total of the grant and such other financial aids, awards or scholarships does not exceed the total educational costs for attendance at an eligible postsecondary institution as certified by an official of the eligible postsecondary institution to be attended by the individual receiving the grant.

(7) Grant payments shall correspond to academic terms, semesters, quarters or equivalent time periods at an eligible postsecondary institution; in no instance may the entire amount of a grant for an educational year, as defined in section 33-4306(9), Idaho Code, be paid to or on behalf of such student in advance.

(8) The individual has complied with such rules and regulations as may be necessary for the administration of this act.

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

Approved April 1, 1993.

CHAPTER 347
(S.B. No. 1255)

AN ACT

RELATING TO LIQUOR, BEER AND WINE BY THE DRINK LICENSES; AMENDING SECTION 23-933, IDAHO CODE, TO REVISE PROCEDURES FOR SUSPENSION, REVOCATION OR REFUSAL TO RENEW LICENSES; AMENDING SECTION 23-1037, IDAHO CODE, TO REVISE PROCEDURES FOR SUSPENSION, REVOCATION OR REFUSAL TO RENEW LICENSES; AND AMENDING SECTION 23-1331, IDAHO CODE, TO REVISE PROCEDURES FOR SUSPENSION, REVOCATION OR REFUSAL TO RENEW LICENSES.

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

SECTION 1. That Section 23-933, Idaho Code, be, and the same is hereby amended to read as follows:

23-933. SUSPENSION, REVOCATION, AND REFUSAL TO RENEW LICENSES.

(1) The director may suspend, revoke, or refuse to renew a license issued pursuant to the terms of this chapter for any violation of or failure to comply with the provisions of this chapter or rules and regulations promulgated by the director or the state tax commission pursuant to the terms and conditions of this chapter. Procedures for the suspension, revocation, or refusal to grant or renew licenses issued under this chapter shall be in accordance with the provisions of chapter 52, title 67, Idaho Code.

(2) When the director determines to suspend such license, the affected licensee may petition the director prior to the effective date of the suspension requesting that a monetary payment be allowed in lieu of the license suspension. If the director determines such payment to be consistent with the purpose of the laws of the state of Idaho and is in the public interest, he shall establish a monetary payment in an amount not to exceed five thousand dollars (\$5,000). The licensee may reject the payment amount determined by the director, and instead be subject to the suspension provisions of subsection (1) of this section. Upon payment of the amount established, the director shall cancel the suspension period. The director shall cause any payment to be paid to the treasurer of the state of Idaho for credit to the state's general account in the state operating fund.

~~(3) Whenever any licensee who has exercised the privilege granted under subsection (2) of this section and has paid a monetary penalty in lieu of suspension shall be guilty of a subsequent violation which brings him under the purview of this section, such licensee shall be ineligible to again exercise the privilege of a monetary penalty, and the director shall proceed under the provisions of subsection (1) hereof.~~

(4) The suspension of a license for the sale of beer or wine shall automatically result in the suspension of any license for the sale of liquor held by the same licensee and issued for the same premises or location. Such additional suspension shall be equal in length to and run concurrently with the period of the original suspension.

(5) When a proceeding to revoke or suspend a license has been or is about to be instituted, during the time a renewal application of such license is pending before the director, the director shall renew the license notwithstanding the pending proceedings, but such renewed license may be revoked or suspended without hearing if and when the previous license is, for any reason, revoked or suspended.

SECTION 2. That Section 23-1037, Idaho Code, be and the same is hereby amended to read as follows:

23-1037. DETERMINATION TO REVOKE, SUSPEND OR REFUSE RENEWAL OF LICENSE BY DIRECTOR -- MONETARY PENALTY. (1) In the event of a conviction of any brewer manufacturing beer in this state or of any wholesaler or retailer licensed under the provisions of this chapter, of

any law of the state of Idaho, or of the United States, regulating, governing or prohibiting the sale, manufacture, transportation or possession of alcoholic beverages or intoxicating liquor, or if the director shall determine that any such licensee has violated any of the provisions of this chapter or any regulation of the director promulgated under the authority of this chapter, the director may, in his discretion, and in addition to any other penalty imposed, determine to revoke the license of any such licensee, to suspend the same for a period not in excess of six (6) months, or to refuse to grant a renewal of such license after the date of its expiration.

(2) When the director determines to suspend such license, the affected licensee may petition the director prior to the effective date of the suspension requesting that a monetary payment be allowed in lieu of the license suspension. If the director determines such payment to be consistent with the purpose of the laws of the state of Idaho and is in the public interest, he shall establish a monetary payment in an amount not to exceed five thousand dollars (\$5,000). The licensee may reject the payment amount determined by the director, and instead be subject to the suspension provisions of subsection (1) of this section. Upon payment of the amount established, the director shall cancel the suspension period. The director shall cause any payment to be paid to the treasurer of the state of Idaho for credit to the state's general account in the state operating fund.

~~(3) Whenever any licensee who has exercised the privilege granted under subsection (2) of this section and has paid a monetary penalty in lieu of suspension shall be guilty of a subsequent violation which brings him under the purview of this section, such licensee shall be ineligible to again exercise the privilege of a monetary penalty, and the director shall proceed under the provisions of subsection (1) of this section.~~

(4) The suspension of a license for the sale of liquor or wine shall automatically result in the suspension of any license for the sale of beer held by the same licensee and issued for the same premises or location. Such additional suspension shall be equal in length to and run concurrently with the period of the suspension.

(5) When a proceeding to revoke or suspend a license has been or is about to be instituted, during the time a renewal application of such license is pending before the director, the director shall renew the license notwithstanding the pending proceedings, but such renewed license may be revoked or suspended without hearing if and when the previous license is, for any reason, revoked or suspended.

SECTION 3. That Section 23-1331, Idaho Code, be and the same is hereby amended to read as follows:

23-1331. SUSPENSION, REVOCATION, AND REFUSAL TO RENEW LICENSES AND PERMITS -- MONETARY PENALTY. (1) The director may suspend, revoke, or refuse to renew a retail wine license, wine by the drink license, wine distributor's license, wine importer's license, winery license or vintner's license issued pursuant to the terms of this chapter for any violation of or failure to comply with the provisions of this chapter or rules and regulations promulgated by the director or the state tax commission pursuant to the terms and conditions of this chapter. Pro-

cedures for the suspension, revocation or refusal to grant or renew licenses issued under this chapter shall be in accordance with the provisions of chapter 52, title 67, Idaho Code.

(2) When the director determines to suspend such license, the affected licensee may petition the director prior to the effective date of the suspension requesting that a monetary payment be allowed in lieu of the license suspension. If the director determines such payment to be consistent with the purpose of the laws of the state of Idaho and is in the public interest, he shall establish a monetary payment in an amount not to exceed five thousand dollars (\$5,000). The licensee may reject the payment amount determined by the director, and instead be subject to the suspension provisions of subsection (1) of this section. Upon payment of the amount established, the director shall cancel the suspension period. The director shall cause any payment to be paid to the treasurer of the state of Idaho for credit to the state's general account in the state operating fund.

~~(3) Whenever any licensee who has exercised the privilege granted under subsection (2) of this section and has paid a monetary penalty in lieu of suspension shall be guilty of a subsequent violation which brings him under the purview of this section, such licensee shall be ineligible to again exercise the privilege of a monetary penalty, and the director shall proceed under the provisions of subsection (1) hereof.~~

(4) The suspension of a license for the sale of liquor or beer shall automatically result in the suspension of any license for the sale of wine held by the same licensee and issued for the same premises or location. Such additional suspension shall be equal in length to and run concurrently with the period of the original suspension.

(54) When a proceeding to revoke or suspend a license has been or is about to be instituted, during the time a renewal application of such license is pending before the director, the director shall renew the license notwithstanding the pending proceedings, but such renewed license may be revoked or suspended without hearing if and when the previous license is, for any reason, revoked or suspended.

Approved April 1, 1993.

CHAPTER 348
(S.B. No. 1262)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1328, IDAHO CODE, TO PROVIDE THAT THE BOARD MAY ASSESS ACTUAL COSTS INCLUDING STAFF SALARIES AND BENEFITS AND MISCELLANEOUS COSTS SUCH AS COMPUTER TIME AS AN ADMINISTRATIVE PENALTY AGAINST AN EMPLOYER THAT FAILS TO COMPLY WITH THE BOARD'S REPORTING REQUIREMENTS AFTER THE SYSTEM HAS ATTEMPTED TO OBTAIN COMPLIANCE FOR A THREE MONTH PERIOD.

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

SECTION 1. That Chapter 13, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 59-1328, Idaho Code, and to read as follows:

59-1328. ADMINISTRATIVE PENALTIES FOR FAILURE TO COMPLY WITH REPORTING REQUIREMENTS. The board may assess actual costs including staff salaries and benefits and miscellaneous costs such as computer programming and processing, as an administrative penalty against any employer which refuses or fails to comply with the board's reporting requirements after the system staff has attempted to obtain compliance for a period of three (3) months. After three (3) months, the actual administrative costs shall be monitored and the board may assess them directly against the noncomplying employer unit.

Approved April 1, 1993.

CHAPTER 349
(S.B. No. 1263)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING CHAPTER 15, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-1526, IDAHO CODE, TO PROVIDE THAT IT IS A MISDEMEANOR FOR ANY PERSON TO MAKE A FALSE CLAIM FOR ALLOWANCE OF BENEFITS OR PAYMENT OF MONEY; AND AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1327, IDAHO CODE, TO PROVIDE THAT IT IS A MISDEMEANOR FOR ANY PERSON TO MAKE A FALSE CLAIM FOR ALLOWANCE OF BENEFITS OR PAYMENT OF MONEY.

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

SECTION 1. That Chapter 15, 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 50-1526, Idaho Code, and to read as follows:

50-1526. MAKING A FALSE CLAIM -- MISDEMEANOR. Any person making a false claim for allowance of benefits or payment of money under the provisions of this chapter, knowing the same to be false, shall be guilty of a misdemeanor, and shall be punished pursuant to the provisions of section 18-113, Idaho Code.

SECTION 2. That Chapter 13, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 59-1327, Idaho Code, and to read as follows:

59-1327. MAKING A FALSE CLAIM -- MISDEMEANOR. Any person making a false claim for allowance of benefits or payment of money under the

provisions of this chapter, knowing the same to be false, shall be guilty of a misdemeanor and shall be punished pursuant to the provisions of section 18-113, Idaho Code.

Approved April 1, 1993.

CHAPTER 350
(S.B. No. 1264)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 50-1502, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 59-1302, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 59-1305, IDAHO CODE, TO PROVIDE THAT THE EXECUTIVE DIRECTOR IS THE SECRETARY TO THE RETIREMENT BOARD AND IS AUTHORIZED TO DESIGNATE A PERSON TO ACT IN THE DIRECTOR'S ABSENCE IN EITHER CAPACITY; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1329, IDAHO CODE, TO PROVIDE THAT THE BOARD IS AUTHORIZED TO PROMULGATE RULES PROVIDING FOR IMPOSITION OF INTEREST ON DELINQUENT EMPLOYEE CONTRIBUTIONS; AMENDING SECTION 59-1343, IDAHO CODE, TO PROVIDE THAT MONTHLY PAYMENTS OF LESS THAN TWENTY DOLLARS SHALL BE COMMUTED INTO AN ACTUARIALLY EQUIVALENT SINGLE SUM; AMENDING SECTION 59-1346, IDAHO CODE, TO CORRECT A SUBSECTION REFERENCE; AMENDING SECTION 59-1359, IDAHO CODE, TO REDUCE TO THREE YEARS FROM TEN, THE PERIOD AFTER WHICH NONVESTED MEMBER CONTRIBUTIONS MUST BE RETURNED TO INACTIVE MEMBERS; AMENDING SECTION 59-1360, IDAHO CODE, TO PROVIDE THAT A PERSON CEASES TO BE A MEMBER WHEN THE PERSON'S ACCUMULATED CONTRIBUTIONS ARE PAID TO THEM, AND TO FURTHER PROVIDE THAT UPON AGAIN BECOMING AN EMPLOYEE THE PERSON MAY REINSTATE PRIOR SERVICE BY REPAYING ALL PRIOR REFUNDED CONTRIBUTIONS AND INTEREST; AMENDING SECTION 72-1403, IDAHO CODE, TO CHANGE THE TERM "WORKMEN'S" TO "WORKERS" AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTIONS 72-1423, 72-1425 AND 72-1447, IDAHO CODE, TO CHANGE THE TERM "WORKMEN'S" TO "WORKERS".

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

SECTION 1. That Section 50-1502, Idaho Code, be, and the same is hereby amended to read as follows:

50-1502. DEFINITIONS. The following are definitions of terms used in sections 50-1501 through 50-1524, Idaho Code:

(a) "Paid policeman" means any individual who is on the payroll of any city in the state of Idaho and who devotes his or her principal time of employment to the care, operation or maintenance of a regularly constituted police department of such city;

(b) "Industrial accident board" means the board as authorized and created under the provisions of chapter 5, title 72, Idaho Code, or as the same may be hereafter amended;

(c) "Workmen's Workers' Compensation Law" means the Workmen's Workers' Compensation Law as authorized and created under title 72, Idaho Code, or as the same may hereafter be amended;

(d) "Twenty-five years active service"--an individual whose principal means of livelihood for the period of twenty-five (25) years has been through employment by a city in a regularly constituted police department, and has actually been carried on the payroll for twenty-five (25) years;

(e) "Five years continuous service, ten years continuous service, fifteen years continuous service"--an individual who has been employed by a regularly constituted police department for a period of five (5) years, ten (10) years, or fifteen (15) years continuously, without having engaged in any other gainful occupation;

(f) "Leave of absence" means a period of time which a paid policeman shall have been out of the service of said police department of the city of which he was a member, and who, for that like period of time was off the payrolls thereof;

(g) "Mandatory retirement at age sixty-five"--retirement to become mandatory when age of sixty-five (65) years has been reached;

(h) The meaning of the term "incapacitated in a degree which prohibits efficient service" means that degree of mental or physical disability which prohibits the efficient performance of the duties of a paid policeman during any occasion when his said services as a policeman shall be necessary;

(i) "Twenty-five years of accumulated service"--an individual who has been been employed by a regularly constituted police department without having engaged in any other gainful occupation and has been had twenty-five (25) years of accumulated service with the same police department and has been carried on the payrolls of such department for that period of accumulated time.

SECTION 2. That Section 59-1302, Idaho Code, be, and the same is hereby amended to read as follows:

59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" mean the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" mean such tables as shall have been

adopted by the board in accordance with recommendations of the actuary.

(5A) "Average monthly salary" means the ~~monthly average of a member's average salary during any the base period in which the member's salary is greater than or equal to the member's salary in any other base period~~ as calculated pursuant to regulations adopted by the retirement board.

(5B) (a) ~~"Base period" means any the period of sixty (60) consecutive months during which such member makes a like number of contributions pursuant to sections 59-1331 through 59-1334, Idaho Code. Effective October 1, 1992, the base period shall be fifty-four~~ (54) consecutive calendar months during which the member earned:

(i) The highest average salary; and

(ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:

A. Military service;

B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and

C. Workers' compensation income benefits.

(b) ~~Effective October 1, 1993, the base period~~ consecutive calendar months shall be forty-eight (48) months. Effective October 1, 1994, the base period consecutive calendar months shall be forty-two (42) months. Effective October 1, 1995, the base period consecutive calendar months shall be thirty-six (36) months.

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) ~~"Disabled" shall have the meaning given in this subsection. A member shall be considered to be disabled if the board shall find;~~

~~on-the-basis-of-medical-evidence means:~~

(a) ~~t~~That he the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country, or from an intentionally self-inflicted injury; and

(b) ~~t~~That he the member will remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and nonmedical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14) (A) "Employee" means:

(a) ~~a~~Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer; or

(b) ~~e~~Elected officials or appointed officials of an employer who receive a salary; or

(c) A person who is separated from service with less than five (5) months of employment and who is reemployed or reinstated by the same employer within thirty (30) days.

(B) "Employee" does not include:

(a) ~~p~~Persons rendering service to an employer in the capacity of

an independent business, trade or profession; or

(b) wWorkers whose employment with any employer does not total five (5) consecutive months; or

(c) pPersons provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such persons; or

(d) iInmates of a state institution or persons enrolled full time in a state institution principally for purposes of training, whether or not receiving compensation for services performed for the institution; or

(e) pPersons making contributions to the United States civil service commission under the United States Civil Service System Retirement Act except that those persons who receive separate remuneration for work currently performed for an employer and the United States government may elect to be members of the retirement system in accordance with rules of the board.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but for whom a separation benefit has not become payable.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, and military service which occurs after the commencement of such contributions.

(23) "Military service" means active duty service in the armed forces of the United States including the national guard and reserves,

under the provisions of title 10, title 32, and title 37, United States code. Provided, however, for the purposes of this chapter, military service SHALL NOT include:

- (a) any period ended by dishonorable discharge or during which termination of such service is available but not accepted;
 - (b) any period which commences more than ninety (90) days after the person ceases to be an employee or ends more than ninety (90) days before the person again becomes an employee unless such ninety (90) day requirements are waived by the board due to circumstances beyond the employee's control; or
 - (c) any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government.
- (24) (a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.
- (b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.
- (25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.
- (26) "Regular interest" means interest at the rate set from time to time by the board.
- (27) "Retired member" means a former active member receiving a retirement allowance.
- (28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.
- (29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.
- (30) "Retirement system" or "system" means the public employee retirement system of Idaho.
- (31) "Salary" means the total salary or wages paid to a person who meets the definition of employee by an employer for personal services currently performed, including the cash value of all remuneration in any medium other than cash in the amount reported by the employer for income tax purposes and also including the amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.
- (32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.
- (33) "Service" means personal-service-rendered-to-an-employer-for-being shown on an employer's payroll as an employee receiving a salary. Service of fifteen (15) days or more during any calendar month

shall be credited as one (1) month of service. Service of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested retirement allowance" means the periodic payment becoming payable upon an inactive member's becoming eligible for vested retirement.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

SECTION 3. 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 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 fees, and against all liability losses and damages of any nature whatsoever that retirement board members, retirement system staff or retirement system mortgage 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 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 actuarial, legal and medical advisors 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 (3) 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 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.

(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.

SECTION 4. That Chapter 13, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 59-1329, Idaho Code, and to read as follows:

59-1329. BOARD REGULATIONS. The board is authorized to promulgate rules providing for imposition of interest on delinquent employee contributions.

SECTION 5. That Section 59-1343, Idaho Code, be, and the same is hereby amended to read as follows:

59-1343. CONVERSION AND COMMUTATION OF CERTAIN PAYMENTS. Payments of less than ~~ten~~ twenty dollars (\$~~20.00~~) per month shall be commuted into an actuarially equivalent single sum, ~~unless the member elects a monthly allowance at time of retirement.~~

SECTION 6. That Section 59-1346, Idaho Code, be, and the same is hereby amended to read as follows:

59-1346. COMPUTATION OF EARLY RETIREMENT ALLOWANCES. (1) The annual amount of initial early retirement allowance of a member shall be a percentage of the member's accrued retirement allowance. Such percentage shall be one hundred percent (100%) if the sum of the number of years and months of credited service and the age in years and months is equal to or greater than the sum indicated below. Otherwise, such percentage shall be one hundred percent (100%) reduced by one-

fourth of one percent (.25%) for each month up to sixty (60) months that the member's retirement precedes the date the member would be eligible to receive full accrued benefit without additional credited service, and further reduced by two-thirds of one percent (.6667%) for each additional month. Effective October 1, 1992, the further reduction for each additional month shall equal six thousand and forty-two ten-thousandths of one percent (.6042%) of the member's average monthly salary; effective October 1, 1993, the further reduction for each additional month shall equal five thousand four hundred and seventeen ten-thousandths of one percent (.5417%) of the member's average monthly salary; effective October 1, 1994, the further reduction for each additional month shall equal four thousand seven hundred and ninety-two ten-thousandths of one percent (.4792%) of the member's average monthly salary; and effective October 1, 1995, the further reduction for each additional month shall equal four thousand one hundred and sixty-seven ten-thousandths of one percent (.4167%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

If a member's service retirement ratio as defined by section 59-1341, Idaho Code, is:	Then the sum of the member's credited service and age must be equal to or greater than:
0.000 to 0.050	90
0.051 to 0.150	89
0.151 to 0.250	88
0.251 to 0.350	87
0.351 to 0.450	86
0.451 to 0.550	85
0.551 to 0.650	84
0.651 to 0.750	83
0.751 to 0.850	82
0.851 to 0.950	81
0.951 to 1.000	80.

(2) If the majority of a member's credited service is as an elected official or as an appointed official, except as a member of the Idaho legislature, and that official was normally in the administrative offices of the employer less than twenty (20) hours per week during the term of office, or was normally not required to be present at any particular work station for the employer twenty (20) hours per week or more during the term of office, that member's accrued retirement allowance for service credited only during that period shall be computed from an average monthly salary for salary received during that period of such employment only. The initial service retirement allowance of members of the Idaho legislature will be computed under ~~subsection (1) and/or (2)~~ the provisions of this section, on the basis of their total months of credited service.

(3) If that member has credited service from any other employment, the accrued retirement allowance for the credited service from such other employment shall be computed from an average monthly salary for salary received during the period of such other employment.

SECTION 7. That Section 59-1359, Idaho Code, be, and the same is hereby amended to read as follows:

59-1359. SEPARATION BENEFITS. (a) The separation benefit, if any, shall become payable upon the written request of an inactive member who has been separated from employment with an employer and who is not reemployed or reinstated by that same employer within thirty (30) days or;.

(b) A separation benefit shall automatically be payable three (3) years after the person becomes an inactive member if the inactive member has less than five (5) years of membership service and has not previously so requested and is not a person who at the time of his separation from service held an office to which he had been elected by popular vote or having a term fixed by the Constitution, statute or charter or was appointed to such office by an elected official or was the head or director of a department, division, agency or statutory section or bureau of the state; shall be payable automatically ten (10) years after the person becomes an inactive member is not eligible for a vested retirement allowance.

SECTION 8. That Section 59-1360, Idaho Code, be, and the same is hereby amended to read as follows:

59-1360. CESSATION OF MEMBERSHIP -- REINSTATEMENT. A person shall cease to be a member when his the person's accumulated contributions become payable are paid to him the person. After again becoming an employee such person the member may reinstate his previous credited service by repaying to the retirement fund the full amount of his all prior accumulated contributions provided such repayment includes payment of interest as determined by the board.

SECTION 9. That Section 72-1403, Idaho Code, be, and the same is hereby amended to read as follows:

72-1403. DEFINITIONS. The following are definitions of terms used in this chapter:

(A) The words "paid fireman" are synonymous with "paid firefighter," and mean any individual, male or female, excluding office secretaries employed after July 1, 1967, who is on the payroll of any city or fire district in the state of Idaho prior to October 1, 1980, and who devotes his or her principal time of employment to the care, operation, maintenance or the requirements of a regularly constituted fire department of such city or fire district in the state of Idaho.

(B) "Industrial commission" means the commission as authorized and created under the provisions of chapter 5, of title 72, Idaho Code.

(C) "Workmen's Workers' compensation law" means the workmen's workers' compensation law as authorized and created under title 72, Idaho Code.

(D) "Twenty-five (25) years active service": an individual whose principal means of livelihood for the period of twenty-five (25) years has been through employment by a city or fire district in the state of

Idaho in a regularly constituted fire department of a city or fire district, and has actually been carried on the payroll of an Idaho fire department for twenty-five (25) years or more.

(E) "Five (5) years continuous service": an individual who has been employed by a regularly constituted fire department in a city or fire district in the state of Idaho for a period of five (5) years continuously, without having engaged in any other gainful occupation as his principal gainful occupation and has had "five (5) years continuous service" with a paid fire department of a city or fire district in the state of Idaho.

(F) "Public employee retirement account" as used herein, means the public employee retirement account created by chapter 13, title 59, Idaho Code, and the "director" thereof, as used herein, means the executive director or manager of the public employee retirement system.

(G) The meaning of the term "incapacitated in a degree which prohibits efficient service" means that degree of mental or physical disability which prohibits the efficient performance of the duties of a paid firefighter.

(H) "Years active service": service rendered by an individual whose principal means of livelihood for the prescribed period of years has been through employment by a city or fire district in the state of Idaho, in a regularly constituted fire department of a city or fire district, and has actually been carried on the payroll of an Idaho fire department for the prescribed period of years. All years of active service as herein defined before the establishment of the firefighters' retirement fund may count only toward the prescribed period of years for retirement as set out in sections 72-1446, 72-1464, 72-1465, and 72-1435, Idaho Code. Before any year's service since February 28, 1945, may count toward the prescribed period of years, contributions must have been deducted from his or her wage or salary and remitted as set out in sections 72-1431 and 72-1432, Idaho Code, for that year.

(I) "Accumulated contributions" mean the sum of all amounts contributed by a firefighter to the retirement fund, pursuant to the provisions of chapter 14, title 72, Idaho Code, together with regular interest credited thereon.

(J) "Regular interest" means interest at the rate set from time to time by the board pursuant to section 59-1302(26), Idaho Code.

SECTION 10. That Section 72-1423, Idaho Code, be, and the same is hereby amended to read as follows:

72-1423. FILING OF CLAIMS -- PROCEDURE -- JURISDICTION OF INDUSTRIAL COMMISSION. All claims against the public employee retirement account shall be filed with the public employee retirement system board. Any appeal from a decision of the board shall be filed with the industrial commission in as nearly as practicable the same manner that claims under the Workmen's Workers' Compensation Law of the state of Idaho are filed, and the said industrial commission is hereby given jurisdiction to entertain and pass upon said claims, allow or deny claims and make awards, and the provisions of the Workmen's Workers' Compensation Law of the state of Idaho relative to process, hearings

and appeals are hereby made applicable to the provisions of this chapter, and said industrial commission is hereby given power and authority to make rules and regulations governing procedure in relation to said claims appealed from the public employee retirement system board.

SECTION 11. That Section 72-1425, Idaho Code, be, and the same is hereby amended to read as follows:

72-1425. WORKMEN'S WORKERS' COMPENSATION LAW NOT REPEALED. No provision contained in this chapter shall be deemed to operate as either a repeal or modification of any provision of the Workmen's Workers' Compensation Law of this state, except as hereinafter specifically set forth.

SECTION 12. That Section 72-1447, Idaho Code, be, and the same is hereby amended to read as follows:

72-1447. PAYMENT OF PENSIONS -- AMOUNT TO BE PAID -- PARTIES ENTITLED THERETO. Any firefighter, spouse, child or children of a firefighter entitled to compensation under the Workmen's Workers' Compensation Law, shall draw benefits under this chapter only to the extent that the benefits under this chapter exceed those to which he or she shall be entitled under the Workmen's Workers' Compensation Law of Idaho. In no case, however, will a firefighter's regular retirement benefit be equal to more than one hundred per cent (100%) of the firefighter's average compensation for the three (3) consecutive years of employment which produce the greatest aggregate compensation. If the benefit is calculated to exceed one hundred per cent (100%) of the firefighter's average compensation, the firefighter shall be eligible for and may choose either:

(1) An annual service retirement allowance equal to the firefighter's average annual compensation for the three (3) consecutive years of employment which produced the greatest aggregate compensation; or

(2) A separation benefit.

Approved April 1, 1993.

CHAPTER 351
(S.B. No. 1265)

AN ACT

RELATING TO PROPERTY REIMBURSEMENT FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED UNDER THE STATE'S MEDICAID PLAN; AMENDING SECTION 56-108, IDAHO CODE, TO REMOVE INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED FROM THE CURRENT STATUTORY PAYMENT METHODOLOGY FOR PROPERTY REIMBURSEMENT; AMENDING SECTION 56-113, IDAHO CODE, TO PROVIDE THAT PROPERTY COSTS BE REIMBURSED IN ACCORDANCE WITH MEDICARE REASONABLE COST PRINCIPLES AND TO PROVIDE FOR THE POSSIBILITY OF NEGOTIATED PROPERTY RATES FOR CURRENT PROVIDERS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 56-108, Idaho Code, be, and the same is hereby amended to read as follows:

56-108. PROPERTY REIMBURSEMENT -- FACILITIES WILL BE PAID A PROPERTY RENTAL RATE, PROPERTY TAXES AND REASONABLE PROPERTY INSURANCE. The provisions of this section shall not apply to hospital-based facilities which are subject to the provisions of section 56-120, Idaho Code, or to intermediate care facilities for the mentally retarded which are subject to the provisions of section 56-113, Idaho Code. The provisions of this section are applicable to all other facilities. The property rental rate includes compensation for major movable equipment but not for minor movable equipment. ~~However, the property rental rate for intermediate care facilities for the mentally retarded shall not include compensation for major movable equipment.~~ The property rental rate is paid in lieu of payment for amortization, depreciation, and interest for financing the cost of land and depreciable assets. ~~However, reimbursement for the cost of major movable equipment for intermediate care facilities for the mentally retarded shall be excluded from the property rental rate and shall be reimbursed according to other provisions of this chapter and to provisions of health insurance manual 15 as promulgated by the U.S. department of health and human services.~~ Prior to final audit, the director shall determine an interim rate that approximates the property rental rate. The property rental rate shall be determined as follows:

(1) Except as determined pursuant to this section and as modified by section 56-109, Idaho Code:

Property rental rate = ("Property base") x ("Change in building costs") x (40 - "Age of facility")

40

where:

(a) "Property base" = \$9.24 for all facilities, ~~except intermediate care facilities for the mentally retarded. Beginning the effective date of this subsection, the property base rate for intermediate care facilities for the mentally retarded shall be \$8.94. (Property base = \$5.81 for intermediate care facilities for the mentally retarded not designed for the care of nonambulatory patients as determined by the director.)~~

(b) "Change in building costs" = 1.0 from April 1, 1985, through December 31, 1985. ~~However, for intermediate care facilities for the mentally retarded, "change in building costs" = 1.0 from the effective date of this subsection through December 31, 1986.~~ Thereafter "Change in building costs" will be adjusted for each calendar year to reflect the reported annual change in the building cost index for a class D building in the western region, as of September of the prior year, published by the Marshall Swift Valuation Service. However, for free-standing skilled care facilities "change in building costs" = 1.145 from July 1, 1991, through December 31, 1991. Thereafter, change in building costs for free-standing skilled care facilities will be adjusted each calendar year to reflect the reported annual change in the building cost index for a class D building in the western region, as of Septem-

ber of the prior year as published by the Marshall Swift Valuation Service or the consumer price index for renter's costs available in September of the prior year, whichever is greater.

(c) "Age of facility" = the director shall determine the effective age, in years, of the facility by subtracting the year in which the facility, or portion thereof, was constructed from the year in which the rate is to be applied. No facility or portion thereof shall be assigned an age of more than thirty (30) years. However, beginning July 1, 1991, for free-standing skilled care facilities, "age of facility" will be a revised age which is the lesser of the age established under other provisions of this section or the age which most closely yields the rate allowable to existing facilities as of June 30, 1991, under subsection (1) of this section. This revised age shall not increase over time.

(i) If adequate information is not submitted by the facility to document that the facility, or portion thereof, is newer than thirty (30) years, the director shall set the effective age at thirty (30) years. Adequate documentation shall include, but not be limited to, such documents as copies of building permits, tax assessors' records, receipts, invoices, building contracts, and original notes of indebtedness. The director shall compute an appropriate age for facilities when documentation is provided to reflect expenditures for building expansion or remodeling prior to the effective date of this section. The computation shall decrease the age of a facility by an amount consistent with the expenditure and the square footage impacted and shall be calculated as follows:

1. Determine, according to indexes published by the Marshall Swift Valuation Service, the construction cost per square foot of an average class D convalescent hospital in the western region for the year in which the expansion or renovation was completed.
2. Multiply the total square footage of the building following the expansion or renovation by the cost per square foot to establish the estimated replacement cost of the building at that time.
3. The age of the building at the time of construction shall be multiplied by the quotient of total actual renovation or remodeling costs divided by replacement cost. If this number is equal to or greater than 2.0, the age of the building in years will be reduced by this number, rounded to the nearest whole number. In no case will the age be less than zero.

(ii) The director shall adjust the effective age of a facility when major repairs, replacement, remodeling or renovation initiated after April 1, 1985, would result in a change in age of at least one (1) year. Such changes shall not increase the allowable property rental rate by more than three-fourths ($3/4$) of the difference between the adjusted property base determined in subsections (1)(a) and (1)(b) of this section and the rental rate paid to the facility at the time of completion of such changes but before the change component has been added to said rate. The adjusted effective age of the

facility will be used in future age determinations, unless modified by provisions of this chapter.

(iii) The director shall allow for future adjustments to the effective age of a facility or its rate to reimburse an appropriate amount for property expenditures resulting from new requirements imposed by state or federal agencies. The director shall, within twelve (12) months of verification of expenditure, reimburse the medicaid share of the entire cost of such new requirements as a one-time payment if the incurred cost for a facility is less than one hundred dollars (\$100) per bed.

(d) At no time shall the property rental rate, established under subsection (1) of this section, be less than that allowed in subsection (1)(c)(ii), with the rate in effect December 31, 1988 being the base. However, subsequent to the application of this paragraph, before any rate increase may be paid, it must first be offset by any rate decrease that would have been realized if the provisions of this paragraph had not been in effect.

(2) A "grandfathered rate" for existing facilities will be determined by dividing the audited allowable annual property costs, exclusive of taxes and insurance, for assets on hand as of January 1, 1985 by the total patient days in the period July 1, 1984 through June 30, 1985. ~~However, a "grandfathered rate" for existing intermediate care facilities for the mentally retarded will be determined by dividing the audited allowable annual property costs, exclusive of taxes, insurance and costs of major movable equipment, for assets on hand as of January 1, 1986 by the total patient days in the period July 1, 1985, through June 30, 1986.~~ The property rental rate will be the greater of the amount determined pursuant to subsection (1) of this section, or the grandfathered rate. The director shall adjust the grandfathered rate of a facility to compensate the owner for the cost of major repairs, replacement, expansion, remodeling and renovation initiated prior to April 1, 1985, and completed after January 1, 1985, but completed no later than December 31, 1985. The director shall adjust the grandfathered rate of a facility to compensate the owner for the cost of major repairs, replacement, expansion, remodeling and renovation initiated prior to April 1, 1985, and completed after January 1, 1985, but completed no later than December 31, 1985. For facilities receiving a grandfathered rate making major repairs, replacement, expansion, remodeling or renovation, initiated after January 1, 1986, the director shall compare the grandfathered rate of the facility to the actual depreciation, amortization, and interest for the current audit period plus the per diem of the recognized cost of major repairs, replacement, expansion, remodeling or renovation, amortized over the American hospital association guideline component useful life. The greater of the two (2) numbers will be allowed as the grandfathered rate. Such changes shall not increase the allowable grandfathered rate by more than three-fourths (3/4) of the difference between the current grandfathered rate and the adjusted property base determined in subsections (1)(a) and (1)(b) of this section.

(3) The property rental rate per day of care paid to facilities with leases signed prior to March 30, 1981, will be the sum of the annualized allowed lease costs and the other annualized property costs

for assets on hand as of January 1, 1985, exclusive of taxes and insurance when paid separately, divided by total patient days in the period June 30, 1983 through July 1, 1984. Effective July 1, 1989, the director shall adjust the property rental rate of a leased skilled facility under this paragraph to compensate for the cost of major repairs, replacement, expansion, remodeling and renovation initiated after January 1, 1985, by adding the per diem of the recognized cost of such expenditures amortized over the American hospital association guideline component useful life. Such addition shall not increase the allowable property rental rate by more than three-fourths (3/4) of the difference between the current property rental rate and the adjusted property base as determined in paragraphs (a) and (b) of subsection (1) of this section. ~~However, the property rental rate per day of care paid to intermediate care facilities for the mentally retarded with leases signed prior to March 30, 1981, will be the sum of the annualized allowed lease costs and the other annualized property costs for assets on hand as of January 1, 1986, exclusive of costs related to major movable equipment, taxes, and insurance when paid separately, divided by total patient days in the period July 1, 1985, through June 30, 1986.~~ Where such leases contain provisions that bind the lessee to accept an increased rate, reimbursement shall be at a rate per day of care which reflects the increase in the lease rate. Where such leases bind the lessee to the lease and allow the rate to be renegotiated, reimbursement shall be at a rate per day of care which reflects an annual increase in the lease rate not to exceed the increase in the consumer price index for renters costs. After the effective date of this subsection, if such a lease is terminated or if the lease allows the lessee the option to terminate other than by purchase of the facility, the property rental rate shall become the amount determined by the formula in subsection (1) of this section as of the date on which the lease is or could be terminated.

(4) (a) In the event of a sale, the buyer shall receive the property rental rate as provided in subsection (1) of this section, except under the conditions of paragraph (b) of this subsection or except in the event of the first sale for a free-standing skilled care facility receiving a grandfathered rate after June 30, 1991, whereupon the new owner shall receive the same rate that the seller would have received at any given point in time.

(b) In the event of a forced sale of a facility where the seller has been receiving a grandfathered rate, the buyer will receive a rate based upon his incurred property costs, exclusive of taxes and insurance, for the twelve (12) months following the sale, divided by the facility's total patient days for that period, or the property rental rate, not modified by section 56-109, Idaho Code, whichever is higher, but not exceeding the rate that would be due the seller.

SECTION 2. That Section 56-113, Idaho Code, be, and the same is hereby amended to read as follows:

56-113. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.
(a) Services provided by intermediate care facilities for the mentally retarded shall also be reimbursed in accordance with the provi-

sions of this chapter, except that property costs shall not be reimbursed as provided in section 56-108, Idaho Code. Instead, property costs shall be reimbursed in accordance with applicable provisions of the health insurance manual 15, as promulgated by the U.S. department of health and human services (SSA HIM-15). Provided, that facilities in operation prior to April 1, 1993, may negotiate a grandfathered rate for property reimbursement with the director. In no event shall the reimbursement of property costs to this class of facility exceed, in the aggregate, the amount which would be reimbursed using medicare payment principles as defined in SSA HIM-15.

(b) Not later than January 1, 1982, and prior to the beginning of each fiscal year thereafter, the director shall determine the total prospective payment rate for all intermediate care facilities for the mentally retarded under medicaid contract with the director on or before the effective date of this chapter in the same manner as set forth in section 56-110, Idaho Code, except that the computation of the prospective payment according to the manner set forth in subsection (b)(1) of section 56-110, Idaho Code, shall include allowable costs-related-to-major-movable-equipment property costs as calculated in subsection (a) of this section.

(bc) For the first fiscal year of an intermediate care facility for the mentally retarded established on or after January 1, 1982, which seeks to contract for the first time to provide medicaid services to recipients, the director shall determine payment for such facility in the same manner as specified in section 56-111, Idaho Code. Thereafter, such determination for such facility shall be done in accordance with subsection (ab) of this section.

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

Approved April 1, 1993.

CHAPTER 352
(S.B. No. 1266)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT
FOR FISCAL YEAR 1993; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made by Section 1, Chapter 205, Laws of 1992, there is hereby appropriated to the Idaho Transportation Department 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, 1992, through June 30, 1993:

	FOR
	CAPITAL
	OUTLAY
I. HIGHWAYS DIVISION:	
A. CAPITAL FACILITIES:	
FROM:	
State Highway Fund	\$1,900,000

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, 1993.

CHAPTER 353
(S.B. No. 1267)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 1994.

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, 1993, through June 30, 1994:

FOR:	
Personnel Costs	\$1,978,600
Operating Expenditures	397,600
Capital Outlay	7,800
TOTAL	<u>\$2,384,000</u>
FROM:	
State Regulatory Fund	\$2,384,000

Approved April 1, 1993.

CHAPTER 354
(S.B. No. 1268)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 1994; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN TRANSFERS OF FUNDS.

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, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General					
Fund	\$ 710,100	\$ 386,100			\$ 1,096,200
Parks and Recreation					
Fund	258,800	275,400			534,200
Recreational					
Fuels					
Fund		16,100	\$ 25,000		41,100
Parks and Recreation					
Registration					
Fund	88,900	41,400			130,300
Federal Grant					
Fund	2,000	100			2,100
Indirect					
Cost Recovery					
Fund	40,600	21,900			62,500
TOTAL	\$1,100,400	\$ 741,000	\$ 25,000		\$ 1,866,400
II. PARK OPERATIONS:					
FROM:					
General					
Fund	\$2,915,300	\$ 505,300			\$ 3,420,600
Miscellaneous Revenue					
Fund		52,200			52,200
Public Recreation					
Enterprise					
Fund	105,400	119,000			224,400
Recreational Fuels					
Fund		12,000	\$ 429,000		441,000
Parks and Recreation					
Fund	771,400	460,500	13,000		1,244,900
Parks and Recreation					
Expendable Trust					
Fund	74,600	341,100			415,700
Federal Grant					
Fund	55,400	57,800			113,200
TOTAL	\$3,922,100	\$1,547,900	\$ 442,000		\$ 5,912,000
III. PARK DEVELOPMENT:					
FROM:					
General					
Fund	\$ 197,500			\$ 25,700	\$ 223,200
Parks and Recreation					
Expendable Trust					
Fund			\$ 388,000		388,000
Recreational					
Fuels					
Fund	69,800		532,000		601,800
Parks and Recreation					
Fund	41,400	\$ 35,600			77,000
TOTAL	\$ 308,700	\$ 35,600	\$ 920,000	\$ 25,700	\$ 1,290,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
IV. RECREATIONAL RESOURCES:					
FROM:					
General					
Fund	\$ 135,700	\$ 16,500			\$ 152,200
Parks and Recreation					
Registration					
Fund	90,900	97,400	\$ 22,800	\$2,433,100	2,644,200
Recreational					
Fuels					
Fund	322,300	77,300	414,200	1,032,900	1,846,700
Parks and Recreation					
Fund		32,600		12,000	44,600
Federal Grant					
Fund	11,600	80,300	2,000	709,000	802,900
Indirect					
Cost Recovery					
Fund	94,900	3,400			98,300
TOTAL	\$ 655,400	\$ 307,500	\$ 439,000	\$4,187,000	\$ 5,588,900
V. LAVA HOT SPRINGS FOUNDATION:					
FROM:					
Public Recreation					
Fund	\$ 426,200	\$ 223,400	\$ 50,000		\$ 699,600
GRAND					
TOTAL	\$6,412,800	\$2,855,400	\$1,876,000	\$4,212,700	\$15,356,900

SECTION 2. It is legislative intent that the Director of the Department of Commerce transfer \$25,000 from the Idaho Tourism and Promotion Fund to the Department of Parks and Recreation for deposit in the Parks and Recreation Fund, and that the Director of the Idaho Transportation Department transfer \$25,000 from the State Highway Fund to the Parks and Recreation Fund. These transfers will fund the appropriation provided in Section 1 of this act for matching fund support of the Gateway Visitors Centers in the Administration program.

Approved April 1, 1993.

CHAPTER 355
(S.B. No. 1269)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 1994; 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 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, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT SERVICES:					
FROM:					
General					
Fund	\$ 583,800	\$ 310,600		\$ 212,300	\$ 1,106,700
Federal Grants					
Fund	39,000	7,000			46,000
Indirect Cost					
Recovery					
Fund	<u>168,400</u>	<u>87,700</u>			<u>256,100</u>
TOTAL	\$ 791,200	\$ 405,300		\$ 212,300	\$ 1,408,800
II. PLANNING AND POLICY DIVISION:					
FROM:					
General					
Fund	\$1,140,000	\$ 228,500		\$ 414,600	\$ 1,783,100
Federal Grants					
Fund	113,400	40,000			153,400
Professional Services					
Fund	266,800	189,500			456,300
Water Pollution Control					
Fund	139,600	39,900		350,000	529,500
Indirect Cost Recovery					
Fund	19,600	4,000			23,600
Resource Conservation					
Fund	<u>175,000</u>	<u>12,000</u>			<u>187,000</u>
TOTAL	\$1,854,400	\$ 513,900		\$ 764,600	\$ 3,132,900
III. ENERGY RESOURCES DIVISION:					
FROM:					
General					
Fund	\$ 116,400	\$ 25,500			\$ 141,900
Indirect Cost					
Recovery					
Fund	67,700	127,500			195,200
Federal Grants					
Fund	747,600	509,100			1,256,700
Professional Services					
Fund	<u>166,000</u>	<u>102,000</u>			<u>268,000</u>
TOTAL	\$1,097,700	\$ 764,100			\$ 1,861,800
IV. WATER MANAGEMENT DIVISION:					
A. SNAKE BASIN ADJUDICATIONS:					
FROM:					
Water Claims					
Adjudication					
Fund	\$1,565,700	\$ 611,600	\$107,200	\$1,020,700	\$ 3,305,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
B. WATER MANAGEMENT:					
FROM:					
General					
Fund	\$1,873,700	\$ 407,400			\$ 2,281,100
Professional Services					
Fund	206,400	33,300			239,700
Indirect Cost Recovery					
Fund	34,000	3,000			37,000
Federal Grants					
Fund	122,700	31,700			154,400
TOTAL	\$2,236,800	\$ 475,400			\$ 2,712,200
GRAND					
TOTAL	\$7,545,800	\$2,770,300	\$107,200	\$1,997,600	\$12,420,900

SECTION 2. There is hereby reappropriated to the Department of Water Resources, any unexpended and unencumbered balances of the Water Pollution Control Fund and the Resource Conservation Fund appropriated for the period July 1, 1992, through June 30, 1993, for the purposes set forth in Chapter 237, Laws of 1991, concerning the purchase of water storage space in Cascade and Deadwood reservoirs.

Approved April 1, 1993.

CHAPTER 356
(S.B. No. 1270)

AN ACT
APPROPRIATING MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR THE PORTS OF ENTRY FOR FISCAL YEAR 1994.

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

SECTION 1. There is hereby appropriated to the Idaho Transportation Department the following amount to be expended for the Ports of Entry within the District Operations Program of the Highways Division, according to the designated expense classes from the listed fund for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. HIGHWAYS DIVISION:				
A. DISTRICT OPERATIONS				
FROM:				
State Highway Fund	\$3,436,100	\$729,000	\$138,800	\$4,303,900

Approved April 1, 1993.

CHAPTER 357
(S.B. No. 1271)

AN ACT

APPROPRIATING MONEYS TO THE LEGISLATIVE COUNCIL FOR FISCAL YEAR 1994;
AND APPROPRIATING MONEYS TO THE JOINT SENATE FINANCE-HOUSE APPROPRIATIONS COMMITTEE FOR FISCAL YEAR 1994.

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 according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	\$666,400	\$178,000	\$844,400
Miscellaneous Revenue Fund		41,500	41,500
TOTAL	<u>\$666,400</u>	<u>\$219,500</u>	<u>\$885,900</u>

SECTION 2. There is hereby appropriated to the Joint Senate Finance-House Appropriations Committee 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, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR LUMP SUM	TOTAL
A. LEGISLATIVE AUDITOR:					
FROM:					
General					
Fund	\$ 805,200	\$ 14,900			\$ 820,100
Professional Services					
Fund	716,100	95,500			811,600
TOTAL	<u>\$1,521,300</u>	<u>\$110,400</u>			<u>\$1,631,700</u>

B. LEGISLATIVE BUDGET OFFICE:

FROM:					
General					
Fund	\$ 571,900	\$ 67,400	\$6,500		\$ 645,800

C. JOINT SENATE FINANCE-HOUSE APPROPRIATIONS INTERIM COMMITTEE:

FROM:					
General					
Fund				\$24,000	\$ 24,000
GRAND TOTAL	\$2,093,200	\$177,800	\$6,500	\$24,000	\$2,301,500

Approved April 1, 1993.

CHAPTER 358
(S.B. No. 1272)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS FOR THE SPECIAL PROGRAMS FOR FISCAL YEAR 1994.

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

SECTION 1. It is legislative intent that the expenditures for the Special Programs not exceed the following amount from the listed funds for the period July 1, 1993, through June 30, 1994:

FROM:		
General Fund		\$2,924,800
Paul L. Fowler Scholarship Fund		10,600
Federal Funds		<u>325,200</u>
TOTAL		\$3,260,600

SECTION 2. There is hereby appropriated to the Board of Regents of the University of Idaho and the State Board of Education for the 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, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. FOREST UTILIZATION RESEARCH:				
FROM:				
General Fund	\$ 372,100	\$ 46,600		\$ 418,700
B. IDAHO GEOLOGICAL SURVEY:				
FROM:				
General Fund	\$ 505,000	\$ 53,100		\$ 558,100
C. SCHOLARSHIPS AND GRANTS:				
FROM:				
General Fund			\$1,324,800	\$1,324,800
Paul L. Fowler Scholarship Fund	\$ 800		9,800	10,600
Federal Funds			<u>325,200</u>	<u>325,200</u>
TOTAL	\$ 800	<u>800</u>	\$1,659,800	\$1,660,600
D. MUSEUM OF NATURAL HISTORY:				
FROM:				
General Fund	\$ 377,400	\$ 28,000		\$ 405,400
E. SMALL BUSINESS DEVELOPMENT CENTERS:				
FROM:				
General Fund			\$ 217,800	\$ 217,800
GRAND TOTAL	\$1,254,500	\$128,500	\$1,877,600	\$3,260,600

Approved April 1, 1993.

CHAPTER 359
(S.B. No. 1275)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 1994.

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, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
A. SUPPORTING SERVICES:						
FROM:						
General						
Fund	\$ 1,094,100	\$ 488,400				\$ 1,582,500
Department of Lands						
Fund	268,300	127,300	\$ 25,700			421,300
Federal Grant						
Fund		54,100				54,100
Land Improvement						
Fund	<u>54,800</u>	<u>3,800</u>				<u>58,600</u>
TOTAL	\$ 1,417,200	\$ 673,600	\$ 25,700			\$ 2,116,500
B. FOREST RESOURCES MANAGEMENT:						
FROM:						
General						
Fund	\$ 2,469,900	\$ 348,400				\$ 2,818,300
Department of Lands						
Fund	1,355,000	687,300	\$ 49,100			2,091,400
Water Pollution Control						
Fund	114,400	13,600	19,000			147,000
Land Improvement						
Fund	1,679,100	1,769,800	139,800			3,588,700
Community Forestry						
Fund				\$75,000		75,000
Federal Grant						
Fund	<u>99,100</u>	<u>39,100</u>				<u>138,200</u>
TOTAL	\$ 5,717,500	\$2,858,200	\$207,900	\$75,000		\$ 8,858,600
C. LAND, RANGE AND MINERAL RESOURCE MANAGEMENT:						
FROM:						
General						
Fund	\$ 1,530,600	\$ 178,000				\$ 1,708,600
Department of Lands						
Fund	18,000	\$ 59,800	\$ 1,800			79,600
Land Improvement						
Fund	162,100	200,100				362,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
Federal Grants						
Fund	40,000	20,000				60,000
Land and Building						
Rental						
Fund		5,100				5,100
TOTAL	\$ 1,750,700	\$ 463,000	\$ 1,800			\$ 2,215,500
D. FOREST AND RANGE FIRE PROTECTION:						
FROM:						
General						
Fund					\$2,015,900	\$ 2,015,900
Department of Lands						
Fund					3,123,800	3,123,800
Fire Suppression						
Fund					101,200	101,200
TOTAL:					\$5,240,900	\$ 5,240,900
E. SOIL & WATER CONSERVATION:						
FROM:						
General						
Fund	\$ 429,500	\$ 58,400		\$227,500		\$ 715,400
Department of Lands						
Fund	368,800	74,300				443,100
Federal Grants						
Fund	178,400	112,300	5,300			296,000
Water Pollution						
Control						
Fund		1,500		261,300		262,800
Resource Conservation						
Fund	13,000	70,600				83,600
TOTAL	\$ 989,700	\$ 317,100	\$ 5,300	\$488,800		\$ 1,800,900
F. SCALING PRACTICES:						
FROM:						
Department of Lands						
Fund	\$ 209,700	\$ 34,100	\$ 35,300			\$ 279,100
GRAND						
TOTAL	\$10,084,800	\$4,346,000	\$276,000	\$563,800	\$5,240,900	\$20,511,500

Approved April 1, 1993.

CHAPTER 360
(S.B. No. 1276)

AN ACT

APPROPRIATING MONEYS FROM THE BUDGET RESERVE FUND; APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR THE OREGON TRAIL SESQUICENTENNIAL WAGON TRAIN; EXPRESSING CONDITIONS OF REPAYMENT TO THE BUDGET RESERVE FUND BY THE IDAHO OREGON TRAIL EXECUTIVE COMMITTEE; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby appropriated and transferred from the Budget Reserve Fund for deposit in the Parks and Recreation Expendable Trust Fund the sum of \$100,000.

SECTION 2. There is hereby appropriated from the Parks and Recreation Expendable Trust Fund the sum of \$100,000 to the Department of Parks and Recreation for the support of Idaho's participation in the Oregon Trail Sesquicentennial Wagon Train reenactment.

SECTION 3. The Idaho Oregon Trail Executive Committee shall repay the Budget Reserve Fund for any moneys expended from the appropriations provided in Sections 1 and 2 of this act. Such repayment shall occur on or before June 30, 1994.

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, 1993.

CHAPTER 361
(S.B. No. 1277)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS FOR THE DIVISION OF VOCATIONAL REHABILITATION FOR FISCAL YEAR 1994; AND REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS.

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

SECTION 1. It is legislative intent that the appropriation for the Division of Vocational Rehabilitation not exceed the following amount for the period July 1, 1993, through June 30, 1994:

FROM:	
General Fund	\$ 2,798,500
Federal Grants Fund	8,586,800
Rehabilitation Revenue and Refunds Fund	379,300
Business and Industry Services Fund	36,400
TOTAL	<u>\$11,801,000</u>

SECTION 2. There is hereby appropriated to the State Board of Education for the Division of Vocational Rehabilitation the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

A. RENAL DISEASE:

FROM:	
General Fund	\$ 453,300
FOR:	
Trustee and Benefit Payments	\$ 453,300

B. VOCATIONAL REHABILITATION:**FROM:**

General Fund	\$ 2,276,200
Federal Grants Fund	8,586,800
Rehabilitation Revenue and Refunds Fund	379,300
Business and Industry Services Fund	<u>36,400</u>
TOTAL	\$11,278,700

FOR:

Personnel Costs	\$ 4,326,600
Operating Expenditures	716,700
Capital Outlay	4,500
Trustee and Benefit Payments	<u>6,230,900</u>
TOTAL	\$11,278,700

C. EPILEPSY SERVICES:**FROM:**

General Fund	\$ 69,000
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FOR:

Trustee and Benefit Payments	\$ 69,000
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GRAND TOTAL**\$11,801,000**

SECTION 3. There is hereby reappropriated to the State Board of Education for the Division of Vocational Rehabilitation, any unexpended and unencumbered balance of all Non-General Fund moneys appropriated to the Division of Vocational Rehabilitation by the Idaho Legislature for the period July 1, 1992, through June 30, 1993.

Approved April 1, 1993.

CHAPTER 362
(S.B. No. 1278)

AN ACT

RELATING TO INDEBTEDNESS OF FIRE PROTECTION DISTRICTS; AMENDING SECTION 31-1424, IDAHO CODE, TO PROVIDE THAT THE INDEBTEDNESS WHICH A FIRE PROTECTION DISTRICT MAY INCUR IN THE FIRST YEAR AFTER ORGANIZATION MAY BE IN THE FORM OF BONDS, NOTES, WARRANTS OR OTHER OBLIGATIONS AND TO INCREASE THE AUTHORIZED INDEBTEDNESS TO SIXTEEN CENTS ON EACH ONE HUNDRED DOLLARS FOR ASSESSMENT PURPOSES OF ALL REAL AND PERSONAL PROPERTY WITHIN THE DISTRICT AND TO PROVIDE FOR PUBLIC HEARINGS; REPEALING SECTION 31-1424, IDAHO CODE; AMENDING CHAPTER 14, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-1424, IDAHO CODE, TO PROVIDE THAT THE BOARD OF COMMISSIONERS OF A FIRE PROTECTION DISTRICT SHALL HAVE NO POWER TO INCUR ANY DEBT OR LIABILITY WITH CERTAIN EXCEPTIONS; DECLARING AN EMERGENCY AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Section 31-1424, Idaho Code, be, and the same is hereby amended to read as follows:

31-1424. INDEBTEDNESS PROHIBITED -- EXCEPTIONS. The board of commissioners of a fire protection district organized pursuant to the provisions of this chapter shall have no power to incur any debt or liability, except to the extent for the purposes and in the manner hereinafter provided:

(a) In the first year after organization, the board of a district may, for the purpose of organization, to finance general preliminary expenses of the district or for any other purpose of the fire protection district law, and before making a tax levy, incur an indebtedness, in the form of bonds, notes, warrants or other obligations, not exceeding in the aggregate a sum equal to one sixteen cents (\$.016) on each one hundred dollars (\$100) of market value for assessment purposes of all real and personal property within the district. Provided however, that the board shall first hold a public hearing within the district regarding said proposed indebtedness and cause a notice of the time, place and nature of the hearing to be published in a newspaper or newspapers of general circulation in the district at least one (1) time, the first such publication to be not less than ten (10) days before the date of the hearing.

(b) Whenever the board of commissioners of a fire protection district shall determine that the interest of said district and the public interest or necessity require incurring an indebtedness exceeding the income and revenue provided for the year for the purposes of (i) acquiring, purchasing, constructing, improving and equipping lands, building sites and buildings together with the necessary appurtenant facilities and equipment and (ii) acquiring and purchasing suitable equipment and apparatus necessary to provide fire protection, the board shall have the power and authority as hereinafter provided to issue general obligation coupon bonds not to exceed in the aggregate at any time two percent (2%) of market value for assessment purposes of the real and personal property in said district.

Whenever the board of a district shall deem it advisable to issue general obligation coupon bonds, the board shall provide for the issuance of such bonds by ordinance which shall specify and set forth all the purposes, objects and things required by section 57-203, Idaho Code, and make provision for the collection of an annual tax sufficient to (i) constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting said bonded indebtedness and (ii) to pay the interest on such proposed bonds as it falls due.

The aforesaid ordinance shall also provide for holding an election, notice of which shall be given for thirty (30) days in a newspaper or newspapers of general circulation in the district. The election shall be conducted in the manner and form, the returns canvassed, and the qualifications of electors of the district voting or offering to vote shall be determined, as provided by the pertinent and applicable provisions of title 34, Idaho Code. The voting at such election must be by ballot and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of dollars for the purpose stated in Ordinance No." and "Against issuing bonds to the amount of dollars for the purpose stated in Ordinance No." If at such election two-thirds (2/3) of the qualified electors voting at such election, assent to the issuing of such

bonds and the incurring of the indebtedness thereby created for the purposes, objects, and things provided in said Ordinance No., such bonds shall be issued in the manner provided by chapter 2, title 57, Idaho Code, the municipal bond law of the state of Idaho.

Bonds issued pursuant to the provisions of this section and the income therefrom shall be exempt from taxation except transfer and estate taxes.

SECTION 2. That Section 31-1424, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 14, 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 31-1424, Idaho Code, and to read as follows:

31-1424. INDEBTEDNESS PROHIBITED -- EXCEPTIONS. The board of commissioners of a fire protection district organized pursuant to the provisions of this chapter shall have no power to incur any debt or liability, except to the extent for the purposes and in the manner hereinafter provided:

(a) In the first year after organization, the board of a district may, for the purpose of organization, to finance general preliminary expenses of the district or for any other purpose of the fire protection district law, and before making a tax levy, incur an indebtedness not exceeding in the aggregate a sum equal to one cent (\$.01) on each one hundred dollars (\$100) of market value for assessment purposes of all real and personal property within the district.

(b) Whenever the board of commissioners of a fire protection district shall determine that the interest of said district and the public interest or necessity require incurring an indebtedness exceeding the income and revenue provided for the year for the purposes of (i) acquiring, purchasing, constructing, improving and equipping lands, building sites and buildings together with the necessary appurtenant facilities and equipment and (ii) acquiring and purchasing suitable equipment and apparatus necessary to provide fire protection, the board shall have the power and authority as hereinafter provided to issue general obligation coupon bonds not to exceed in the aggregate at any time two percent (2%) of market value for assessment purposes of the real and personal property in said district.

Whenever the board of a district shall deem it advisable to issue general obligation coupon bonds, the board shall provide for the issuance of such bonds by ordinance which shall specify and set forth all the purposes, objects and things required by section 57-203, Idaho Code, and make provision for the collection of an annual tax sufficient to (i) constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting said bonded indebtedness and (ii) to pay the interest on such proposed bonds as it falls due.

The aforesaid ordinance shall also provide for holding an election, notice of which shall be given for thirty (30) days in a newspaper or newspapers of general circulation in the district. The election shall be conducted in the manner and form, the returns canvassed,

and the qualifications of electors of the district voting or offering to vote shall be determined, as provided by the pertinent and applicable provisions of title 34, Idaho Code. The voting at such election must be by ballot and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of dollars for the purpose stated in Ordinance No." and "Against issuing bonds to the amount of dollars for the purpose stated in Ordinance No." If at such election two-thirds (2/3) of the qualified electors voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purposes, objects, and things provided in said Ordinance No., such bonds shall be issued in the manner provided by chapter 2, title 57, Idaho Code, the municipal bond law of the state of Idaho.

Bonds issued pursuant to the provisions of this section and the income therefrom shall be exempt from taxation except transfer and estate taxes.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after its passage and approval. Sections 2 and 3 of this act shall be in full force and effect on and after April 1, 1995.

Approved April 1, 1993.

CHAPTER 363
(S.B. No. 1280)

AN ACT

APPROPRIATING MONEYS TO THE LIEUTENANT GOVERNOR FOR FISCAL YEAR 1994;
AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES.

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

SECTION 1. There is hereby appropriated to the Lieutenant Governor the following amounts, to be expended according to designated expense classes from the listed fund for the period July 1, 1993, through June 30, 1994:

FOR:

Personnel Costs	\$74,600
Operating Expenditures	<u>13,300</u>
TOTAL	\$87,900

FROM:	
General Fund	\$87,900

SECTION 2. It is legislative intent that an amount, not to exceed \$1,000 of the amounts appropriated in Section 1, may be used at the discretion of the Lieutenant Governor to assist in defraying expenses relating to or resulting from the discharge of the Lieutenant Governor's official duties. Such moneys shall be accounted for according to

the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

Approved April 1, 1993.

CHAPTER 364
(S.B. No. 1281)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL YEAR 1994.

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

SECTION 1. There is hereby appropriated to the Public Utilities Commission for the Administration Program the following amount, to be expended for the designated expense class from the listed fund for the period July 1, 1993, through June 30, 1994:

FOR:

Personnel Costs	\$19,200
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FROM:

General Fund	\$19,200
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Approved April 1, 1993.

CHAPTER 365
(S.B. No. 1282)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE SUPREME COURT FOR FISCAL YEAR 1994; SETTING FORTH CONDITIONS FOR THE APPROPRIATION MADE IN SECTION 2; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES.

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

SECTION 1. It is legislative intent that the expenditures for the Supreme Court not exceed the following amount for the period July 1, 1993, through June 30, 1994:

FROM:

General Fund	\$16,125,900
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Water Resources Adjudication Fund	819,400
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Interagency Billing and Receipts Fund	211,600
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TOTAL	<u>\$17,156,900</u>
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SECTION 2. There is hereby appropriated to the Supreme Court, the following amounts, to be expended for the designated programs accord-

ing to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. SUPREME COURT:					
FROM:					
General Fund	\$ 2,098,500	\$ 373,100		\$ 52,500	\$ 2,524,100
Interagency Billing and Receipts Fund		<u>211,600</u>			<u>211,600</u>
TOTAL	<u>\$ 2,098,500</u>	<u>\$ 584,700</u>		<u>\$ 52,500</u>	<u>\$ 2,735,700</u>
B. LAW LIBRARY:					
FROM:					
General Fund	\$ 286,000	\$ 203,500	\$ 57,700		\$ 547,200
C. DISTRICT COURTS:					
FROM:					
General Fund	\$ 5,069,400	\$ 412,400			\$ 5,481,800
Water Resources Adjudication Fund	<u>453,600</u>	<u>281,100</u>	<u>84,700</u>		<u>819,400</u>
TOTAL	<u>\$ 5,523,000</u>	<u>\$ 693,500</u>	<u>\$ 84,700</u>		<u>\$ 6,301,200</u>
D. MAGISTRATES DIVISION:					
FROM:					
General Fund	\$ 6,166,400	\$ 256,800			\$ 6,423,200
E. JUDICIAL COUNCIL:					
FROM:					
General Fund	\$ 2,000	\$ 61,100			\$ 63,100
F. COURT OF APPEALS:					
FROM:					
General Fund	\$ 693,600	\$ 97,100	\$ 4,200		\$ 794,900
G. GUARDIAN AD LITEM ACCOUNT:					
FROM:					
General Fund				\$291,600	\$ 291,600
GRAND TOTAL	\$14,769,500	\$1,896,700	\$146,600	\$344,100	\$17,156,900

SECTION 3. The appropriation made in Section 2 for the Guardian Ad Litem Account shall be expended according to Section 16-1636, Idaho Code.

SECTION 4. It is legislative intent that of the amount appropriated in Section 2, an amount not to exceed \$5,000 may be used at the discretion of the Chief Justice, to assist in defraying expenses relating to or resulting from the discharge of the Supreme Court Justices' official duties and the official duties of the Supreme Court. Further, it is legislative intent that an amount, not to exceed \$1,500 of the amount appropriated in Section 2, may be used at the discretion of the Chief Judge of the Court of Appeals to assist in defraying expenses relating to or resulting from the discharge of the Court of Appeals Judges' official duties and the official duties of the Court

of Appeals. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

Approved April 1, 1993.

CHAPTER 366
(S.B. No. 1283)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE DEPARTMENT OF REVENUE AND TAXATION FOR FISCAL YEAR 1994; AND CLASSIFYING CERTAIN PERSONNEL UNDER THE PROVISIONS OF CHAPTER 53, TITLE 67, IDAHO CODE.

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

SECTION 1. It is legislative intent that the expenditures for the Department of Revenue and Taxation not exceed the following amounts for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	\$11,944,100	\$3,526,900	\$25,100	\$15,496,100
Dedicated Funds	1,584,600	747,500	18,700	2,350,800
Federal Funds	51,300	26,000		77,300
Other Funds		136,100		136,100
TOTAL	<u>\$13,580,000</u>	<u>\$4,436,500</u>	<u>\$43,800</u>	<u>\$18,060,300</u>

SECTION 2. There is hereby appropriated to the Department of Revenue and Taxation the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. MANAGEMENT SERVICES:				
FROM:				
General Fund	\$ 2,329,400	\$1,167,000	\$25,100	\$ 3,521,500
Seminars and Publications Fund		54,600		54,600
Administration and Accounting Fund		35,400		35,400
Administration and Accounting - Services to Transportation Fund	249,100	76,200	13,900	339,200
TOTAL	<u>\$ 2,578,500</u>	<u>\$1,333,200</u>	<u>\$39,000</u>	<u>\$ 3,950,700</u>

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
B. AUDIT AND COLLECTIONS:				
FROM:				
General Fund	\$ 5,999,100	\$1,012,900		\$ 7,012,000
Multi-State Tax Compact Fund		163,100		163,100
Federal Grant Fund	51,300	26,000		77,300
Seminars and Publications Fund		4,000		4,000
Administration and Accounting Fund	134,800	79,800		214,600
Administration and Accounting - Services to Transportation Fund	765,900	151,700	4,800	922,400
Abandoned Property Trust - Unclaimed Property Fund	<u>250,600</u>	<u>63,700</u>		<u>314,300</u>
TOTAL	\$ 7,201,700	\$1,501,200	\$ 4,800	\$ 8,707,700
C. REVENUE OPERATIONS:				
FROM:				
General Fund	\$ 1,943,500	\$ 928,800		\$ 2,872,300
Seminars and Publications Fund		17,200		17,200
Administration and Accounting Fund		25,400		25,400
Administration and Accounting - Services to Transportation Fund	<u>184,200</u>	<u>152,200</u>		<u>336,400</u>
TOTAL	\$ 2,127,700	\$1,123,600		\$ 3,251,300
D. COUNTY SUPPORT:				
FROM:				
General Fund	\$ 1,615,800	\$ 402,800		\$ 2,018,600
Seminars and Publications Fund		<u>60,300</u>		<u>60,300</u>
TOTAL	\$ 1,615,800	\$ 463,100		\$ 2,078,900
E. BOARD OF TAX APPEALS:				
FROM:				
General Fund	\$ 56,300	\$ 15,400		\$ 71,700
GRAND TOTAL	\$13,580,000	\$4,436,500	\$43,800	\$18,060,300

SECTION 3. All personnel employed by the State Tax Commission Property Tax Assistance (Uniform Assessment) Program and the Forest Land Appraiser shall be classified employees and be subject to the provisions of Chapter 53, Title 67, Idaho Code.

Approved April 1, 1993.

CHAPTER 367
(S.B. No. 1284)

AN ACT

RELATING TO RESOLUTION OF LEGAL ISSUES INVOLVING INDIAN GAMING; SETTING FORTH CERTAIN BACKGROUND INFORMATION AND PURPOSE; PROVIDING FOR RESOLUTION OF CERTAIN ISSUES RELATED TO INDIAN GAMING IN CERTAIN CONSOLIDATED CASES; AND DECLARING AN EMERGENCY.

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

SECTION 1. BACKGROUND AND PURPOSE. On December 18, 1992, an Indian Gaming Compact authorizing and regulating Class III gaming on the Coeur d'Alene Indian Reservation was executed by the Coeur d'Alene Tribe and the Governor of the State of Idaho. This Compact identified two legal issues regarding the Indian Gaming Regulatory Act, 25 U.S.C. section 2701 et seq., that could not be resolved by the parties. It was agreed upon in the Compact that an action seeking a declaratory judgment in the United States District Court for the District of Idaho would be the proper method to resolve these disputed legal issues.

It is the strong public policy of the State of Idaho to forbid all forms of gambling, including casino-style gambling except a state lottery, pari-mutuel betting, and charitable bingo and raffle games. Nothing contained in this act can or should be construed in contravention of said policy.

Similarly, it is the public policy of the State of Idaho to jealously guard against intrusions upon its inherent right of self-government and state sovereignty. Federal mandates and preemptions of state sovereignty such as those contained within the Indian Gaming Regulatory Act are unacceptable to the State of Idaho. The Legislature does not believe that federal law should mandate additional gambling activities in this State beyond those permitted under State law.

The issues in dispute identified by the Compact included whether the Indian Gaming Regulatory Act requires the State of Idaho to accept all types of Class III gaming requested by Idaho Indian tribes during the negotiation process prescribed by 25 U.S.C. section 2710(d) and also whether permissible subjects of negotiation may include negotiated limits upon the scale of operations of games authorized under the Indian Gaming Regulatory Act.

Both the State of Idaho and the Coeur d'Alene Tribe have filed separate complaints in the United States District Court for the District of Idaho seeking resolution of the above issues, including the issue of whether portions of the Indian Gaming Regulatory Act violate the tenth amendment to the United States Constitution. The cases:

"Coeur d'Alene Tribe v. State of Idaho," Case No. CIV-92-0437-N-HLR and "State of Idaho v. Coeur d'Alene Tribe, et al.," Case No. CIV-93-0015-N-HLR, are now consolidated, and the Nez Perce Tribe and the Kootenai Tribe of Idaho have joined in those actions. The Nez Perce Tribe seeks to resolve, in the consolidated cases, the question of whether the state lottery may operate on reservations absent a compact.

SECTION 2. LIMITED AUTHORIZATION FOR RESOLUTION OF LEGAL ISSUES. The State of Idaho consents to resolution of the issues identified above (including tenth amendment defenses and the state lottery question) in "Coeur d'Alene Tribe v. State of Idaho," United States District Court for the District of Idaho Case No. CIV-92-0437-N-HLR and "State of Idaho v. Coeur d'Alene Tribe, et al.," United States District Court for the District of Idaho Case No. CIV-93-0015-N-HLR, and for this limited purpose, the State will not raise an eleventh amendment defense. By this authorization, the State does not consent directly, indirectly, or by implication to resolution of any additional issues in the consolidated cases, nor does the State consent to any separate action in federal court involving the same or other issues.

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, 1993.

CHAPTER 368
(S.B. No. 1285)

AN ACT

APPROPRIATING MONEYS TO THE STATE AUDITOR FOR FISCAL YEAR 1994;
EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES;
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 Auditor the following amounts, to be expended from the listed funds for the period July 1, 1993, through June 30, 1994:

FROM:	
General Fund	\$2,082,100
Professional Services Fund	2,313,400
Data Processing Services Fund	4,617,000
Miscellaneous Revenues Fund	<u>9,600</u>
TOTAL	<u>\$9,022,100</u>

SECTION 2. It is legislative intent that an amount, not to exceed \$1,000 of the amounts appropriated in Section 1, may be used at the

discretion of the State Auditor to assist in defraying expenses relating to or resulting from the discharge of the State Auditor's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 3. There is hereby reappropriated to the State Auditor the unexpended and unencumbered balance of any General Fund appropriation made to the State Auditor for the period July 1, 1992, through June 30, 1993, to be used for nonrecurring expenditures only for the period July 1, 1993, through June 30, 1994.

Approved April 1, 1993.

CHAPTER 369
(S.B. No. 1287)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 1994; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES.

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

SECTION 1. There is hereby appropriated to the Department of Insurance for the Administration Program the amount of \$85,000 from the Self-Governing Operating Fund to be expended for the purpose of implementing the provisions of S.B. No. 1039, Laws of 1993, and for administrative support of the Health Insurance Task Force, for the period July 1, 1993, through June 30, 1994:

SECTION 2. It is legislative intent that:

(1) Of the amounts appropriated for the Administration Program from the Self-Governing Operating Fund in Section 1, \$10,000 is designated for administrative support for the continuation of the task force originally authorized by H.C.R. No. 23 as adopted by the First Regular Session of the Fifty-first Idaho Legislature, and continued by Chapter 326, Laws of 1992, which is hereby created.

(2) The Health Insurance Task Force shall continue to study the issues of health care cost containment and to propose plans that will provide access to health insurance coverage for the state's uninsured and uninsurable population.

(3) The executive committee of the Health Insurance Task Force shall report periodically on its deliberations to the Office of the Governor and to the Special Legislative Committee on Health Care.

(4) The Department of Insurance shall report the findings and recommended legislation of the executive committee to the Second Regular Session of the Fifty-second Idaho Legislature.

Approved April 1, 1993.

CHAPTER 370
(H.B. No. 406, As Amended)

AN ACT

APPROPRIATING MONEYS FOR THE STATE LIQUOR DISPENSARY FOR FISCAL YEAR 1994; AND TRANSFERRING MONEYS FROM THE LIQUOR FUND TO THE CATASTROPHIC HEALTH CARE FUND.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the State Liquor Dispensary the following amounts, to be expended according to designated expense classes from the listed fund for the period July 1, 1993, through June 30, 1994:

FOR:	
Personnel Costs	\$4,758,600
Operating Expenditures	3,341,900
Capital Outlay	61,500
TOTAL	\$8,162,000
FROM:	
Liquor Fund	\$8,162,000

~~SECTION 2. Notwithstanding the provisions of Section 23-404, Idaho Code, there is hereby transferred from the Liquor Fund to the Catastrophic Health Care Fund the amount of \$3,255,800 in four quarterly allotments as follows:~~

October 15, 1993	\$748,800
January 14, 1994	748,800
April 15, 1994	879,100
June 30, 1994	879,100

Approved April 1, 1993.

*Section 2 was line item vetoed on April 1, 1993

CHAPTER 371
(S.B. No. 1230)

AN ACT

RELATING TO ALLOWABLE GROSS LOADS; AMENDING SECTION 49-1001, IDAHO CODE, TO PROVIDE FOR THE DETERMINATION OF THE GROSS WEIGHT OF A VEHICLE AND THE GROSS WEIGHT OF ANY TWO OR MORE CONSECUTIVE AXLES, AND TO PROVIDE WEIGHT LIMITATIONS FOR VEHICLES TRAVELING ON NONINTERSTATE HIGHWAYS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 49-1001, Idaho Code, be, and the same is hereby amended to read as follows:

49-1001. ALLOWABLE GROSS LOADS. The gross load imposed on the highway by any vehicle or combination of vehicles shall not exceed the limits in this section. The maximum single axle gross weight shall be twenty thousand (20,000) pounds, the maximum single wheel gross weight shall be ten thousand (10,000) pounds and the maximum gross vehicle or combination weight shall be one hundred five thousand five hundred (105,500) pounds, provided that maximum gross vehicle or combination weight on United States federal interstate and defense highways of this state shall not exceed eighty thousand (80,000) pounds, except as permitted under the provisions of section 49-1004, Idaho Code.

(1) The total gross weight imposed on the highway by any group of consecutive axles shall be determined by the following formula:

$$W=500((LN/N-1)+12N+36)$$

Where W is the maximum weight in pounds (to the nearest 500 pounds) carried on any group of two (2) or more consecutive axles. L is the distance in feet between the extremes of any group of two (2) or more consecutive axles, and N is the number of axles under consideration.

The formula is modified as illustrated in the following table:

Distance in feet between the extremes of any group of 2 or more consecutive axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
4	34,000							
5	34,000							
6	34,000							
7	34,000							
8	34,000	42,000						
9	39,000	42,500						
10	40,000	43,500						
11		44,000						
12		45,000	50,000					
13		45,500	50,500					
14		46,500	51,500					
15		47,000	52,000					
16		48,000	52,500	58,000				
17		48,500	53,500	58,500				
18		49,500	54,000	59,000				
19		50,000	54,500	60,000				
20		51,000	55,500	60,500	66,000			
21		51,500	56,000	61,000	66,500			
22		52,500	56,500	61,500	67,000			
23		53,000	57,500	62,500	68,000			
24		54,000	58,000	63,000	68,500	74,000		
25		54,500	58,500	64,500	69,000	74,500		
26		55,500	59,500	65,000	69,500	75,000		
27		56,000	60,000	65,000	70,000	75,500		
28		57,000	60,500	65,500	71,500	76,500	82,000	
29		57,500	61,500	66,000	71,500	77,000	82,500	
30		58,500	62,000	66,500	72,000	77,500	83,000	
31		59,000	62,500	67,500	72,500	78,000	83,500	
32		60,000	63,500	68,000	73,000	78,500	84,500	90,000

WHEN NO ALLOWABLE WEIGHT IS LISTED FOR ANY AXLE SPACING, APPLY THE ALLOWABLE WEIGHT AS LISTED IN THE FIRST COLUMN TO THE LEFT

33	64,000	68,500	74,000	79,000	85,000	90,500
34	64,500	69,000	74,500	80,000	85,500	91,000
35	65,500	70,000	75,000	80,500	86,000	91,500
36	66,000	70,500	75,500	81,000	86,500	92,000
37	66,500	71,000	76,000	81,500	87,000	93,000
38	67,500	72,000	77,000	82,000	87,500	93,500
39	68,000	72,500	77,500	82,500	88,500	94,000
40	68,500	73,000	78,000	83,500	89,000	94,500
41	69,500	73,500	78,500	84,000	89,500	95,000
42	70,000	74,000	79,000	84,500	90,000	95,500
43	70,500	75,000	80,000	85,000	90,500	96,000
44	71,500	75,500	80,500	85,500	91,000	96,500
45	72,000	76,000	81,000	86,000	91,500	97,500
46	72,500	76,500	81,500	87,000	92,500	98,000
47	73,500	77,500	82,000	87,500	93,000	98,500
48	74,000	78,000	83,000	88,000	93,500	99,000
49	74,500	78,500	83,500	88,500	94,000	99,500
50	75,500	79,000	84,000	89,000	94,500	100,000
51	76,000	80,000	84,500	89,500	95,000	100,500
52	76,500	80,500	85,000	90,500	95,500	101,000
53	77,500	81,000	86,000	91,000	96,500	102,000
54	78,000	81,500	86,500	91,500	97,000	102,500
55	78,500	82,500	87,000	92,000	97,500	103,000
56	79,500	83,000	87,500	92,500	98,000	103,500
57	80,000	83,500	88,000	93,000	98,500	104,000
58		84,000	89,000	94,000	99,000	104,500
59		85,000	89,500	94,500	99,500	105,000
60		85,500	90,000	95,000	100,500	105,500
61		86,000	90,500	95,500	101,000	
62		87,000	91,000	96,000	101,500	
63		87,500	92,000	96,500	102,000	
64		88,000	92,500	97,500	102,500	
65		88,500	93,000	98,000	103,000	
66		89,500	93,500	98,500	103,500	
67		90,000	94,000	99,000	104,500	
68		90,500	95,000	99,500	105,000	
69		91,000	95,500	100,000	105,500	
70		92,000	96,000	101,000		
71		92,500	96,500	101,500		
72		93,000	97,000	102,000		
73		93,500	98,000	102,500		
74		94,500	98,500	103,000		
75		95,000	99,000	103,500		
76		95,500	99,500	104,500		
77		96,000	100,000	105,000		
78		97,000	101,000	105,500		
79		97,500	101,500			
80		98,000	102,000			
81		98,500	102,500			
82		99,000	103,000			
83		100,000	104,000			
84			104,500			
85			105,000			
86 or more			105,500			

(a) The board may limit the application of the weights authorized in this section as to certain highways which it determines have limited structural capacity of pavements, bridges, or other appurtenances. In designating such highways, it may specify a minimum wheelbase for combinations to be operated thereon. It may also designate specific highways or portions on which operation of a combination of vehicles with seven (7), eight (8) or nine (9) axle vehicles will be subject to specified lesser allowable gross weights.

(b) Notwithstanding the figures shown in the above table in this subsection (1), two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more.

(2) The weight limitations set forth in the table above in subsection (1) of this section shall not apply to any vehicle, or combination of vehicles when a greater allowed weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state, the following table of allowable weights shall apply only to vehicles engaged in the transportation of logs, pulp wood, stull, rough lumber, poles or piling; or to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel and aggregates thereof, in bulk; or to any such vehicle engaged in the transportation of agricultural commodities, including livestock:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Allowed Load in Pounds	
	Vehicles with Three or Four axles	Vehicles with Five or more axles
3 through 12	37,800	37,800
13	56,470	56,470
14	57,940	57,940
15	59,400	59,400
16	60,610	60,610
17	61,820	61,820
18	63,140	63,140
19	64,350	64,350
20	65,450	65,450
21	66,000	66,330
22	66,000	67,250
23	66,000	67,880
24	66,000	68,510
25	66,000	69,150
26	66,000	69,770
27	66,000	70,400
28	66,000	70,950
29	66,000	71,500
30	66,000	72,050
31		72,600
32		73,150
33		73,700
34		74,250

35	74,800
36	75,350
37	75,900
38	76,450
39	77,000
40	77,550
41	78,100
42	78,650
43 and over	79,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles exceeds seventy-nine thousand (79,000) pounds. When the provisions of this subsection are applicable to a vehicle or combination of vehicles, it shall be a violation of the provisions of this subsection if that vehicle or combination of vehicles exceeds the weights specified in this table.

(3) In determining the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles under subsections (1) or (2) or (9) of this section, the total gross weight of the vehicle or combination of vehicles or the gross weight of any two (2) or more consecutive axles shall be the sum of the axle weights.

For the purposes of this chapter the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles may be determined by accumulatively adding the separate weights of individual axles and tandem axles or groups of axles to determine gross weight. The results of any weighing at a temporary or permanent port of entry and the records relating to the calibration and accuracy of any scale at a temporary or permanent port of entry shall be admissible in any proceeding in this state. In order to prove a violation of the provisions of this section the state must show that:

(a) The sum of the axle weights exceeds what is allowable under the provisions of subsection (1) or (2) or (9) of this section;

(b) The scale involved in the weighing was at the time of weighing calibrated in conformity with and met the accuracy requirements of the standards for the enforcement of traffic and highway laws as set forth in the latest edition of handbook 44 of the national institute of standards and technology;

(c) Weights of individual axles or axles within a commonly suspended group of axles supported by a mechanical system designed to distribute equal wheel loads to individual axles in the group were utilized only to determine gross weights of that group of axles, and that any further evaluation of gross weights of combinations of axles considered only the accumulated gross weight of each such commonly suspended group of axles.

(4) In applying the weight limitations imposed in this section, a vehicle or combination of vehicles must comply exclusively with the weight limitations in either subsection (1) or (2) or (9) of this section.

(5) In applying the weight limitations imposed in this section, the distance between axles shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

(6) The limitations imposed in this section are in addition and

supplemental to all other laws imposing limitations upon the size and weight of vehicles.

(7) Notwithstanding the other provisions of this chapter, no vehicle, motor vehicle, trailer and/or semitrailer, or combination thereof, may be operated on the public highways of the state under loads which would result in the withholding of funds by operation of controlling federal law as provided in the Federal Aid Highway Act of 1956, as amended.

(8) Except as provided herein, no vehicle or combination of vehicles may proceed past the place of weighing at temporary or permanent ports of entry or checking stations when: the weight of a single axle exceeds the maximum limitations set forth herein by two thousand (2,000) pounds or more; the weight of a combination of axles, or gross vehicle weight exceeds the maximum allowable weight as set forth herein by seven percent (7%) or more. Vehicles or combinations of vehicles which exceed the weight limitations set forth herein shall be required to be brought into compliance with applicable weight limitations contained within this subsection at the place of weighing prior to continuing, except those vehicles or combinations of vehicles which are transporting loads which, in the determination of the board or other proper authorities in charge of or having jurisdiction over a highway, are deemed unsafe or impractical to bring into compliance at the place of weighing. Vehicles or combinations of vehicles transporting loads in this latter category shall obtain a travel authorization to the nearest place of safe unloading, load adjustment or other means of legalization.

(a) Neither the state of Idaho or its employees, nor any authority and its employees in charge of or having jurisdiction over a highway, shall be held liable for personal injury or property damage resulting from the requirements of section 49-1001(8), Idaho Code.

(b) The fee for a travel authorization as set forth above shall be fifty dollars (\$50.00) and shall be on a form prescribed by the board or other proper authorities.

(c) The board or other proper authorities in charge of or having jurisdiction over a highway shall adopt and enforce administrative rules and regulations as may be necessary to carry out the provisions of this section.

(9) For vehicles on all highways except the United States federal interstate and defense highways of this state, the following table shall apply:

<u>Distance in feet between the extremes of any group of 2 or more consecutive axles</u>	<u>Allowed Load in Pounds</u>	
	<u>Vehicles with Three or Four</u>	<u>Vehicles with Five or more</u>
<u>3 through 12</u>	<u>37,800</u>	<u>37,800</u>
<u>13</u>	<u>56,470</u>	<u>56,470</u>
<u>14</u>	<u>57,940</u>	<u>57,940</u>
<u>15</u>	<u>59,400</u>	<u>59,400</u>
<u>16</u>	<u>60,610</u>	<u>60,610</u>
<u>17</u>	<u>61,820</u>	<u>61,820</u>
<u>18</u>	<u>63,140</u>	<u>63,140</u>
<u>19</u>	<u>64,350</u>	<u>64,350</u>

<u>20</u>	65,450	65,450
<u>21</u>	66,000	66,330
<u>22</u>	66,000	67,250
<u>23</u>	66,000	67,880
<u>24</u>	66,000	68,510
<u>25</u>	66,000	69,150
<u>26</u>	66,000	69,770
<u>27</u>	66,000	70,400
<u>28</u>	66,000	70,950
<u>29</u>	66,000	71,500
<u>30</u>	66,000	72,050
<u>31</u>		72,600
<u>32</u>		73,150
<u>33</u>		73,700
<u>34</u>		74,250
<u>35</u>		74,800
<u>36</u>		75,350
<u>37</u>		75,900
<u>38</u>		76,450
<u>39</u>		77,000
<u>40</u>		77,550
<u>41</u>		78,100
<u>42</u>		78,650
<u>43 and over</u>		80,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles exceeds eighty thousand (80,000) pounds. When the provisions of this subsection are applicable to a vehicle or combination of vehicles, it shall be a violation of the provisions of this subsection if that vehicle or combination of vehicles exceeds the weights specified in this table.

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, 1993.

CHAPTER 372
(H.B. No. 193)

AN ACT

RELATING TO MANUFACTURED HOMES; AMENDING CHAPTER 22, TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 44-2101, IDAHO CODE, TO STATE THE PURPOSE OF THE CHAPTER AND TO CLARIFY THAT LICENSURE FOR MANUFACTURING, SERVICING, INSTALLING OR SELLING OF MANUFACTURED HOMES IS REQUIRED; AMENDING SECTION 44-2101, IDAHO CODE, TO REDESIGNATE THE SECTION AND PROVIDE ADDITIONAL DEFINITIONS; AMENDING SECTION 44-2103, IDAHO CODE, TO REMOVE REFERENCES TO FEES FOR SETUP AND SERVICE INSPECTIONS AND TO CORRECT TERMINOLOGY; REPEALING SECTION 44-2105, IDAHO CODE; AMENDING CHAPTER 21, TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 44-2105, IDAHO CODE,

TO PROVIDE FOR SUSPENSION OR REVOCATION OF LICENSES, HEARINGS, JUDICIAL REVIEW AND REAPPLICATION FOR A LICENSE AFTER REVOCATION; AMENDING CHAPTER 21, TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 44-2106, IDAHO CODE, TO SPECIFY ACTS CONSTITUTING VIOLATIONS OF THE PROVISIONS OF THE CHAPTER; AMENDING SECTION 44-2106, IDAHO CODE, TO REDESIGNATE THE SECTION, TO DELETE THE AMOUNT OF THE FINE AND THE TERM OF IMPRISONMENT WHICH MAY BE IMPOSED FOR VIOLATIONS OF THE CHAPTER AND TO CORRECT TERMINOLOGY; AMENDING SECTION 44-2201, IDAHO CODE, TO REQUIRE COMPLIANCE WITH THE MANUFACTURER'S INSTRUCTIONS FOR INSTALLATION OF A MOBILE/MANUFACTURED HOME UNLESS THEY ARE NOT READILY AVAILABLE, TO REQUIRE INSTALLATION OF MOBILE/MANUFACTURED HOMES IN COMPLIANCE WITH STATE LAWS PERTAINING TO UTILITY CONNECTION REQUIREMENTS, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 44-2202, IDAHO CODE, TO PROVIDE FOR ISSUANCE OF INSTALLATION PERMITS AND INSPECTIONS OF MOBILE/MANUFACTURED HOME INSTALLATIONS AS REQUIRED BY CITY OR COUNTY ORDINANCE, TO REQUIRE CITIES AND COUNTIES WHICH HAVE ADOPTED A BUILDING CODE TO ESTABLISH A PERMIT PROCESS FOR INSTALLATION OF MOBILE/MANUFACTURED HOMES WITHIN THEIR JURISDICTION AND TO PROVIDE FOR INSPECTION OF INSTALLATIONS, AND TO PROVIDE FOR ESTABLISHMENT OF FEES FOR PERMITS AND INSPECTIONS BY THE CITY OR COUNTY HAVING JURISDICTION; AND AMENDING SECTION 44-2204, IDAHO CODE, TO PROVIDE OTHER REQUIREMENTS FOR INSTALLING STABILIZING SYSTEMS.

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

SECTION 1. That Chapter 21, Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 44-2101, Idaho Code, and to read as follows:

44-2101. PURPOSE -- LICENSE REQUIRED. The legislature finds that the regulation and control of those persons engaged in the business of manufacturing, selling, installing or servicing of manufactured homes is necessary to protect the health and safety of the citizens of Idaho. To that end, it shall be unlawful for any person to engage in business as a manufacturer of manufactured homes, a manufactured home dealer, manufactured home broker, manufactured home service company or a manufactured home salesman without being duly licensed as provided in this chapter.

SECTION 2. That Section 44-2101, Idaho Code, be, and the same is hereby amended to read as follows:

44-2101A. DEFINITIONS. As used in this chapter:

- (1) "Department" means the department of labor and industrial services of the state of Idaho.
- (2) "Director" means the director of the department of labor and industrial services of the state of Idaho.
- (3) "Manufactured home" means a structure as defined in section 39-4105(14), Idaho Code.
- (4) "Manufactured home broker" means any person engaged in the

business of selling or exchanging used units only, or who buys, or sells, lists or exchanges three (3) or more used units in any one (1) calendar year, except as otherwise provided in this chapter.

(5) "Manufactured home dealer" means any person engaged in the business of selling or exchanging new and used units, or who buys, or sells, lists or exchanges three (3) or more new and used units in any one (1) calendar year, except as otherwise provided in this chapter.

(6) "Manufactured home salesman" means any person who, employed by a manufactured home dealer or broker for a salary, commission or compensation of any kind, ~~is employed either directly or indirectly, or regularly or occasionally by any manufactured home dealer~~ to sell, list, purchase or exchange or to negotiate for the sale, listing, purchase or exchange of units, except as otherwise provided in this chapter.

(7) "Manufactured home service company" includes "manufactured home installer" and means any person other than a manufactured home dealer primarily engaged in the who provides service, and setup, or both, of manufactured or mobile homes.

(8) "Manufacturer" means any person engaged in the business of manufacturing manufactured homes that are offered for sale, lease or exchange in the state of Idaho.

(9) "Mobile home" means a structure similar to a manufactured home, but built to a state mobile home code which existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code).

(910) "Person" means a natural person, corporation, partnership, trust, society, club, association, or other organization.

(11) "Principal place of business" means an enclosed structure accessible and open to the public, at which the business is lawfully conducted in accordance with the terms of all applicable building codes, zoning and other land use regulatory ordinances, in which building the public may contact the dealer, broker or salesman, and at which place shall be kept and maintained the books, records and files necessary to conduct the business. There shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic.

(102) "Unit" means a mobile or manufactured home.

SECTION 3. That Section 44-2103, Idaho Code, be, and the same is hereby amended to read as follows:

44-2103. FEES -- DEPOSIT OF FEES. (1) Fees for licensing of dealers, brokers, manufacturers, salesmen and service companies shall not exceed:

- (a) Manufactured home dealer or broker's license \$250.00
- (b) Manufacturer license \$250.00
- (c) Manufactured home service company/installer \$125.00
- (d) Manufactured home salesman's license \$ 25.00

(2) ~~Fees for setup and service inspections shall not exceed fifty dollars (\$50.00) plus appropriate travel expenses.~~

(3) All license fees collected by the department under the provisions of this chapter shall be paid into the manufactured housing account, which is hereby created in the dedicated fund. The expenses incurred in administering and enforcing the provisions of this chapter

shall be paid from the account.

(4) The following performance bonding requirements shall be met before the issuance of these licenses:

- (a) Manufacturer \$20,000 bond
- (b) Manufactured home dealer \$20,000 bond
- (c) Manufactured home broker \$20,000 bond
- (d) Manufactured home service company/installer ... \$ 5,000 bond.

SECTION 4. That Section 44-2105, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Chapter 21, Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 44-2105, Idaho Code, and to read as follows:

44-2105. SUSPENSION OR REVOCATION OF LICENSES -- HEARING -- JUDICIAL REVIEW -- REAPPLICATION. (1) The director may suspend or revoke any license, if the license was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent, or has wilfully violated any provision of this chapter or the rules adopted thereunder.

(2) The director shall have the power to appoint, by an order in writing, any competent person to take testimony at a hearing conducted for the purposes of determining whether a license should be suspended or revoked. The director, and any hearing officer appointed by the director, shall have the power to administer oaths, issue subpoenas and compel the attendance of witnesses and the production of documents and records.

(3) Before any license shall be suspended or revoked, the holder thereof shall be served with written notice enumerating the charges against him, and shall be afforded an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code. The notice shall specify the time and place for hearing, which time shall not be less than five (5) days after the service thereof.

(4) Any party aggrieved by an order of the director suspending or revoking a license shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

(5) Any person whose license has been revoked may not apply for a new license until the expiration of one (1) year from the date of such revocation.

SECTION 6. That Chapter 21, Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 44-2106, Idaho Code, and to read as follows:

44-2106. VIOLATIONS. (1) It shall be unlawful to engage in business as a manufacturer, manufactured home dealer, manufactured home broker, manufactured home salesman or manufactured home service company without being duly licensed by the department pursuant to this chapter.

(2) It shall be unlawful for a manufacturer, manufactured home dealer, manufactured home broker, manufactured home salesman or manufactured home service company to:

- (a) Intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products or services sold or provided by a manufacturer, manufactured home dealer, broker, salesman or service company;
- (b) Violate any of the provisions of this chapter or any rule adopted by the department pursuant to this chapter;
- (c) Knowingly purchase, sell or otherwise acquire or dispose of a stolen manufactured or mobile home;
- (d) With respect only to a manufacturer home dealer or broker, to engage in the business for which such dealer or broker is licensed without at all times maintaining a principal place of business located within the state.

SECTION 7. That Section 44-2106, Idaho Code, be, and the same is hereby amended to read as follows:

44-21067. PENALTY PROVISIONS. Whoever shall violate any of the provisions of this chapter, or any laws, or rules or regulations promulgated adopted pursuant to this chapter, shall be guilty of a misdemeanor and, upon conviction, be fined not more than five hundred dollars (\$500) or imprisoned for not more than ninety (90) days, or both, for each offense.

SECTION 8. That Section 44-2201, Idaho Code, be, and the same is hereby amended to read as follows:

44-2201. MOBILE/MANUFACTURED HOMES INSTALLATION. All mobile/manufactured homes and commercial coaches must be installed either in accordance with the manufacturer's instructions or where the manufacturer's instructions are not readily available from the manufacturer, the mobile/manufactured home must be installed in accordance with the provisions of this chapter. All mobile/manufactured homes must be installed in accordance with all other applicable state laws pertaining to utility connection requirements. If the home is installed in accordance with the manufacturer's specifications, a copy of those specifications shall be in the home at the time of setup and inspection. If the home is installed in accordance with the provisions of this chapter, then a copy of the state setup requirements shall be included with the home. All dimensions required by the provisions of this chapter are considered to be nominal.

The homeowner or park owner must ensure that the ground on which a mobile/manufactured home is to be installed has been improved as necessary to provide a proper base for the unit and that the area beneath it has adequate drainage.

SECTION 9. That Section 44-2202, Idaho Code, be, and the same is hereby amended to read as follows:

44-2202. INSTALLATION PERMITS AND INSPECTIONS REQUIRED. (1) The

owner or the installer/inspector of a mobile/manufactured home must obtain an installation permit from the department of labor and industrial services as required by city or county ordinance before installing a mobile/manufactured home that will be used as a residence on a building site or in a park. The applicant shall include with the application for the permit such permit fee as may be set by the department by rule and regulation for such permit. No installer/inspector may submit an application for permit for installation of a mobile/manufactured home who has not previously furnished the department proof of coverage by a surety bond in the amount set in section 44-2103, Idaho Code, and is properly licensed by the department. The surety bond installer's license must be in effect at the time of the application for the installation permit. If the owner installs his own home, then upon completion, he shall contact the department of labor and industrial services for an inspection. Fees for such inspection shall be established by rule.

(2) Cities and counties, which have by ordinance adopted a building code, shall establish a permit process for the installation of all mobile/manufactured homes within their respective jurisdictions and shall provide for inspection of all work required by the manufacturer's installation instructions or the installation and setup provisions of this chapter, whichever is applicable pursuant to the provisions of section 44-2201, Idaho Code. Fees for installation permits and inspections shall be as established by the city or county having jurisdiction.

SECTION 10. That Section 44-2204, Idaho Code, be, and the same is hereby amended to read as follows:

44-2204. REQUIREMENTS FOR INSTALLING STABILIZING SYSTEMS. Mobile/manufactured homes or commercial coaches not installed pursuant to the manufacturer's installation instructions must be installed according to this section.

(1) Footings must be constructed of:

- (a) Precast or poured-in-place concrete, not less than 16 inches x 16 inches x 4 inches, or
- (b) Two concrete pads, 4 inches x 8 inches x 16 inches, installed side by side, or
- (c) Other materials and sizes approved by the division which provide equivalent load-bearing capacity and resistance to decay or when justified by soil compaction analysis.

(2) Supports must be one (1) of the following:

- (a) Steel piers sufficient to carry the weight of the mobile/manufactured home or commercial coach must be installed under the supporting frame, spaced at a distance not exceeding 6 feet on center, with the end piers not further than 2 feet from the end of the mobile/manufactured home or commercial coach. No steel pier may be used unless it has been approved by the department and has a minimum 3,000 pounds of compressive strength.
- (b) Concrete, cinder or pumice block piers, minimum of 3,000 pounds compressive strength, must be installed under the supporting frame, spaced at a distance not exceeding 6 feet on center, with the piers not further than 2 feet from each end of the

mobile/manufactured home. Concrete, cinder or pumice block piers must be constructed of blocks 8 inches x 8 inches x 16 inches. The cells of the blocks must be vertical and placed perpendicular (crosswise) to the main frame. All block piers must be topped with a solid concrete, cinder or pumice or wood cap measuring 8 inches x 16 inches x 2 inches, minimum size; no more than 2 wooden wedges or shims; or with other material approved by the department. A wood plate measuring 8 inches x 16 inches, not exceeding 2 inches in thickness, and shims that transfer loads uniformly, not exceeding 1 inch in thickness, shall be permitted to be used to fill any gap between the top of the pier and the main frame. Two 2 inch or 4 inch solid concrete blocks shall be permitted to be used to fill the remainder of any gap. Shims shall be at least nominal 4 inches wide and 6 inches long and shall be fitted and driven tight between the wood plate or pier and main frame. No other pier support material will be approved unless it provides equivalent load-bearing capacity and can be documented by engineering calculations. All materials having ground contact must be resistant to decay.

(c) Block piers more than 40 inches but not more than 80 inches in height must be constructed by using double tiers with interlocking concrete, cinder or pumice blocks. Block piers more than 60 inches in height must be constructed of concrete, cinder or pumice blocks with 1/2 inch reinforcing steel bars inserted vertically and the cells of the blocks poured solid with concrete.

(3) A mobile/manufactured home of more than one section must have center-line centerline blocking at end walls and at any other point of connection of the sections of the mobile/manufactured home that are at a ridge beam bearing support.

(4) The house will be set so that 75% of the area under the home has at least 12 inches of clearance between the bottom of the I-beam and the ground level.

(5) Whatever type of fascia or skirting is installed on any mobile/manufactured home shall be properly vented, with no less than eight minimum 96 square inch vents (net size of screen) spaced no more than 25 feet apart, with one vent no more than 3 feet from each corner in both directions.

Approved April 1, 1993.

CHAPTER 373
(H.B. No. 218)

AN ACT

RELATING TO THE IDAHO BOARD AND CARE ACT; AMENDING SECTION 39-3301, IDAHO CODE, TO LIMIT APPLICATION TO MENTALLY ILL, DEVELOPMENTALLY OR PHYSICALLY DISABLED PERSONS; AMENDING SECTION 39-3302, IDAHO CODE, TO FURTHER DEFINE ADMINISTRATOR/OPERATOR, FACILITY AND LICENSE, AND TO REDEFINE RESIDENTIAL CARE FACILITY; AMENDING SECTION 39-3303, IDAHO CODE, TO SPECIFY THE CLIENT POPULATION WHICH MAY SEEK PLACEMENT IN A RESIDENTIAL CARE FACILITY; AMENDING SEC-

TION 39-3304, IDAHO CODE, TO LIMIT THE CLIENT POPULATION OF RESIDENTIAL CARE FACILITIES TO MENTALLY ILL, DEVELOPMENTALLY OR PHYSICALLY DISABLED PERSONS; AND AMENDING SECTIONS 39-3305 AND 39-3306, IDAHO CODE, TO DELETE REFERENCE TO REGULATIONS AND STANDARDS; AMENDING SECTION 39-3330, IDAHO CODE, TO REVISE THE MEMBERSHIP ON THE BOARD AND CARE COUNCIL; AMENDING SECTION 39-3340, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3342, IDAHO CODE, TO PROVIDE APPLICATION TO INDIVIDUALS WHO ARE MENTALLY ILL, DEVELOPMENTALLY DISABLED OR PHYSICALLY DISABLED; AMENDING SECTION 39-3352, IDAHO CODE, TO PROVIDE THAT NO UNLICENSED RESIDENTIAL CARE FACILITY WHICH PROVIDES SERVICE TO INDIVIDUALS WHO ARE MENTALLY ILL, DEVELOPMENTALLY DISABLED OR PHYSICALLY DISABLED SHALL OPERATE IN THIS STATE, AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 39-3371, IDAHO CODE, TO PROVIDE PROPER TERMINOLOGY.

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

SECTION 1. That Section 39-3301, Idaho Code, be, and the same is hereby amended to read as follows:

39-3301. LEGISLATIVE INTENT AND DECLARATION. The purpose of a board and care facility in Idaho is to provide a humane, safe, and home-like living arrangement for persons who are mentally ill, developmentally disabled; or physically disabled; ~~and/or elderly~~ who need some assistance with activities of daily living and personal care but do not require the level of care provided by nursing facilities or other institutions.

The state will encourage the development of facilities tailored to the needs of individual populations which operate in integrated settings in communities where sufficient supportive services exist to provide the resident, if appropriate, an opportunity to work and be involved in recreation and education opportunities alongside people who are not mentally ill, developmentally disabled; or physically disabled; ~~and/or elderly~~.

The facilities shall be operated and staffed by individuals who have the knowledge and experience required to provide safe and appropriate services to all residents of the facility. The operators shall protect the rights and provide appropriate services to meet the needs of the individual residents.

The department will be responsible for monitoring and enforcing the provisions of this chapter. This responsibility includes, but is not limited to, monitoring the condition of the facility, the individualized, written plan of care including activities of daily living and support services to be provided, and the development of enforcement procedures when violations occur.

Nothing in this chapter is intended to reduce or eliminate any duty of the department or any other public or private entity for provision of services for any resident.

SECTION 2. That Section 39-3302, Idaho Code, be, and the same is hereby amended to read as follows:

39-3302. DEFINITIONS. As used in this chapter:

(1) "Activities of daily living" mean the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(2) "Administrator/operator" means any person who has responsibility for day-to-day administration or operation of a residential care facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled.

(3) "Adult" means a person who has attained the age of eighteen (18) years.

(4) "Adult foster care family" means all individuals related by blood or marriage, other than residents, residing in the adult foster care home.

(5) "Adult foster care home" means a family home in which two (2) or less adults are placed to live who are not able to reside in their own home and who require family care, help in daily living, protection, security, and encouragement toward independence (may be referred to as a "home").

(6) "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of mentally ill, developmentally disabled, or elderly residents.

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

(8) "Board and care council" means the interdisciplinary group appointed by the director to advise the agency on matters of policy relating to board and care facilities.

(9) "Certificate" means a one (1) year certificate issued by the certifying agent of the department to adult foster care homes complying with this chapter.

(10) "Certifying agent" means a person representing the areas of social services, mental health or developmental disabilities, acting under the authority of the department to participate in the certification, inspection, and regulation of an adult foster care home.

(11) "Client" means any person who receives financial aid and/or services from an organized program of the department.

(12) "Continuing" means personal assistance services required over an extended period of time.

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

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

(15) "Facility" means a residential care facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled or an adult foster care home.

(16) "Foster care provider" means an adult member of the foster care family responsible for maintaining the adult foster care home. The foster care provider and the legal owner may not necessarily be the same person.

(17) "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board, or other agency thereof.

(18) "Him or his" means him or her.

(19) "License" means a basic permit to operate a residential care

facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled.

(20) "Licensee" means the holder of a license to operate a residential care facility under this chapter.

(21) "Licensing agency" means the unit of the department of health and welfare that conducts inspections and surveys and issues licenses based on compliance with this chapter.

(22) "Person" means any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(23) "Personal assistance" means the provision by the staff of the facility of one or more of the following services:

(a) Assisting the resident with activities of daily living.

(b) Arranging for supportive services.

(c) Being aware of the resident's general whereabouts.

(d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and well-being.

(24) "Plan of care" means a written description of the functional capabilities of an individual, the individual's need for personal assistance and supervision, and the services to be provided to meet the individual's needs.

(25) "Political subdivision" means a city or county.

(26) "Representative of the department" means an employee of the department.

(27) "Resident" means an adult who resides in a residential care facility or an adult foster care home who may be mentally ill, developmentally disabled, physically disabled and/or elderly and for whom appropriate care is given.

(28) "Residential care facility" means a facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more ~~elderly~~, developmentally disabled, physically disabled and/or mentally ill adults not related to the owner.

(29) "Room and board" means lodging and meals.

(30) "Qualified mental health professional" means a person who is qualified, by training and experience as defined by regulations promulgated by the board, to provide services to the mentally ill.

(31) "Qualified mental retardation professional" means a person who is qualified, by training and experience as defined by regulations promulgated by the board, to provide services to the mentally retarded.

(32) "Service coordinator" means an employee of the department who is qualified, by training and experience as defined by regulations promulgated by the board, and designated at the regional level to develop or coordinate plans of care for clients of the department.

(33) "Substantial compliance" means there are no deficiencies which would endanger the health, safety, or welfare of the residents.

(34) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts, and assistance with activities of daily living. The operator is responsible for providing appropriate supervision based on

each resident's plan of care.

(35) "Supportive services" mean the specific services that are provided to the resident in the community and that are required by the plan of care or reasonably requested by the resident.

SECTION 3. That Section 39-3303, Idaho Code, be, and the same is hereby amended to read as follows:

39-3303. PAYMENT LEVELS. Clients of the department who are mentally ill, developmentally disabled or physically disabled and are receiving financial aid as set out in sections 56-207, 56-208 and 56-209a, Idaho Code, seeking placement in a residential care facility will be assessed by a service coordinator. Based upon the assessed need and plan of care, the specific types of services and supports required will determine the level of payment to be received by the resident according to the following criteria:

(1) Level I. The client requires room, board, and supervision and may require one or more of the following:

(a) Minimal assistance with activities of daily living and non-medical personal assistance.

(b) Minimal assistance with mobility, i.e., client is independently mobile.

(c) Minimal assistance in an emergency, i.e., client is capable of self-preservation in an emergency.

(d) Minimal assistance with medications, i.e., client does not require medication management or supervision.

(e) Minimal behavior management substantiated by the client's history.

(2) Level II. The client requires room, board, and supervision and may require one or more of the following:

(a) Moderate assistance with activities of daily living and non-medical personal assistance.

(b) Moderate assistance with mobility, but easily mobile with assistance.

(c) Moderate assistance in an emergency, but client is capable of self-preservation with assistance.

(d) Moderate assistance with medications.

(e) Moderate assistance with behavior management.

(3) Level III. The client requires room, board, and staff up and awake on a twenty-four (24) hour basis and may require one or more of the following:

(a) Extensive assistance with activities of daily living.

(b) Extensive personal assistance.

(c) Extensive assistance with mobility and may be immobile without extensive assistance.

(d) Extensive assistance in an emergency and may be incapable of self-preservation without assistance.

(e) Extensive assistance with and monitoring of medications.

(f) Extensive assistance with training and/or behavior management.

SECTION 4. That Section 39-3304, Idaho Code, be, and the same is hereby amended to read as follows:

39-3304. TYPES OF FACILITIES. (†) The state will foster the development of, and provide incentives for, residential care facilities serving specific mentally ill and developmentally or physically disabled populations which are small in size to provide for family and home-like arrangements. Small facilities of eight (8) beds or less for the developmentally or physically disabled population and fifteen (15) beds or less for the mentally ill population will provide residents with the opportunity for normalized and integrated living in typical homes in neighborhoods and communities.

~~(2) The state shall also foster the development of residential care facilities serving clients with Alzheimer's disease which are thirty (30) beds or less in size.~~

SECTION 5. That Section 39-3305, Idaho Code, be, and the same is hereby amended to read as follows:

39-3305. RULES ~~AND REGULATIONS~~. The board shall have the authority to adopt, amend, repeal and enforce such reasonable rules, ~~regulations, and standards~~ as may be necessary or proper to carry out the purpose and intent of this chapter which are designed to protect the health, safety and individual rights of residents in residential care facilities and provide adequate nutrition, supervision, and therapeutic recreational activities and to enable the department to exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with any statute of this state. These rules, regulations, and standards shall be promulgated in accordance with the provisions of the Idaho administrative procedures act.

SECTION 6. That Section 39-3306, Idaho Code, be, and the same is hereby amended to read as follows:

39-3306. STATE LICENSING TO SUPERSEDE LOCAL REGULATION. This chapter and the rules, ~~regulations, and standards~~ promulgated pursuant to this chapter shall supersede any program of any political subdivision of the state which licenses or sets standards for residential care facilities.

SECTION 7. That Section 39-3330, Idaho Code, be, and the same is hereby amended to read as follows:

39-3330. BOARD AND CARE COUNCIL. (1) The department shall establish a state level board and care council consisting of twenty (20) members appointed by the director. The director, or his designee, shall serve as chairman of the council. The members of the council shall be:

- (a) The representative of the department's adult services unit or his designee.
- (b) The representative of the department's mental health unit or his designee.
- (c) The representative of the department's developmental disabilities unit or his designee.
- (d) The state ombudsman for the elderly or his designee.
- (e) The director of the state protection and advocacy system or

his designee.

(f) An advocate for mentally ill citizens in the state.

(g) An advocate for physically disabled citizens in the state.

(h) The director of the state developmental disabilities council or his designee.

(i) Six (6) administrators or licensees of licensed residential care facilities, one (1) of whom shall be the president of the state association representing residential care facilities and two (2) of whom shall be designees representing such association.

(j) Two (2) adult foster care home providers.

(k) Three (3) residents of residential care facilities who are mentally ill, developmentally disabled or physically disabled or individuals residing in adult foster care homes.

(2) In appointing the first members of the council who are not state agency representatives, the director shall appoint eight (8) members for a term of two (2) years and seven (7) members for a term of three (3) years. After the initial appointment, members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member.

SECTION 8. That Section 39-3340, Idaho Code, be, and the same is hereby amended to read as follows:

39-3340. LICENSING OF RESIDENTIAL CARE FACILITIES FOR THE MENTALLY ILL, DEVELOPMENTALLY DISABLED, AND PHYSICALLY DISABLED,~~AND ELDERLY.~~ After July 1, 1991, no person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential care facility in the state without a current valid license issued by the licensing agency of the department.

SECTION 9. That Section 39-3342, Idaho Code, be, and the same is hereby amended to read as follows:

39-3342. APPLICATION. The applicant shall apply for a license upon forms provided by the licensing agency giving such information as the licensing agency shall require including, but not limited to:

(1) Evidence satisfactory to the licensing agency of the ability of the applicant to comply with the provisions of this chapter and with the rules, regulations and standards adopted under this chapter by the department.

(2) Evidence satisfactory to the department that the applicant is of reputable and responsible character.

(3) The evidence shall include, but not be limited to:

(a) A criminal record clearance;

(b) Fingerprinting;

(c) Employment history;

(d) Credit report;

(e) Character references.

(4) If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, like evidence shall be submitted as to the members or shareholders holding ten percent

(10%) or more interest thereof, and the administrator/operator of the residential care facility.

(5) Evidence satisfactory to the licensing agency that the applicant has sufficient financial resources to maintain the standards of service required by rules, regulations and standards adopted pursuant to this chapter.

(6) Evidence satisfactory to the licensing agency that the administrator/operator has successfully completed the department approved orientation.

(7) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities in Idaho as specified in section 39-3345, Idaho Code, or any other jurisdiction.

(8) Any other information as may be required by the licensing agency for the proper administration and enforcement of the provisions of this chapter.

(9) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(10) A signed statement that the person desiring issuance or renewal of a license has read and understands the provisions of this chapter and residential care facility rules and regulations which apply to individuals who are mentally ill, developmentally disabled or physically disabled.

SECTION 10. That Section 39-3352, Idaho Code, be, and the same is hereby amended to read as follows:

39-3352. UNLICENSED RESIDENTIAL CARE FACILITIES. (1) No unlicensed residential care facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled shall operate in this state.

(2) A facility shall be deemed to be an "unlicensed residential care facility" and "maintained and operated to provide residential care" if it is unlicensed and not exempt from licensure, and any one (1) of the following conditions is satisfied:

(a) The facility is, or is held out as or represented as, providing care, supervision and services.

(b) The facility accepts or retains residents who demonstrate the need for care, supervision, and services, as defined by in this chapter or the rules, ~~regulations and standards~~ adopted pursuant to this chapter.

(3) Upon discovery of an unlicensed residential care facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled, the department shall refer residents to the appropriate placement or adult protective services agency if either of the following conditions exist:

(a) There is an immediate threat to the resident's health and safety.

(b) The facility will not cooperate with the licensing agency to

apply for a license, meet licensing standards, and obtain a valid license.

(4) A person found to be operating a residential care facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled, without a license shall be guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed five thousand dollars (\$5,000).

(5) In the event the county attorney in the county where the alleged violation occurred fails or refuses to act within thirty (30) days of notification of the violation, the attorney general is authorized to prosecute violations under the provisions of this section.

SECTION 11. That Section 39-3371, Idaho Code, be, and the same is hereby amended to read as follows:

39-3371. ~~RULES AND REGULATIONS~~. The board shall have the power and it shall be its duty to promulgate appropriate rules ~~and regulations~~ necessary to implement and enforce the standards for certifying adult foster care homes pursuant to this act including, but not limited to, the following:

(1) A home shall not be certified for more than two (2) adults.

(2) An adult foster care provider may be a couple or a single individual.

(3) A home cannot be certified for adult foster care if it also provides room and board for other persons.

(4) A home cannot be certified for adult foster care and child foster care at the same time.

(5) The adult foster care provider must have sufficient income to maintain the home and the services offered.

(6) Information obtained by the foster care provider shall be held confidential except to representatives of the department to provide services or determine compliance with this chapter or upon consent of the individual or his legal guardian.

(7) Record keeping and reporting requirements as may be deemed necessary.

(8) Requirements to assure the safety and adequate care of residents.

Approved April 1, 1993.

CHAPTER 374
(H.B. No. 219, As Amended)

AN ACT

RELATING TO RESIDENTIAL CARE FOR THE ELDERLY; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 35, TITLE 39, IDAHO CODE, TO PROVIDE FOR LEGISLATIVE INTENT AND DECLARATION, TO PROVIDE FOR DEFINITIONS, TO PROVIDE FOR PAYMENT LEVELS, TO PROVIDE FOR TYPES OF FACILITIES, TO PROVIDE FOR RULES, TO PROVIDE FOR STATE LICENSING TO SUPERSEDE LOCAL REGULATION, TO PROVIDE FOR ADMISSIONS, TO

PROVIDE FOR PLAN OF CARE, TO PROVIDE FOR PREPARATION, TO PROVIDE FOR PERIODIC REVIEW, TO PROVIDE FOR PHYSICIAN'S ORDER FOR NONCLIENTS OF THE DEPARTMENT, TO PROVIDE FOR RESPONSIBILITIES OF LICENSEE, TO PROVIDE FOR ADMISSION AGREEMENTS, TO PROVIDE FOR TERMINATION OF ADMISSION AGREEMENTS, TO PROVIDE FOR ADMISSION RECORDS, TO PROVIDE FOR RESIDENT RIGHTS, TO PROVIDE FOR NOTICE OF RIGHTS, TO PROVIDE FOR FACILITY RESPONSE TO INCIDENTS AND COMPLAINTS, TO PROVIDE FOR ACCESS BY ADVOCATES AND REPRESENTATIVES, TO PROVIDE FOR RESIDENT COUNCILS, TO PROVIDE FOR QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR/OPERATOR, TO PROVIDE FOR QUALIFICATIONS AND REQUIREMENTS FOR FACILITY STAFF, TO PROVIDE FOR TRAINING, TO PROVIDE FOR STAFF TRAINING, TO PROVIDE FOR REQUIREMENTS FOR LOCATION AND PHYSICAL ENVIRONMENT OF FACILITIES, TO PROVIDE FOR RESIDENTIAL CARE COUNCIL FOR THE ELDERLY, TO PROVIDE FOR POWERS AND DUTIES, TO PROVIDE FOR MEETINGS, TO PROVIDE FOR REIMBURSEMENT OF EXPENSES, TO PROVIDE FOR LICENSING OF RESIDENTIAL CARE FACILITIES FOR THE ELDERLY, TO PROVIDE FOR INITIAL APPLICATION AND ISSUANCE OF A LICENSE, TO PROVIDE FOR APPLICATION, TO PROVIDE FOR TEMPORARY LICENSE, TO PROVIDE FOR RENEWAL OF A LICENSE, TO PROVIDE FOR DENIAL OR REVOCATION OF A LICENSE, TO PROVIDE FOR PROCEDURE FOR DENIAL OR REVOCATION OF A LICENSE, TO PROVIDE FOR EFFECT OF PREVIOUS REVOCATION OR DENIAL OF A LICENSE, TO PROVIDE FOR COPIES OF DEPARTMENT OF HEALTH AND WELFARE RULES, TO PROVIDE FOR RESPONSIBILITY FOR INSPECTIONS AND LICENSING AND FOR NONTRANSFERABILITY OF LICENSES, TO PROVIDE FOR CONSULTING SERVICES, TO PROVIDE FOR EXEMPTIONS, TO PROHIBIT UNLICENSED RESIDENTIAL CARE FACILITIES FOR THE ELDERLY, TO PROHIBIT PLACEMENT OF PERSONS INTO AN UNLICENSED RESIDENTIAL CARE FACILITY FOR THE ELDERLY, TO PROVIDE FOR WAIVER OR VARIANCE, TO PROVIDE FOR INSPECTIONS, TO PROVIDE FOR COMPLAINTS, TO PROVIDE FOR ENFORCEMENT PROCESS, TO PROVIDE FOR SPECIFIED REMEDIES, AND TO PROVIDE FOR TRANSFER OF RESIDENTS.

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 35, Title 39, Idaho Code, and to read as follows:

CHAPTER 35 RESIDENTIAL CARE FOR THE ELDERLY

39-3501. LEGISLATIVE INTENT AND DECLARATION. The purpose of a residential care facility for the elderly in Idaho is to provide a humane, safe, and home-like living arrangement for persons who are elderly who need some assistance with activities of daily living and personal care but do not require the level of care provided by nursing facilities or other institutions.

It is the intent of the legislature that residential care facilities for the elderly be available to meet the needs of those for whom they care by recognizing the capabilities of individuals to direct their self-medication or to use supervised self-medication techniques when ordered and approved by an individual licensed to prescribe medi-

cation.

Nothing in this chapter is intended to reduce or eliminate any duty of the department or any other public or private entity for provision of services for any resident.

39-3502. DEFINITIONS. As used in this chapter:

(1) "Activities of daily living" mean the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(2) "Administrator/operator" means any person who has responsibility for day-to-day administration or operation of a residential care facility for the elderly.

(3) "Adult" means a person who has attained the age of eighteen (18) years.

(4) "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by the facility.

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

(6) "Client" means any person who receives financial aid and/or services from an organized program of the department.

(7) "Continuing" means personal assistance services required over an extended period of time.

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

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

(10) "Facility" means a residential care facility for the elderly.

(11) "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board or other agency thereof.

(12) "Him or his" means him or her.

(13) "License" means a basic permit to operate a residential care facility for the elderly.

(14) "Licensee" means the holder of a license to operate a residential care facility for the elderly under this chapter.

(15) "Licensing agency" means the unit of the department of health and welfare that conducts inspections and surveys and issues licenses based on compliance with this chapter.

(16) "Mixed populations" mean that two (2) or more of the following populations: mentally ill, developmentally disabled, physically disabled, and/or elderly, are provided care and/or housing within the facility.

(17) "Person" means any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(18) "Personal assistance" means the provision by the staff of the facility of one (1) or more of the following services:

(a) Assisting the resident with activities of daily living.

(b) Arranging for supportive services.

(c) Being aware of the resident's general whereabouts.

(d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and

well-being.

(19) "Plan of care" means a written description of the functional capabilities of an individual, the individual's need for personal assistance and supervision, and the services to be provided to meet the individual's needs.

(20) "Political subdivision" means a city or county.

(21) "Representative of the department" means an employee of the department.

(22) "Resident" means an individual who, by reason of age or infirmity, requires personal assistance and who is not related by blood or marriage to the licensee of the facility.

(23) "Residential care council for the elderly" means the interdisciplinary group appointed by the director to advise the agency and legislature on matters of policy relating to residential care facilities for the elderly.

(24) "Residential care facility for the elderly" means a facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more elderly adults not related to the owner.

(25) "Room and board" means lodging and meals.

(26) "Service coordinator" means an employee of the department who is qualified, by training and experience as defined by rules promulgated by the board, and designated at the regional level to develop or coordinate plans of care for clients of the department.

(27) "Substantial compliance" means there are no deficiencies which would endanger the health, safety or welfare of the residents.

(28) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts and assistance with activities of daily living. The operator is responsible for providing appropriate supervision based on each resident's plan of care.

(29) "Supportive services" mean the specific services that are provided to the resident in the community and that are required by the plan of care or reasonably requested by the resident.

39-3503. PAYMENT LEVELS. Clients of the department receiving financial aid as set out in sections 56-207, 56-208 and 56-209a, Idaho Code, seeking placement in a residential care facility for the elderly will be assessed by a service coordinator. Based upon the assessed need and plan of care, the specific types of services and supports required will determine the level of payment to be received by the resident according to the following criteria:

(1) Level I. The client requires room, board, and supervision and may require one (1) or more of the following:

(a) Minimal assistance with activities of daily living and non-medical personal assistance.

(b) Minimal assistance with mobility, i.e., client is independently mobile.

(c) Minimal assistance in an emergency, i.e., client is capable of self-preservation in an emergency.

(d) Minimal assistance with medications, i.e., client does not require medication management or supervision.

(e) Minimal behavior management substantiated by the client's history.

(2) Level II. The client requires room, board and supervision and may require one (1) or more of the following:

(a) Moderate assistance with activities of daily living and non-medical personal assistance.

(b) Moderate assistance with mobility, but easily mobile with assistance.

(c) Moderate assistance in an emergency, but client is capable of self-preservation with assistance.

(d) Moderate assistance with medications.

(e) Moderate assistance with behavior management.

(3) Level III. The client requires room, board, and staff up and awake on a twenty-four (24) hour basis and may require one (1) or more of the following:

(a) Extensive assistance with activities of daily living.

(b) Extensive personal assistance.

(c) Extensive assistance with mobility and may be immobile without extensive assistance.

(d) Extensive assistance in an emergency and may be incapable of self-preservation without assistance.

(e) Extensive assistance with and monitoring of medications.

(f) Extensive assistance with training and/or behavior management.

39-3504. TYPES OF FACILITIES. The state will foster the development of, and provide incentives for, facilities serving clients with Alzheimer's disease which are thirty (30) beds or less in size and any other type of facility specifically designed to meet the growing needs of the elderly population.

39-3505. RULES. The board shall have the authority to adopt, amend, repeal and enforce such reasonable rules as may be necessary or proper to carry out the purpose and intent of this chapter which are designed to protect the health, safety and individual rights of residents in residential care facilities for the elderly and provide adequate nutrition, supervision, and therapeutic recreational activities and to enable the department to exercise the powers and perform the duties conferred upon it in this chapter, not inconsistent with any statute of this state. Providers who care for a mixed population shall comply with the rules that are the most restrictive based on the populations being served. These rules shall be promulgated in accordance with the provisions of the Idaho administrative procedure act. Rules will be adopted July 1, 1994, but prior to that time, the existing rules as provided in section 39-3305, Idaho Code, will apply to residential care facilities for the elderly.

39-3506. STATE LICENSING TO SUPERSEDE LOCAL REGULATION. The provisions of this chapter, and the rules promulgated pursuant to this chapter, shall supersede any program of any political subdivision of the state which licenses or sets standards for residential care facilities for the elderly.

39-3507. ADMISSIONS. (1) A residential care facility for the elderly shall not admit or retain any resident requiring a level of services or type of service for which the facility is not licensed or which the facility does not provide, or if the facility does not have the staff, appropriate in numbers and with appropriate skills, to provide.

(2) The facility shall not admit any client of the department without a written statement from the service coordinator that the resident requires residential care based on an assessment, prior to admission, of the resident's medical/social/skills information.

(3) The facility shall not admit any nonclient of the department without a written order by the attending physician for admission to the residential care facility for the elderly which shall include orders for medications, treatments and activity level.

(4) The department shall develop rules governing admissions to residential care facilities for the elderly.

39-3508. PLAN OF CARE. (1) The mechanism for coordinating services for each resident is the individualized plan of care. Upon completion, the plan shall clearly describe the resident and the services to be provided to the resident and how they are to be accomplished in a manner that will guide the staff of the facility in assisting the resident.

(2) At a minimum, the written plan of care shall describe, in lay terms, the following:

(a) The resident's specific strengths and limitations in performing activities of daily living.

(b) Any medical or health problems of the resident which are relevant to the services needed by the resident.

(c) Any physical disabilities or impairments of the resident which are relevant to the services needed by the resident.

(d) Any emotional or mental health problems of the resident which are relevant to the services needed by the resident.

(e) The resident's requirements for recreational activities.

(f) The resident's requirements for supervision.

(g) The resident's requirements for supportive services.

(h) Where indicated, will include a functional habilitation record specifying measurable goals and objectives supported by documentation reflecting outcomes which compliment supportive services in the community.

(i) Any other problems of the resident which are relevant to the services needed by the resident.

(j) A transitional or discharge plan.

39-3509. PREPARATION. (1) For clients of the department, the plan of care shall be developed by a professional team with the service coordinator as team leader utilizing information gathered from the client, the client's physical examination, medical history, social evaluations, skills evaluations and, where appropriate, input from discharge planners, trainers, the residential care facility operator, family, advocates and others.

(2) For nonclients of the department, the plan of care shall be developed by the operator, the resident and/or their legal representa-

tive based on information provided in the resident's medical history and physical, social information, skills evaluations and, where appropriate, input from discharge planners, family, advocates and others.

(3) Upon completion, the written plan of care shall be signed and dated by the service coordinator for the clients of the department and the operator for nonclients of the department.

(4) If a resident is admitted to the facility without a plan of care, it shall be completed within fifteen (15) days of admission.

(5) Upon request, a copy of the plan of care shall be provided to the resident or their legal representative.

(6) Each individual who is a resident of a residential care facility for the elderly as of the effective date of this chapter shall have a plan of care. The department shall assist facilities and residents in complying with the provisions of this chapter.

39-3510. PERIODIC REVIEW. The plan of care may be reviewed as necessary but must be reviewed at least every six (6) months.

39-3511. PHYSICIAN'S ORDER FOR NONCLIENTS OF THE DEPARTMENT. A physician's order shall include the following:

(1) A history and physical documenting any medical or health problems of the resident which are relevant to the services needed by the resident.

(2) A description of the functional abilities of the resident including his specific strengths and limitations.

(3) The specific needs of the resident for personal assistance.

39-3512. RESPONSIBILITIES OF LICENSEE. The facility shall be responsible for informing residents and persons seeking admission to a residential care facility for the elderly of the requirement of a plan of care or physician's order.

39-3513. ADMISSION AGREEMENTS. Upon admission to a residential care facility for the elderly, the facility and the resident shall enter into an admission agreement. The agreement shall be in writing and shall be signed by both parties. The board shall promulgate rules governing admission agreements.

39-3514. TERMINATION OF ADMISSION AGREEMENTS. Admission agreements may only be terminated pursuant to rules promulgated by the board.

39-3515. ADMISSION RECORDS. Records required for admission to a facility shall be maintained and updated for administrative purposes only and shall be confidential. Their availability, subject to Idaho department of health and welfare rules, title 5, chapter 1, shall be limited to administration, professional consultants, the resident's physician, and representatives of the licensing agency. They shall include at least the following information:

(1) Name and social security number.

(2) Permanent address if other than the facility.

(3) Marital status and sex.

(4) Birthplace and date of birth.

- (5) Name, address and telephone number of responsible agent or agency.
- (6) Personal physician and dentist.
- (7) Admission date and by whom admitted.
- (8) Results of a physical or health status examination performed by a licensed physician or nurse practitioner within six (6) months prior to admission.
- (9) A list of medications, treatments and diet prescribed for the resident which is signed and dated by the physician giving the order(s).
- (10) Religious affiliation if resident chooses to so state.
- (11) Interested relatives and friends other than those in subsection (5) of this section. Names, addresses and telephone numbers of family members and/or significant others.

39-3516. RESIDENT RIGHTS. A residential care facility for the elderly must protect and promote the rights of each resident, including each of the following rights:

- (1) Resident records. Each facility must maintain and keep current a record of the following information on each resident:
 - (a) A copy of the resident's current plan of care or physician's order.
 - (b) Written acknowledgement that the resident has received copies of the rights.
 - (c) A record of all personal property and funds which the resident has entrusted to the facility, including copies of receipts for the property.
 - (d) Information about any specific health problems of the resident which may be useful in a medical emergency.
 - (e) The name, address and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident.
 - (f) Any other health-related, emergency or pertinent information which the resident requests the facility to keep on record.
 - (g) The current admission agreement between the resident and the facility.
- (2) Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups.
- (3) Humane care and environment (dignity and respect).
 - (a) Each resident shall have the right to humane care and a humane environment, including the following:
 - (i) The right to a diet which is consistent with any religious or health-related restrictions.
 - (ii) The right to refuse a restricted diet.
 - (iii) The right to a safe and sanitary living environment.
 - (b) Each resident shall have the right to be treated with dignity and respect, including:
 - (i) The right to be treated in a courteous manner by staff.
 - (ii) The right to receive a response from the facility to any request of the resident within a reasonable time.
- (4) Personal possessions. Each resident shall have the right to:

- (a) Wear his own clothing.
 - (b) Determine his own dress or hair style.
 - (c) Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity.
 - (d) Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property.
- (5) Personal funds. Residents whose board and care is paid for by public assistance shall retain, for their personal use, the difference between their total income and the applicable board and care allowance established by department rules.
- (a) A facility shall not require a resident to deposit his personal funds with the facility.
 - (b) Once the facility accepts the written authorization of the resident, the facility must hold, safeguard and account for such personal funds under a system established and maintained by the facility in accordance with this subparagraph.
- (6) Management of personal funds. Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows:
- (a) The facility must deposit any amount of a resident's personal funds in excess of one hundred dollars (\$100) in an interest bearing account, or accounts, that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a noninterest bearing account or petty cash fund.
 - (b) The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident, or a legal representative of the resident, reasonable access to such record.
 - (c) Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds, and a final accounting of such funds, to the individual administering the resident's estate.
- (7) Access and visitation rights. Each facility must permit:
- (a) Immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designee, or by the resident's individual physician.
 - (b) Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives.
 - (c) Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident.
 - (d) Reasonable access to a resident by any entity or individual that provides health, social, legal or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(8) Employment. Each resident shall have the right to refuse to perform services for the facility except as contracted for by the resident and the operator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident shall be consistent with state and federal law.

(9) Confidentiality. Each resident shall have the right to confidentiality of personal and clinical records.

(10) Freedom from abuse, neglect and restraints. Each resident shall have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience.

(11) Freedom of religion. Each resident shall have the right to practice the religion of his choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

(12) Control and receipt of health-related services. Each resident shall have the right to control his receipt of health-related services, including:

(a) The right to retain the services of his own personal physician and dentist.

(b) The right to select the pharmacy or pharmacist of his choice.

(c) The right to confidentiality and privacy concerning his medical or dental condition and treatment.

(13) Grievances. Each resident shall have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(14) Participation in resident and family groups. Each resident shall have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(15) Participation in other activities. Each resident shall have the right to participate in social, religious and community activities that do not interfere with the rights of other residents in the facility.

(16) Examination of survey results. Each resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the department with respect to the facility and any plan of correction in effect with respect to the facility.

(17) Other rights. Each resident shall have any other right established by the department.

39-3517. NOTICE OF RIGHTS. Each facility must:

(1) Inform each resident, orally and in writing at the time of admission to the facility, of his legal rights during the stay at the facility.

(2) Make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon

changes in such rights).

(3) The written description of legal rights under this subsection shall include a description of the protection of personal funds and a statement that a resident may file a complaint with the licensing agency respecting resident abuse and neglect and misappropriation of resident property in the facility. A copy of the list of resident rights shall be conspicuously posted in the facility at all times.

39-3518. FACILITY RESPONSE TO INCIDENTS AND COMPLAINTS. (1) In addition to any other requirements of this chapter, the residential care facility for the elderly shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the owner, licensee, or person designated by the owner or licensee is notified of the incident, that the owner, licensee or person designated by the owner or licensee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a response of action taken or a reason why no action needs to be taken. In the case of anonymous complaints, the administrator/operator shall document the action taken or a reason why no action needs to be taken.

(2) In order to assure the opportunity for complaints from the residents, the neighborhood and the community to be made directly to the owner, licensee, or person designated by the owner or licensee, each facility shall establish a regular time when the owner, licensee, or person designated by the owner or licensee will be present to respond to such incidents or complaints.

39-3519. ACCESS BY ADVOCATES AND REPRESENTATIVES. A residential care facility for the elderly shall permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to:

(1) Visit, talk with, and make personal, social and legal services available to all residents.

(2) Inform residents of their rights and entitlements, and their corresponding obligations under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals.

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, as well as in all other matters in which residents are aggrieved, which may be provided individually or in a group basis, and may include organizational activity, counseling and litigation.

(4) Engage in all other methods of assisting, advising and representing residents so as to extend to them the full enjoyment of their rights.

(5) Communicate privately and without restrictions with any resident who consents to the communication.

(6) Observe all common areas of the facility.

39-3520. RESIDENT COUNCILS. (1) Every licensed residential care facility for the elderly over fifteen (15) beds shall assist the resi-

dents in establishing and maintaining a resident council. The council shall be composed of residents of the facility and may include their family members. The council may extend membership to advocates, friends and others.

(2) The council shall have the following duties:

(a) To assist the facility in developing a grievance procedure.

(b) To communicate resident opinions and concerns.

(c) To obtain information from the facility and disseminate the information to the residents.

(d) To identify problems and participate in the resolution of those problems.

(e) To act as a liaison with the community.

(3) Every licensed facility of less than fifteen (15) beds, at the request of the majority of its residents, shall be subject to the provisions of this section.

39-3521. QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR/OPERATOR. Each residential care facility for the elderly must employ at least one (1) full-time administrator who:

(1) Is twenty-one (21) years of age or older.

(2) Has successfully completed a basic initial training and participates in ongoing training programs approved by the department and designed to assure the individual's competence to carry out the requirements of this chapter.

(3) Meets such minimum educational standards as prescribed by the department.

(4) Is of good moral and responsible character and has not been convicted of any felony or defrauding the federal government.

(5) Has sufficient physical, emotional and mental capacity to carry out the requirements of this chapter.

(6) Has sufficient management and administrative ability to carry out the requirements of this chapter.

39-3522. QUALIFICATIONS AND REQUIREMENTS FOR FACILITY STAFF. Each residential care facility for the elderly must employ sufficiently trained staff to fully meet the needs of its residents and the requirements of this chapter. The department shall develop a staff-to-resident ratio deemed to meet this requirement. There must be at least one (1) staff person immediately available to the residents at all times and when a resident is present in the facility, there must be at least one (1) staff person also present in the facility.

39-3523. TRAINING. The department shall insure that administrators/operators applying for a license have successfully completed a department approved orientation and training program covering areas related to providing the care and services for which the license is to be issued. The department shall approve a uniform core of knowledge within the required training which shall include, at a minimum, basic understanding of the psychosocial and physical needs of residents to be served and facility administration. The department will specify annual continuing education requirements for administrators/operators.

39-3524. STAFF TRAINING. All employees of a residential care

facility for the elderly shall receive department approved orientation and continuing education pertinent to their job responsibilities.

39-3525. REQUIREMENTS FOR LOCATION AND PHYSICAL ENVIRONMENT OF FACILITIES. (1) Residential care facilities for the elderly shall:

(a) Be located in geographical areas which are accessible to supportive services and are free from conditions which would pose a danger to the residents.

(b) Be maintained internally and externally in good repair and condition.

(c) Be maintained in a clean and sanitary manner, including proper sewage disposal, food handling and hygiene practices.

(d) Be maintained in such a manner as to be free from fire/safety hazards.

(2) The department shall promulgate rules concerning physical structure, fire safety, health and sanitation, household items and furnishings, diet, self-administered medications and rooms.

39-3526 -- 39-3529. [RESERVED.]

39-3530. RESIDENTIAL CARE COUNCIL FOR THE ELDERLY. (1) The department shall establish a residential care council for the elderly consisting of seven (7) members appointed by the director. The director, or his designee, shall serve as chairman of the council. The members of the council shall be:

(a) The state ombudsman for the elderly or his designee.

(b) The director of the bureau of facility standards or his designee.

(c) An advocate for individuals who are elderly in the state.

(d) Three (3) administrators or licensees of licensed residential care facilities for the elderly, one (1) of whom shall represent facilities licensed for nine (9) beds or less, one (1) of whom shall represent facilities licensed for ten (10) to sixty (60) beds and one (1) of whom shall represent facilities licensed for sixty-one (61) beds or more.

(2) In appointing the first members of the council who are not state agency representatives, the director shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years and two (2) members for a term of three (3) years. After the initial appointments, members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member.

39-3531. POWERS AND DUTIES. The residential care council for the elderly shall have the following powers and duties:

(1) To make policy recommendations regarding the coordination of licensing, certifying and enforcement standards in residential care facilities for the elderly and the provision of services to residents of board and care facilities.

(2) To advise the department regarding methods for identification of unlicensed residential care facilities for the elderly.

(3) To advise the agency during development and revision of

rules.

(4) To review and comment upon proposed rules.

(5) To submit an annual report to the legislature stating opinions and recommendations which would further the state's capability in addressing residential care for the elderly issues.

39-3532. MEETINGS. The residential care council for the elderly shall meet as necessary but not less than two (2) times a year. Meetings of the council shall be open to the public. The department shall provide:

(1) Staff necessary to assist the council in performing its duties.

(2) Space for meetings of the council.

39-3533. REIMBURSEMENT OF EXPENSES. Members of the residential care council for the elderly shall be reimbursed by the department for their actual expenses incurred in the performance of their duties.

39-3534 -- 39-3539. [RESERVED.]

39-3540. LICENSING OF RESIDENTIAL CARE FACILITIES FOR THE ELDERLY. After July 1, 1993, no person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct or maintain a residential care facility for the elderly in the state without a current valid license issued by the licensing agency of the department.

39-3541. INITIAL APPLICATION AND ISSUANCE OF A LICENSE. Any person or governmental unit proposing to operate a residential care facility for the elderly shall apply for a license to the licensing agency specifying the types of residents to be served and the level(s) of care to be provided.

39-3542. APPLICATION. The applicant shall apply for a license upon forms provided by the licensing agency giving such information as the licensing agency shall require including, but not limited to:

(1) Evidence satisfactory to the licensing agency of the ability of the applicant to comply with the provisions of this chapter and with the rules adopted under this chapter by the department.

(2) Evidence satisfactory to the department that the applicant is of reputable and responsible character.

(3) The evidence shall include, but not be limited to:

(a) A criminal record clearance;

(b) Fingerprinting;

(c) Employment history;

(d) Credit report;

(e) Character references.

(4) If the applicant is a firm, association, organization, partnership, business trust, corporation or company, like evidence shall be submitted as to the members or shareholders holding ten percent (10%) or more interest thereof, and the administrator/operator of the residential care facility for the elderly.

(5) Evidence satisfactory to the licensing agency that the appli-

cant has sufficient financial resources to maintain the standards of service required by rules adopted pursuant to this chapter.

(6) Evidence satisfactory to the licensing agency that the administrator/operator has successfully completed the department approved orientation.

(7) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities in Idaho as specified in section 39-3545, Idaho Code, or any other jurisdiction.

(8) Any other information as may be required by the licensing agency for the proper administration and enforcement of the provisions of this chapter.

(9) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in rules of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(10) A signed statement that the person desiring issuance or renewal of a license has read and understands the provisions of this chapter and residential care facilities for the elderly rules.

39-3543. TEMPORARY LICENSE. (1) Following completion of an acceptable application and an inspection by the licensing agency determining that the facility has the initial capability to provide services, the facility will be issued a license not to exceed six (6) months. Within the six (6) month period, the licensing agency will conduct a full survey to determine the facility's ongoing capability to provide services.

(2) Each license issued shall be only for the premises and persons named in the application and shall not be transferable or assignable.

(3) Each license shall specify the maximum allowable number of beds or residents to be housed, which number shall not be exceeded. All occupants other than the owner, manager, immediate family or employees shall be included in the licensed bed capacity.

(4) The license shall be posted in the facility so as to be clearly visible to the general public.

(5) The temporary license may be replaced with a full license when the licensing agency has completed a revisit to the facility prior to the expiration of the temporary license and has determined that the facility qualifies for a full license.

(6) Following a revisit by the licensing agency prior to the expiration of the temporary license, if the licensing agency determines that the facility is not in compliance with the provisions of this chapter, or applicable rules the facility will be denied a full license and the temporary license shall be revoked.

39-3544. RENEWAL OF A LICENSE. (1) The application for renewal of a license shall be submitted on a form prescribed by the licensing agency. The completed application shall be returned to the licensing agency at least sixty (60) days prior to the expiration.

(2) A full license shall be valid for a period of time not to

exceed twelve (12) months from the date of approval by the licensing agency. The license shall expire at the end of its stated period unless it is continued in effect by agreement with the licensing agency or by operation of law.

(3) A provisional license, not to exceed six (6) months, may be granted to a facility which is not in full compliance with this chapter pending the satisfactory correction of all deficiencies and provided that the deficiencies do not jeopardize the health and safety of residents.

39-3545. DENIAL OR REVOCATION OF A LICENSE. The licensing agency may deny the issuance of a license or revoke any license when persuaded by a preponderance of evidence that such conditions exist as to endanger the health or safety of any resident, or when the facility is not in substantial compliance with the provisions of this chapter and rules promulgated pursuant to this chapter.

39-3546. PROCEDURE FOR DENIAL OR REVOCATION OF A LICENSE. Immediately upon the denial of any application for a license, or the revocation of a license, the licensing agency shall notify the applicant in writing including notification that upon request the applicant may request an informal pre-hearing conference with the licensing agency. Within twenty-one (21) days after the licensing agency mails the notice, the applicant may present his or her written petition for a hearing to the department's administrative procedure section. Upon receipt by the department of the petition in proper form, the petition shall be set for hearing. The proceedings shall be conducted in accordance with the Idaho administrative procedure act and the department has all the powers granted therein.

39-3547. EFFECT OF PREVIOUS REVOCATION OR DENIAL OF A LICENSE. The licensing agency is not required to review the application of an applicant who has had a license denied or revoked until five (5) years have elapsed from the date of licensure denial, revocation or appeals.

39-3548. RULES PROVIDED. Upon initial licensure, residential care facilities for the elderly shall be provided a printed copy of all applicable rules by the department, without charge.

39-3549. RESPONSIBILITY FOR INSPECTIONS AND LICENSING -- NONTRANSFERABILITY OF LICENSES. The licensing agency shall inspect and license residential care facilities for the elderly. A license is not transferable.

39-3550. CONSULTING SERVICES. The department may provide consulting services upon request to any residential care facility for the elderly to assist in the identification or correction of deficiencies and in the upgrading of the quality of care provided by the facility.

39-3551. EXEMPTIONS. The provisions of this chapter do not apply to any of the following:

(1) Any health facility as defined by chapter 13, title 39, Idaho Code.

(2) Any house, institution, hotel, congregate housing project for the elderly, retirement home or other similar place that is limited to providing one (1) or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities; or that have residents independently accessing supportive services; provided however, that no resident thereof requires any continuing element of care and supervision or protective supervision as determined by the director.

(3) Any arrangement for the receiving and care of persons by a relative.

(4) Any similar facility determined by the director.

39-3552. UNLICENSED RESIDENTIAL CARE FACILITIES FOR THE ELDERLY.

(1) No unlicensed residential care facility for the elderly shall operate in this state.

(2) A facility shall be deemed to be an "unlicensed residential care facility for the elderly" and "maintained and operated to provide residential care for the elderly" if it is unlicensed and not exempt from licensure, and any one (1) of the following conditions is satisfied:

(a) The facility is, or is held out as or represented as, providing care, supervision and services.

(b) The facility accepts or retains residents who demonstrate the need for care, supervision and services, as defined by this chapter or the rules adopted pursuant to this chapter.

(3) Upon discovery of an unlicensed residential care facility for the elderly, the department shall refer residents to the appropriate placement or adult protective services agency if either of the following conditions exist:

(a) There is an immediate threat to the resident's health and safety.

(b) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

(4) A person found to be operating a residential care facility for the elderly without a license shall be guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed five thousand dollars (\$5,000).

(5) In the event the county attorney in the county where the alleged violation occurred fails or refuses to act within thirty (30) days of notification of the violation, the attorney general is authorized to prosecute violations under the provisions of this section.

39-3553. PLACEMENT OF PERSONS INTO AN UNLICENSED RESIDENTIAL CARE FACILITY FOR THE ELDERLY. (1) No person or public agency employee shall place, refer or recommend placement of a person into a residential care facility for the elderly which is operating without a license.

(2) Any person or public agency employee who knows that a residential care facility for the elderly is operating without a license shall report the name and address of the facility to the licensing agency of the department. Failure to comply with the provisions of this subsection shall constitute a misdemeanor.

39-3554. **WAIVER OR VARIANCE.** The board shall provide, by rule, a procedure whereby a temporary variance or a permanent waiver of a specific standard may be granted in the event that good cause is shown for such a variance or waiver and providing that a variance or waiver of a standard does not endanger the health and safety of any resident. The decision to grant a variance or waiver shall not be considered as precedent or be given any force of effect in any other proceeding.

39-3555. **INSPECTIONS.** (1) The licensing agency shall cause to be made such inspections and investigations as it may deem necessary to determine compliance with the provisions of this chapter and applicable rules.

(2) All inspections for such purposes will be made unannounced and without prior notice.

(3) Inspections shall be conducted at least once each twelve (12) months.

(4) Inspections shall be conducted by the agency designated for licensing.

(5) An inspector shall have full access and authority to examine, among other things, quality of care and service delivery, a facility's records, resident accounts, physical premises, including buildings, grounds and equipment, and any other areas necessary to determine compliance with the provisions of this chapter and applicable rules.

(6) An inspector shall have authority to interview the licensee, administrator/operator, staff and residents. Interviews with residents shall be confidential and conducted privately unless otherwise specified by the resident.

(7) The licensing agency shall notify the facility, in writing, of all deficiencies and shall approve a reasonable length of time for compliance by the facility.

(8) Current lists of deficiencies, including plans of correction, shall be available to the public upon request in the individual facilities or by written request to the regional office of the department or the licensing agency.

39-3556. **COMPLAINTS.** (1) A person who believes that any provision of this chapter has been violated may file a complaint with the licensing agency.

(2) The licensing agency shall investigate, or cause to be investigated, any complaint alleging a violation of this chapter or applicable rules. If the licensing agency reasonably believes a requirement of this chapter has been violated, it shall conduct an inspection of the facility.

(3) A complaint filed with the licensing agency, which is subsequently released to the facility that is the subject of the complaint or to any member of the public, shall not disclose the name or identifying characteristics of the complainant unless:

(a) The complainant consents in writing to the disclosure.

(b) The investigation results in a judicial proceeding and disclosure is ordered by the court.

(c) If the disclosure is essential to the investigation, the complainant shall be given an opportunity to withdraw the complaint before disclosure.

(4) The licensing agency shall inform the complainant or, if requested by the complainant, the complainant's designated representative, of the results of the investigation and any action taken by the agency.

39-3557. ENFORCEMENT PROCESS. (1) If the licensing agency finds, on the basis of inspections as defined in this chapter or otherwise, that a residential care facility for the elderly no longer meets a requirement of this chapter, and further finds that the facility's deficiencies:

(a) Immediately jeopardize the health or safety of its residents, the department shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in section 39-3558(1)(c), Idaho Code, or prohibit the facility from keeping or admitting residents and may provide, in addition, for one (1) or more of the other remedies described in section 39-3558, Idaho Code.

(b) Do not immediately jeopardize the health or safety of its residents, the department shall provide for one (1) or more of the remedies described in section 39-3558, Idaho Code.

(2) Nothing in this section shall be construed as restricting the remedies available to the department to remedy a facility's deficiencies. If the department finds that a facility meets the requirements of this chapter, but, as of a previous period, intentionally did not meet such requirements, the department may provide for a civil money penalty under section 39-3558(1)(b), Idaho Code, for the days in which it finds that the facility was not in compliance with such requirements.

39-3558. SPECIFIED REMEDIES. (1) The department shall establish at least the following remedies:

(a) Prohibit the facility from admitting residents or prohibit a facility from keeping or admitting residents with a specific diagnosis.

(b) A civil money penalty assessed and collected, with interest, for each day the facility is or was out of compliance with a requirement of this chapter. Funds collected by the department as a result of imposition of such a penalty shall be applied to the protection of the health or property of residents of residential care facilities for the elderly that the department finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(c) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while:

(i) There is an orderly closure of the facility.

(ii) Improvements are made in order to bring the facility into compliance with all the requirements of this chapter.

(iii) The temporary management under this clause shall not be terminated until the department has determined that the

facility has the management capability to ensure continued compliance with all the requirements of this chapter.

(d) The authority, in the case of an emergency, to summarily suspend the license, to close the facility, and/or to transfer residents in that facility to other facilities.

(2) The department shall also specify criteria as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

39-3559. TRANSFER OF RESIDENTS. The department may transfer residents from a residential care facility for the elderly to an alternative placement on the following grounds:

(1) As a result of a violation of a provision of this chapter or an applicable rule the facility is unable or unwilling to provide an adequate level of meals, lodging, personal assistance or supervision to persons residing in the facility at the time of the violation.

(2) A violation of a resident's rights as provided in section 39-3516, Idaho Code.

(3) The number of residents currently in the facility exceeds the number of residents the facility is licensed to serve.

(4) The facility is operating without a license.

(5) A violation of a provision of this chapter or an applicable rule results in conditions that present an imminent danger.

Approved April 1, 1993.

CHAPTER 375

(H.B. No. 275, As Amended, As Amended in the Senate)

AN ACT

RELATING TO DISPOSAL OF WASTE TIRES; AMENDING SECTION 39-6501, IDAHO CODE, TO FURTHER DEFINE TERMINOLOGY; AMENDING SECTION 39-6502, IDAHO CODE, TO REVISE PROCEDURES FOR COLLECTION AND ADMINISTRATIVE FEES ALLOWED IN ORDER TO CARRY OUT THE PROVISIONS OF THIS CHAPTER AND MAKE NAME CHANGES; AMENDING SECTION 39-6503, IDAHO CODE, TO PROVIDE THAT WASTE COLLECTION SITES COMPLY WITH LOCAL, STATE AND/OR FEDERAL AUTHORITIES; AMENDING SECTION 39-6504, IDAHO CODE, TO REVISE WASTE TIRE MANAGEMENT METHODS; AMENDING SECTION 39-6505, IDAHO CODE, TO INCREASE THE PERCENTAGE THAT MAY BE USED FOR ADMINISTRATION AND TO RENAME CERTAIN TERMS; AMENDING SECTION 39-6506, IDAHO CODE, TO PROVIDE FOR RULE AND REGULATION AUTHORITY; AMENDING 39-6507, IDAHO CODE, TO CLARIFY PENALTIES IMPOSED; AND AMENDING SECTIONS 2 AND 3 OF CHAPTER 308, LAWS OF 1991, TO CHANGE THE DATE WHEN THE ACT SUNSETS.

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

SECTION 1. That Section 39-6501, Idaho Code, be, and the same is hereby amended to read as follows:

39-6501. DEFINITIONS. As used in this chapter:

(1) "Division" means the division of environmental quality of the department of health and welfare.

(2) "Motor vehicle" means any automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination or other vehicle operated on the roads of this state, used to transport persons or property and propelled by power other than muscular power, but motor vehicle does not include bicycles.

(3) "Retail seller of motor vehicle tires" and "wholesale seller of motor vehicle tires" include those persons who sell or lease motor vehicles to others in the ordinary course of business.

(34) "Tire" shall have the meaning contained in section 49-121, Idaho Code.

(5) "New tire" means a tire which is not used or retreaded, and is being sold on the market for the first time.

(46) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(57) "Waste tire collection site" means a site where waste tires are collected before being offered for recycling or reuse and where more than one-thousand-five-hundred-~~(1,500)~~ fifty (50) tons of used tires are kept on site on any day.

(8) "Idaho retreader" is a person who accepts passenger and light truck tires generated in Idaho and retreads such tires in Idaho and is registered with the division.

(9) "Passenger and light truck tire" means any motor vehicle tire with a rim diameter of twelve (12) inches through sixteen (16) inches.

(10) "Review committee" is an advisory committee appointed by the administrator of the division to establish and/or review percentages for reimbursing retreaders and other users of waste tires, and to review proposals for other uses, grants to counties and contracts with private entities.

(11) "Waste tires generated in Idaho" are tires which first become waste tires in Idaho.

(12) "Mining waste tire" means a waste tire which is greater than fifty-four (54) inches in diameter which was used in mining operations. Mining waste tires may be disposed of by burial. The department of lands shall prepare guidelines to govern the burial of mining waste tires.

(13) "End user" means the first person or company that purchases and uses waste tires, chips or other materials made from waste tires.

SECTION 2. That Section 39-6502, Idaho Code, be, and the same is hereby amended to read as follows:

39-6502. SALE OF TIRES -- FEES -- ACCEPTANCE OF WASTE TIRES -- NOTICE -- DEFINITION. (1) A retail seller of motor vehicle tires shall collect a fee of one dollar (\$1.00) per tire for each new tire sold.

(2) A wholesale seller of motor vehicle tires who sells tires to this state or a political subdivision of this state or who sells tires to a private entity which does not resell the tires shall collect a

fee which shall be the same as provided in subsection (1) of this section and shall be listed separately on any invoice.

(3) The fee imposed in this section shall be paid to the division of ~~environmental-quality~~ for deposit on a quarterly basis in the waste tire grant account established pursuant to section 39-6505, Idaho Code.

(4) A retail seller of motor vehicle tires or a wholesale seller of motor vehicle tires shall accept waste tires from the retailer's customers at the point of transfer pursuant to this subsection. A seller shall accept up to the number of tires sold at that point of transfer annually and may accept additional tires. The seller shall accept tires from a seller's customer if the customer presents a receipt within thirty (30) days of the date of purchase.

(5) A seller of motor vehicle tires who is subject to the provisions of subsection (4) of this section shall post a written notice which is clearly visible in the public sales area of the establishment and which contains the following language:

"It is unlawful to throw away a motor vehicle tire.
Recycle all used tires.
This retailer is required to accept scrap tires if any new or retreaded tires are purchased here. When any tire is purchased, an additional fee will be charged."

(6) A credit of ten cents (\$.10) per tire is allowed against the fee imposed under the provisions of this section for expenses incurred by the ~~payer-of-the-fee~~ retail seller or wholesale seller of motor vehicle tires for accounting for and reporting the fees.

(7) The provisions of this section do not apply to a person whose retail sales of motor vehicles¹ tires are not in the ordinary course of business.

SECTION 3. That Section 39-6503, Idaho Code, be, and the same is hereby amended to read as follows:

39-6503. WASTE TIRE COLLECTION SITES. An owner or operator of a waste tire collection site, within six (6) months of the effective date of this section, shall register with the division of ~~environmental-quality~~ and provide the division of ~~environmental-quality~~ with information concerning the site's location and size and the approximate number of waste tires which are stored at the site and shall initiate steps to comply with the provisions of this chapter and other local, state and/or federal authorities.

SECTION 4. That Section 39-6504, Idaho Code, be, and the same is hereby amended to read as follows:

39-6504. DISPOSAL OF WASTE TIRES. (1) The disposal of waste tires, in any form, in landfills and the incineration of those tires is prohibited, except as provided by permissible methods of waste tire management listed in subsection (3) of this section or in accordance with rules and regulations of the department of health and welfare. An owner and operator of a solid waste disposal site shall not knowingly accept waste tires for disposal.

(2) Beginning on January 1, 1993, a person shall not dispose of waste tires unless the waste tires are disposed of at a waste tire collection site or managed as provided in subsection (3) of this section in accordance with rules and regulations of the division of ~~environmental-quality-of-the-department-of-health-and-welfare~~.

(3) The following are permissible methods of waste tire disposal management:

(a) Retreading.

(b) Constructing collision barriers.

(c) Controlling soil erosion ~~or-for-food-control~~ only if used in accordance with approved engineering practices.

(d) Chopping or shredding prior to reuse.

(e) Grinding for use in asphalt and or as a raw material for other products.

(f) Using as playground equipment.

(g) Incinerating or using as a fuel or pyrolysis if permitted by law, regulations or ordinances relating to burning of fuel.

(h) Hauling to lawful out-of-state collection or processing sites.

(i) Any other beneficial use, reuse or recycling of waste tires, chips or similar material from waste tires generated in Idaho which meets the criteria set forth by the division.

(4) The department board of health and welfare, by rule and regulation, may authorize other methods of management and/or disposal of waste tires.

(5) The division shall expedite the processing and issuance of any permits required by the rules and regulations of the department of health and welfare for facilities or operations utilizing permissible methods of waste tire management in accordance with the provisions of subsections (2) and (3) of this section.

SECTION 5. That Section 39-6505, Idaho Code, be, and the same is hereby amended to read as follows:

39-6505. WASTE TIRE GRANT ACCOUNT. (1) There is hereby created in the dedicated fund of the state treasury, the waste tire grant account. Moneys in the account shall be administered by the division of ~~environmental-quality~~ and are hereby perpetually appropriated to carry out the provisions of this chapter. No more than five fifteen per cent (15%) of the account may be used for the collection of fees and administration of the provisions of this chapter.

(2) Any person ~~or-entity~~ end user who purchases waste tires generated in Idaho or tire chips or similar materials from waste tires generated in Idaho and who uses the tires or chips or similar material in Idaho for energy recovery or other appropriate uses enumerated in subsection (3) of section 39-6504, Idaho Code, may apply to the division for partial reimbursement of the cost of purchasing the tires or chips or similar materials. Any person who uses, but does not purchase, waste tires or chips or similar materials, for energy recovery or another appropriate use enumerated in subsection (3) of section 39-6504, Idaho Code, may also apply for a reimbursement of part of the cost of such use. The intent of the partial reimbursement of costs under this subsection is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials. The

division shall limit or eliminate reimbursements if the division finds they are not necessary to promote the use of waste tires. The division shall reimburse eligible persons or entities end users at the rate of up to twenty dollars (\$20.00) per ton for not to exceed the purchase or use of eligible waste tires or tire chips or similar materials from waste tires generated in Idaho price and one dollar (\$1.00) per tire for passenger and light truck tires to be used for retreading operations in Idaho upon presentation of documentation deemed necessary by the division. Any costs reimbursed pursuant to this subsection shall not exceed the amount in the waste tire grant account and shall be paid from the waste tire grant account.

(3) By July 1, 1992, the division of ~~environmental quality~~ shall establish a program to make grants to counties or contracts with private entities to do any of the following, either individually or collectively:

(a) Contract for a waste tire processing facility service.

(b) Remove or contract for the removal of waste tires from county landfills or removal of other existing unlawful tire piles in the state.

(c) Establish waste tire collection centers at solid waste disposal facilities or waste tire processing facilities.

(4) Beginning October 1, 1992, each county shall establish a program pursuant to this section to address waste tire disposal.

(5) The division of ~~environmental quality~~ shall provide an annual report to the legislature on the grant program. The annual report shall examine the fee imposed by this chapter and determine if it is providing sufficient funding.

SECTION 6. That Section 39-6506, Idaho Code, be, and the same is hereby amended to read as follows:

39-6506. RULES AND REGULATIONS. The board of health and welfare shall promulgate rules and regulations to address the registration of waste tire transporters in Idaho; management standards; collection, storage and disposal of waste tires in Idaho, financial assurance and removal agreements; development of a grant program to counties and reimbursement requirements for eligible tire recyclers and Idaho retreaders, and to carry out the provisions of this chapter.

SECTION 7. That Section 39-6507, Idaho Code, be, and the same is hereby amended to read as follows:

39-6507. PENALTIES. (1) A person who improperly disposes of a tire in violation of the provisions of this chapter is subject to a civil penalty of not more than five hundred dollars (\$500) per violation and is subject to the penalty provisions of the environmental protection and health act contained in ~~chapter 39, title 39~~ section 39-108, Idaho Code. Each tire so disposed of improperly constitutes a separate violation.

(2) A person who knowingly violates any provision of this chapter other than as described in subparagraph subsection (1) of this section, is subject to a civil penalty of not more than one hundred dollars (\$100) per violation and is subject to the provisions of the

environmental protection and health act contained in section 39-108, Idaho Code.

SECTION 8. That Sections 2 and 3 of Chapter 308, Laws of 1991, Idaho Code, be, and the same are hereby amended to read as follows:

SECTION 2. That Sections 39-6502 and 39-6505, Idaho Code, be, and the same are hereby repealed.

SECTION 3. Section 1 of this act shall be in full force and effect on and after July 1, 1991. Section 2 of this act shall be in full force and effect on and after July 1, 1995⁶. Any moneys in the Waste Tire Grant Account which are unexpended or unencumbered on June 30, 1995⁶, shall be transmitted to the State Highway Account.

SECTION 9. This act shall be in full force and effect on and after July 1, 1993.

Approved April 1, 1993.

CHAPTER 376

(H.B. No. 289, As Amended in the Senate)

AN ACT

RELATING TO MAXIMUM ALLOWABLE GROSS WEIGHTS AND AXLE WEIGHTS OF VEHICLES EQUIPPED WITH VARIABLE LOAD SUSPENSION AXLES; AMENDING SECTION 49-123, IDAHO CODE, TO DEFINE A VARIABLE LOAD SUSPENSION AXLE; AMENDING SECTION 49-1001, IDAHO CODE, TO SET FORTH MINIMUM QUALIFICATIONS FOR A VARIABLE LOAD SUSPENSION AXLE TO RECEIVE ANY ALLOWANCES FOR GROSS WEIGHT OR AXLE WEIGHT, TO PROVIDE A PENALTY FOR OPERATING A VEHICLE WITHOUT THE VARIABLE LOAD AXLE BEING FULLY DEPLOYED AND TO CORRECT A CODIFIER'S ERROR; AND DECLARING AN EMERGENCY.

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

SECTION 1. 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.

(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, 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 or more lanes of traffic, other emergency vehicles designated by the director of the department of law enforcement 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 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 of this title (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 and motorized wheelchairs.

(h) Noncommercial vehicle. For the purposes of chapter 4 of this title, (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.

(i) Reconstructed vehicle. Every vehicle that has been rebuilt 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 "reconstruct" 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.

(j) Salvage vehicle. Every vehicle 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.

(k) 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 home-made parts and materials not obtained from other vehicles; or
3. A vehicle that has been constructed by using major component parts from one 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.

(1) 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.

(23) "Vehicle identification number." (See "Identifying number", section 49-110, Idaho Code)

(34) "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)

(45) "Veteran." (See section 65-509, Idaho Code)

(56) "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 2. That Section 49-1001, Idaho Code, be, and the same is hereby amended to read as follows:

49-1001. ALLOWABLE GROSS LOADS. The gross load imposed on the highway by any vehicle or combination of vehicles shall not exceed the limits in this section. The maximum single axle gross weight shall be twenty thousand (20,000) pounds, the maximum single wheel gross weight shall be ten thousand (10,000) pounds and the maximum gross vehicle or combination weight shall be one hundred five thousand five hundred (105,500) pounds, provided that maximum gross vehicle or combination weight on United States federal interstate and defense highways of this state shall not exceed eighty thousand (80,000) pounds, except as permitted under the provisions of section 49-1004, Idaho Code.

(1) The total gross weight imposed on the highway by any group of consecutive axles shall be determined by the following formula:

$$W=500((LN/N-1)+12N+36)$$

Where W is the maximum weight in pounds (to the nearest 500 pounds) carried on any group of two (2) or more consecutive axles. L is the distance in feet between the extremes of any group of two (2) or more consecutive axles, and N is the number of axles under consideration.

The formula is modified as illustrated in the following table:

Distance in feet between the extremes of any group of 2 or more consecutive axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
4	34,000							
5	34,000							
6	34,000							
7	34,000							
8	34,000	42,000						
9	39,000	42,500						
10	40,000	43,500						
11		44,000						
12		45,000	50,000					
13		45,500	50,500					
14		46,500	51,500					
15		47,000	52,000					
16		48,000	52,500	58,000				
17		48,500	53,500	58,500				
18		49,500	54,000	59,000				
19		50,000	54,500	60,000				
20		51,000	55,500	60,500	66,000			
21		51,500	56,000	61,000	66,500			
22		52,500	56,500	61,500	67,000			
23		53,000	57,500	62,500	68,000			
24		54,000	58,000	63,000	68,500	74,000		
25		54,500	58,500	64,500	69,000	74,500		
26		55,500	59,500	65,000	69,500	75,000		
27		56,000	60,000	65,000	70,000	75,500		
28		57,000	60,500	65,500	71,500	76,500	82,000	
29		57,500	61,500	66,000	71,500	77,000	82,500	
30		58,500	62,000	66,500	72,000	77,500	83,000	
31		59,000	62,500	67,500	72,500	78,000	83,500	
32		60,000	63,500	68,000	73,000	78,500	84,500	90,000
33		64,000	64,000	68,500	74,000	79,000	85,000	90,500
34		64,500	69,000	74,500	80,000	85,500	91,000	
35		65,500	70,000	75,000	80,500	86,000	91,500	
36		66,000	70,500	75,500	81,000	86,500	92,000	
37		66,500	71,000	76,000	81,500	87,000	93,000	
38		67,500	72,000	77,000	82,000	87,500	93,500	
39		68,000	72,500	77,500	82,500	88,500	94,000	
40		68,500	73,000	78,000	83,500	89,000	94,500	
41		69,500	73,500	78,500	84,000	89,500	95,000	
42		70,000	74,000	79,000	84,500	90,000	95,500	
43		70,500	75,000	80,000	85,000	90,500	96,000	
44		71,500	75,500	80,500	85,500	91,000	96,500	
45		72,000	76,000	81,000	86,000	91,500	97,500	
46		72,500	76,500	81,500	87,000	92,500	98,000	
47		73,500	77,500	82,000	87,500	93,000	98,500	

WHEN NO ALLOWABLE WEIGHT IS LISTED FOR ANY AXLE SPACING, APPLY THE ALLOWABLE WEIGHT AS LISTED IN THE FIRST COLUMN TO THE LEFT

48	74,000	78,000	83,000	88,000	93,500	99,000
49	74,500	78,500	83,500	88,500	94,000	99,500
50	75,500	79,000	84,000	89,000	94,500	100,000
51	76,000	80,000	84,500	89,500	95,000	100,500
52	76,500	80,500	85,000	90,500	95,500	101,000
53	77,500	81,000	86,000	91,000	96,500	102,000
54	78,000	81,500	86,500	91,500	97,000	102,500
55	78,500	82,500	87,000	92,000	97,500	103,000
56	79,500	83,000	87,500	92,500	98,000	103,500
57	80,000	83,500	88,000	93,000	98,500	104,000
58		84,000	89,000	94,000	99,000	104,500
59		85,000	89,500	94,500	99,500	105,000
60		85,500	90,000	95,000	100,500	105,500
61		86,000	90,500	95,500	101,000	
62		87,000	91,000	96,000	101,500	
63		87,500	92,000	96,500	102,000	
64		88,000	92,500	97,500	102,500	
65		88,500	93,000	98,000	103,000	
66		89,500	93,500	98,500	103,500	
67		90,000	94,000	99,000	104,500	
68		90,500	95,000	99,500	105,000	
69		91,000	95,500	100,000	105,500	
70		92,000	96,000	101,000		
71		92,500	96,500	101,500		
72		93,000	97,000	102,000		
73		93,500	98,000	102,500		
74		94,500	98,500	103,000		
75		95,000	99,000	103,500		
76		95,500	99,500	104,500		
77		96,000	100,000	105,000		
78		97,000	101,000	105,500		
79		97,500	101,500			
80		98,000	102,000			
81		98,500	102,500			
82		99,000	103,000			
83		100,000	104,000			
84			104,500			
85			105,000			
86 or more			105,500			

(a) The board may limit the application of the weights authorized in this section as to certain highways which it determines have limited structural capacity of pavements, bridges, or other appurtenances. In designating such highways, it may specify a minimum wheelbase for combinations to be operated thereon. It may also designate specific highways or portions on which operation of a combination of vehicles with seven (7), eight (8) or nine (9) axle vehicles will be subject to specified lesser allowable gross weights.

(b) Notwithstanding the figures shown in the above table, two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more.

(2) The weight limitations set forth in the table above shall not

apply to any vehicle, or combination of vehicles when a greater allowed weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state, the following table of allowable weights shall apply only to vehicles engaged in the transportation of logs, pulp wood, stull, rough lumber, poles or piling; or to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel and aggregates thereof, in bulk; or to any such vehicle engaged in the transportation of agricultural commodities, including livestock:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Allowed Load in Pounds	
	Vehicles with Three or Four axles	Vehicles with Five or more axles
3 through 12	37,800	37,800
13	56,470	56,470
14	57,940	57,940
15	59,400	59,400
16	60,610	60,610
17	61,820	61,820
18	63,140	63,140
19	64,350	64,350
20	65,450	65,450
21	66,000	66,330
22	66,000	67,250
23	66,000	67,880
24	66,000	68,510
25	66,000	69,150
26	66,000	69,770
27	66,000	70,400
28	66,000	70,950
29	66,000	71,500
30	66,000	72,050
31		72,600
32		73,150
33		73,700
34		74,250
35		74,800
36		75,350
37		75,900
38		76,450
39		77,000
40		77,550
41		78,100
42		78,650
43 and over		79,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles exceeds seventy-nine thousand (79,000) pounds.

(3) In determining the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles under subsections (1) or (2) of this section, the total gross weight of the vehicle or combination of vehicles or the gross weight of any two (2) or more con-

secutive axles shall be the sum of the axle weights.

(4) In applying the weight limitations imposed in this section, a vehicle or combination of vehicles must comply exclusively with the weight limitations in either subsection (1) or (2) of this section.

(5) In applying the weight limitations imposed in this section, the distance between axles shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

(6) The limitations imposed in this section are in addition and supplemental to all other laws imposing limitations upon the size and weight of vehicles.

(7) Notwithstanding the other provisions of this chapter, no vehicle, motor vehicle, trailer and/or semitrailer, or combination thereof, may be operated on the public highways of the state under loads which would result in the withholding of funds by operation of controlling federal law as provided in the Federal Aid Highway Act of 1956, as amended.

(8) Except as provided herein, no vehicle or combination of vehicles may proceed past the place of weighing at temporary or permanent ports of entry or checking stations when: the weight of a single axle exceeds the maximum limitations set forth herein by two thousand (2,000) pounds or more; the weight of a combination of axles, or gross vehicle weight exceeds the maximum allowable weight as set forth herein by seven percent (7%) or more. Vehicles or combinations of vehicles which exceed the weight limitations set forth herein shall be required to be brought into compliance with applicable weight limitations contained within this subsection at the place of weighing prior to continuing, except those vehicles or combinations of vehicles which are transporting loads which, in the determination of the board or other proper authorities in charge of or having jurisdiction over a highway, are deemed unsafe or impractical to bring into compliance at the place of weighing. Vehicles or combinations of vehicles transporting loads in this latter category shall obtain a travel authorization to the nearest place of safe unloading, load adjustment or other means of legalization.

(a) Neither the state of Idaho or its employees, nor any authority and its employees in charge of or having jurisdiction over a highway, shall be held liable for personal injury or property damage resulting from the requirements of section 49-1001(8), Idaho Code.

(b) The fee for a travel authorization as set forth above shall be fifty dollars (\$50.00) and shall be on a form prescribed by the board or other proper authorities.

(c) The board or other proper authorities in charge of or having jurisdiction over a highway shall adopt and enforce administrative rules and regulations as may be necessary to carry out the provisions of this section.

(9) Variable load suspension axles shall meet the following criteria in order to be included in the computation of gross vehicle or axle weight limits for vehicles under the provisions of this section:

(a) The deployment control switch for such axles may be located inside of the driver's compartment but the pressure regulator for the operation of pressure on the pavement shall be located outside

of and inaccessible to the driver's compartment.

(b) The gross axle weight rating of each such axle must not be less than the actual loading of the axle and shall not be less than nine thousand (9,000) pounds.

(c) All variable load suspension axles mounted on a vehicle after January 1, 1990, shall be designed to be self-steering in a manner that will guide or direct the variable load suspension mounted wheels through a turning movement without undue tire scrubbing or pavement scuffing.

(d) Variable load suspension axles must be fully deployed or fully raised. The pressure regulator which governs the load distribution to the variable load suspension axle(s) shall be set and sealed by the owner of the vehicle(s).

(10) Any person who operates a motor vehicle with a variable suspension axle that is not fully deployed and the vehicle is hauling a load shall be guilty of a misdemeanor. The penalty for violating the provisions of this subsection shall be a fine of eight hundred dollars (\$800). All moneys collected as a result of the penalties prescribed in this subsection shall be deposited in the highway distribution 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 April 1, 1993.

CHAPTER 377
(H.B. No. 290, As Amended)

AN ACT

RELATING TO EMERGENCY VEHICLES; AMENDING SECTION 49-910A, IDAHO CODE, TO PROVIDE THAT VEHICLES BELONGING TO PERSONNEL OF VOLUNTARY FIRE DEPARTMENTS ARE DESIGNATED EMERGENCY VEHICLES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 49-910A, Idaho Code, be, and the same is hereby amended to read as follows:

49-910A. COLOR OF LAMPS AND GLOBES LIMITED TO CERTAIN VEHICLE CLASSES. For the purposes of this chapter lighting devices utilizing various colors of lighted globes approved by the director of law enforcement for use on vehicles shall be restricted to the following class of vehicles:

(1) Police vehicles. Only police vehicles shall display blue lights, lenses or globes.

(2) Designated emergency vehicles. Fire fighting vehicles, vehicles belonging to personnel of voluntary fire departments ~~white-in~~ performance-of-official-duties-only, ambulances, sheriff's search and

rescue vehicles which are under the immediate supervision of the county sheriff, and wreckers, as defined in section 49-124, Idaho Code, which are engaged in motor vehicle recovery operations and are blocking part or all of one or more lanes of traffic, are designated emergency vehicles. With the exception of school buses as provided in section 49-915, Idaho Code, only fire fighting vehicles, vehicles belonging to personnel of voluntary fire departments ~~while-in-performance-of-official-duties-only~~, ambulances, designated emergency vehicles described herein, vehicles authorized by the Idaho transportation board for use in the enforcement of vehicle laws specified in section 40-510, Idaho Code, and other emergency vehicles designated by the director of the department of law enforcement may display red flashing lights or red lenses or globes which are visible from the front of the vehicle.

(3) All vehicles. Any motor vehicle may have attached to it a flashing amber light to warn motorists of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing the vehicle displaying such lighting. The driver of an approaching vehicle shall yield the right-of-way to any stationary vehicle displaying a flashing amber light.

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, 1993.

CHAPTER 378
(H.B. No. 305)

AN ACT

RELATING TO LIENS OF MECHANICS AND MATERIALMEN; AMENDING SECTION 45-507, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE AND TO PROVIDE THAT A CLAIM OF LIEN MUST BE FILED WITHIN NINETY DAYS AFTER LABOR OR SERVICES ARE COMPLETED OR MATERIALS ARE FURNISHED OR AFTER THE CESSATION OF LABOR, SERVICES OR FURNISHING OF MATERIALS FOR ANY CAUSE; AMENDING SECTION 45-511, IDAHO CODE, TO PROVIDE THAT THE AMOUNTS DUE A LIEN CLAIMANT SHALL INCLUDE SUCH AMOUNTS AS MAY BE FOUND DUE BY THE COURT PURSUANT TO SECTION 45-522, IDAHO CODE; AMENDING CHAPTER 5, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-518, IDAHO CODE, TO PROVIDE FOR THE RELEASE OF A LIEN ON REAL PROPERTY BY POSTING OF A SURETY BOND; AMENDING CHAPTER 5, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-519, IDAHO CODE, TO PROVIDE FOR THE FORM OF THE BOND TO BE POSTED; AMENDING CHAPTER 5, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-520, IDAHO CODE, TO PROVIDE FOR A PETITION FOR RELEASE OF A MECHANIC'S LIEN BY THE POSTING OF A SURETY BOND AND PROVIDING FOR SERVICE OF A COPY OF THE PETITION; AMENDING CHAPTER 5, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-521, IDAHO CODE, TO PROVIDE FOR HEARING ON THE PETITION FOR RELEASE OF THE MECHANIC'S LIEN BY THE POSTING OF A SURETY BOND AND TO PROVIDE FOR

THE CONTENTS AND EFFECT OF AN ORDER RELEASING THE LIEN; AMENDING CHAPTER 5, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-522, IDAHO CODE, TO PROVIDE FOR THE BRINGING OF AN ACTION AGAINST THE LIEN CLAIMANT'S DEBTOR AND THE SURETY ON THE BOND AND PROVIDING FOR PREFERENTIAL SETTING OF THE ACTION; AMENDING CHAPTER 5, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-523, IDAHO CODE, TO PROVIDE FOR A MOTION TO ENFORCE THE LIABILITY OF THE SURETY; AND AMENDING CHAPTER 5, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-524, IDAHO CODE, TO PROVIDE FOR THE FILING OF A NOTICE BY THE LIEN CLAIMANT EXCEPTING TO THE SUFFICIENCY OF THE SURETY.

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

SECTION 1. That Section 45-507, Idaho Code, be, and the same is hereby amended to read as follows:

~~45-507. CLAIM OF LIEN. Every original contractor, professional engineer or licensed surveyor claiming the benefit of this chapter must, within ninety (90) days, and every other person must, within sixty (60) days, after the completion of any building, improvement or structure, or after the completion of the alteration or repair thereof, or in case he ceases to labor or perform professional services thereon before the completion thereof, then after he so ceases to labor or to perform professional services or after he has ceased to labor or to perform professional services thereon for any cause, or after he has ceased to furnish materials therefor, or after the performance of any labor or professional services in a mine or mining claim~~ Any person claiming a lien pursuant to the provisions of this chapter must, within ninety (90) days after the completion of the labor or services or furnishing of materials, or the cessation of the labor, services or furnishing of materials for any cause, file for record with the county recorder for the county in which such property or some part thereof is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner, or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just. A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery or mailing shall be made no later than twenty-four (24) hours following the filing of said claim of lien.

SECTION 2. That Section 45-511, Idaho Code, be, and the same is hereby amended to read as follows:

45-511. RECOVERY BY CONTRACTOR -- DEDUCTION OF DEBTS TO SUBCONTRACTORS. The original or subcontractor shall be entitled to recover,

upon the claim filed by him, only such amount as may be due to him according to the terms of his contract, and, if applicable, such other amounts as may be found due to the lien claimant by the court pursuant to section 45-522, Idaho Code, after deducting all claims of other parties for work done and materials furnished to him as aforesaid, of which claim of lien shall have been filed as required by this chapter, and in all cases where a claim shall be filed under this chapter for work done or materials furnished to any subcontractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the person indebted to the contractor may withhold from such contractor the amount of money for which claim is filed; and in case of judgment upon the lien, the person indebted in the contract shall be entitled to deduct from any amount due or to become due by him to such contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due from him to such contractor, if the person indebted in the contract shall have settled with such contractor in full, he shall be entitled to recover back from such contractor any amount so paid by him in excess of the contract price, and for which such contractor was originally the party liable.

SECTION 3. That Chapter 5, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-518, Idaho Code, and to read as follows:

45-518. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- MANNER. A mechanic's lien of record upon real property may be released upon the posting of a surety bond in the manner provided in sections 45-519 through 45-524, Idaho Code.

SECTION 4. That Chapter 5, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-519, Idaho Code, and to read as follows:

45-519. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- FORM OF BOND. The debtor of the lien claimant or a party in interest in the premises subject to the lien must obtain a surety bond executed by the debtor of the lien claimant or a party in interest in the premises subject to the lien, as principal, and executed by a corporation authorized to transact surety business in this state, as surety, in substantially the following form:

(Title of court and cause, if action has been commenced)

WHEREAS, _____ (name of owner, contractor, or other person disputing the lien) desires to give a bond for releasing the following described real property from that certain claim of mechanic's lien in the sum of \$_____, recorded _____, 19____, in the office of the recorder in _____ (name of county where the real property is situated):

(legal description)

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to _____, (name of claimant) the claimant named in the mechanic's lien, under the conditions prescribed by sections 45-518 through 45-524, Idaho Code, inclusive, in the sum of \$ _____ (1-1/2 x claim), from which sum they will pay the claimant such amount as a court of competent jurisdiction may adjudge to have been secured by his lien, with interest, costs and attorney's fees.

IN WITNESS WHEREOF, the principal and surety have executed this bond at _____, Idaho, on the _____ day of _____, 19____.

(Signature of Principal)
(SURETY CORPORATION)

BY _____
(Its Attorney in Fact)

State of Idaho)
) ss.
County of _____)

On _____, 19____, before me, the undersigned, a notary public of this county and state, personally appeared _____ who acknowledged that he executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared _____ known (or satisfactorily proved) to me to be the attorney in fact of the corporation that executed the foregoing instrument and known to me to be the person who executed that instrument on behalf of the corporation therein named, and he acknowledged to me that that corporation executed the foregoing instrument.

(Notary Public in and for the
County and State)

SECTION 5. That Chapter 5, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-520, Idaho Code, and to read as follows:

45-520. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- PETITION FOR RELEASE -- SERVICE OF COPY OF PETITION. (1) A petition for the release of a mechanic's lien by posting a surety bond must be filed in the district court of the county wherein the property is located and shall set forth:

(a) The title of the cause, thus: "In the matter of the petition of _____ (name of petitioner) for release of mechanic's lien of _____ (name of mechanic's lien claimant) upon posting surety bond."

(b) An allegation of the purchase of and payment of the premium for the bond, and the dates of purchase and payment.

(c) An allegation incorporating by reference a true copy of the bond, which copy must be attached to the petition.

(d) The name or names of the owner or reputed owners of the land subject to the lien.

(e) A description of the real property subject to the lien, and the instrument number of the lien as given by the recorder's office.

(f) A prayer for an order releasing the lien.

(2) The petitioner shall obtain an order from the district court setting forth the time and date of the hearing on the petition, which time and date must be at least five (5) days after the date of the order and not more than ten (10) days after the date of the order.

(3) A copy of the petition and a copy of the order must be served on the lien claimant at least two (2) days before the date set for the hearing and served in the manner provided by law for service of summons.

SECTION 6. That Chapter 5, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-521, Idaho Code, and to read as follows:

45-521. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- HEARING ON PETITION -- CONTENTS AND EFFECT OF ORDER RELEASING LIEN.

(1) Upon the hearing, the court shall enter its order releasing the mechanic's lien upon the petitioner's filing in open court the original bond, and introducing into evidence a receipt for payment of the premium.

(2) The entry of the order by the court must refer to the property which is the subject of the lien and the lien itself, by instrument number, and must recite that the lien is released of record for all purposes to the same extent as if released of record by the lienor.

(3) Upon entry of the order, the lien is released of record in its entirety and for all purposes and the real property, the subject of the lien, is released from the encumbrances of the lien.

(4) There is no appeal from the entry of an order pursuant to the provisions of this section and upon entry the order is final for all purposes.

SECTION 7. That Chapter 5, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-522, Idaho Code, and to read as follows:

45-522. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- ACTION AGAINST DEBTOR AND SURETY -- PREFERENTIAL SETTINGS. (1) The lien claimant is entitled to bring an action against the lien claimant's debtor and to join therein the surety on the bond. The rights of the lien claimant include and the court may award to him in that action:

- (a) The amount found due to the lien claimant by the court;
- (b) The cost of preparing and filing the lien claim, including attorney's fees, if any;
- (c) The costs of the proceedings;
- (d) Attorney's fees for representation of the lien claimant in the proceedings; and
- (e) Interest at the rate of seven percent (7%) per annum on the amount found due to the lien claimant and from the date found by the court that the sum was due and payable.

(2) Proceedings under subsection (1) of this section are entitled to priority of hearing second only to criminal hearings. The plaintiff in the action may serve upon the adverse party a "demand for thirty (30) day setting" in the proper form, and file the demand with the clerk of the court. Upon filing, the clerk of the court shall, before Friday next, vacate a case or cases as necessary and set the lien claimant's case for hearing, on a day or days certain, to be heard within thirty (30) days of the filing of the "demand for thirty (30) day setting." Only one (1) such preferential setting need be given by the court, unless the hearing date is vacated without stipulation of counsel for the plaintiff in writing. If the hearing date is vacated without that stipulation, upon service and filing of a "demand for thirty (30) day setting," a new preferential setting must be given.

SECTION 8. That Chapter 5, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-523, Idaho Code, and to read as follows:

45-523. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- MOTION TO ENFORCE LIABILITY OF SURETY. (1) By entering into a bond given pursuant to section 45-519, Idaho Code, the surety submits himself to the jurisdiction of the court in which the bond is filed in the proceeding for release of the lien, and the surety irrevocably appoints the clerk of that court as its agent upon whom any papers affecting its liability on the bond may be served. Its liability may be enforced on motion without the necessity of an independent action. The motion and such notice of motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the surety if his address is known.

(2) The motion described in subsection (1) of this section must not be instituted until the lapse of thirty (30) days following the giving of notice of entry of judgment in the action against the lien claimant's debtor, if no notice of appeal from the judgment is filed, nor may the motion be instituted until the lapse of thirty (30) days following the filing of the remittitur from the court of appeals or the supreme court, if an appeal has been taken from the judgment.

SECTION 9. That Chapter 5, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-524, Idaho Code, and to read as follows:

45-524. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND

-- EXCEPTION TO SUFFICIENCY OF SURETY. (1) The lien claimant may, within two (2) days after the service of a copy of the petition for release of the lien with a copy of the bond attached thereto pursuant to section 45-520, Idaho Code, file with the clerk of the court in the action a notice excepting to the sufficiency of the surety on the bond, and shall, at the same time and together with that notice, file an affidavit setting forth the grounds and basis of the exceptions to the surety, and shall serve a copy of the notice and a copy of the affidavit upon the attorney or the petitioner on the same date as the date of filing of the notice and affidavit. A hearing must be had upon the justification of the surety at the same time as that set for the hearing on the petition for an order to release the lien.

(2) If the lien claimant fails to file and serve the notice and affidavit within two (2) days after the service of the petition for release of the lien, he shall be deemed to have waived all objection to the justification and sufficiency of the surety.

Approved April 1, 1993.

CHAPTER 379

(H.B. No. 330, As Amended in the Senate)

AN ACT

RELATING TO MUNICIPAL ELECTIONS; AMENDING SECTION 34-1401, IDAHO CODE, AS ADDED BY SECTION 4, CHAPTER 176, LAWS OF 1992, TO PROVIDE THAT MUNICIPAL ELECTIONS GOVERNED BY THE PROVISIONS OF CHAPTER 4, TITLE 50, IDAHO CODE, ARE EXEMPT FROM CHAPTER 14, TITLE 34, IDAHO CODE; AMENDING SECTION 50-429, IDAHO CODE, RELATING TO GENERAL AND SPECIAL CITY ELECTIONS TO PROVIDE THAT, WITH CERTAIN EXCEPTIONS, THERE SHALL BE NO MORE THAN FOUR ELECTIONS CONDUCTED IN ANY CITY IN ANY CALENDAR YEAR; REPEALING SECTIONS 50-414, 50-416 THROUGH 50-421, 50-423, 50-424 AND 50-476, IDAHO CODE; AMENDING CHAPTER 4, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-414, IDAHO CODE, TO PROVIDE FOR THE REGISTRATION OF ELECTORS; AMENDING SECTION 50-453, IDAHO CODE, TO REQUIRE THAT AT ALL GENERAL AND SPECIAL CITY ELECTIONS THE POLLS SHALL BE OPENED AT 8:00 O'CLOCK A.M.; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 34-1401, Idaho Code, as added by Section 4, Chapter 176, Laws of 1992, be, and the same is hereby amended to read as follows:

34-1401. ELECTION ADMINISTRATION. Notwithstanding any provision to the contrary, the election official of each political subdivision shall administer all elections on behalf of any political subdivision, subject to the provisions of this chapter, including all ~~municipal elections~~; special district elections, and elections of special questions submitted to the electors as provided in this chapter. School districts governed by title 33, Idaho Code, and water districts gov-

governed by chapter 6, title 42, Idaho Code, irrigation districts governed by title 43, Idaho Code, and municipal elections governed by the provisions of chapter 4, title 50, Idaho Code, are exempt from the provisions of this chapter. For the purposes of achieving uniformity, the secretary of state shall, from time to time, provide directives and instructions to the various county clerks and political subdivision election officials. Unless a specific exception is provided in this chapter, the provisions of this chapter shall govern in all questions regarding the conduct of elections on behalf of all political subdivisions. In all matters not specifically covered by this chapter, other provisions of title 34, Idaho Code, governing elections shall prevail over any special provision which conflicts therewith.

A political subdivision may contract with the county clerk to conduct all or part of the elections for that political subdivision. In the event of such a contract, the county clerk shall perform all necessary duties of the election official of a political subdivision including, but not limited to, notice of the filing deadline, notice of the election, and preparation of the election calendar.

SECTION 2. That Section 50-429, Idaho Code, be, and the same is hereby amended to read as follows:

50-429. GENERAL AND SPECIAL CITY ELECTIONS. (1) A general election shall be held in each city governed by this title, for officials as in this title provided, on the Tuesday following the first Monday of November in each odd-numbered year. All such officials shall be elected and hold their respective offices for the term specified and until their successors are elected and qualified. All other city elections that may be held under authority of general law shall be known as special city elections.

(2) On and after January 1, 1994, notwithstanding any other provisions of law to the contrary, there shall be no more than four (4) elections conducted in any city in any calendar year, except as provided in this section.

(3) The dates on which elections may be conducted are:

(a) The first Tuesday in February of each year; and

(b) The fourth Tuesday in May of each year; and

(c) The first Tuesday in August of each year; and

(d) The Tuesday following the first Monday in November of each year.

(e) In addition to the elections specified in subsections (a) through (d) of this section, an emergency election may be called upon motion of the city council of a city. An emergency exists when 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 a national or local defense, or it is necessary to do emergency work to safeguard life, health or property. Such a special election, if conducted by the city clerk, shall be conducted at the expense of the political subdivision submitting the question.

(4) The secretary of state is authorized to provide such assistance as necessary, and to prescribe any needed rules or interpretations for the conduct of elections authorized under the provisions of

this section.

SECTION 3. That Sections 50-414, 50-416 through 50-421, 50-423, 50-424 and 50-476, Idaho Code, be, and the same are hereby repealed.

SECTION 4. That Chapter 4, 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 50-414, Idaho Code, and to read as follows:

50-414. REGISTRATION OF ELECTORS. All electors must register before being able to vote at any municipal election. The county clerk shall be the registrar for all city elections and shall conduct voter registration for each city pursuant to the provisions of section 34-1402, Idaho Code.

SECTION 5. That Section 50-453, Idaho Code, be, and the same is hereby amended to read as follows:

50-453. OPENING AND CLOSING POLLS. (1) At all general and special city elections the polls shall be opened at ~~12--noon~~ 8:00 a.m. and remain open until all registered electors of that precinct have voted or until 8:00 p.m. of the same day, whichever comes first. ~~Provided; however;--that--a-city-council-may-by-ordinance-require-that-the-polls-in-the-city-shall-open-at-8-a.m.~~

(2) Upon opening the polls the precinct judge will make the proclamation of the same and thirty (30) minutes before closing the polls a proclamation shall be made in the same manner. Any elector who is in line at 8:00 p.m. shall be allowed to vote, notwithstanding the pronouncement that the polls are closed.

SECTION 6. This act shall be in full force and effect on and after January 1, 1994.

Approved April 1, 1993.

CHAPTER 380
(H.B. No. 387)

AN ACT

RELATING TO THE MOBILE HOME PARK LANDLORD TENANT ACT; AMENDING SECTION 55-2006, IDAHO CODE, TO PROVIDE THAT RENTAL INCREASES WHICH ARE UNIFORM AMONG ALL HOMES IN THE SAME RENTAL TIER SHALL MEET THE REQUIREMENT FOR UNIFORMITY OF RENTAL INCREASES THROUGHOUT THE PARK AND TO CORRECT TERMINOLOGY; AMENDING SECTION 55-2007, IDAHO CODE, TO SPECIFY ADDITIONAL PROVISIONS TO BE CONTAINED IN A RENTAL AGREEMENT, TO SPECIFY ADDITIONAL PROVISIONS WHICH MAY NOT BE CONTAINED IN A RENTAL AGREEMENT, TO PROVIDE TERMS AND CONDITIONS WHICH SHALL BE AN IMPLICIT PART OF ANY RENTAL AGREEMENT AND TO PROVIDE FOR DISCLOSURES TO THE TENANT PRIOR TO EXECUTION OF A RENTAL AGREEMENT; REPEALING SECTION 55-2014, IDAHO CODE; AMENDING

CHAPTER 20, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2014, IDAHO CODE, TO PROVIDE FOR A TENANT ACTION FOR DAMAGES AND SPECIFIC PERFORMANCE AGAINST A LANDLORD, TO PROVIDE GROUNDS FOR FILING AN ACTION, TO PROVIDE PROCEDURES, TO SPECIFY THE DAMAGES WHICH MAY BE RECOVERED AND TO PROVIDE FOR NOTICE TO THE LANDLORD PRIOR TO SUIT; AMENDING CHAPTER 20, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2016, IDAHO CODE, TO PROVIDE FOR ARBITRATION OF DISPUTES; AMENDING SECTION 55-2016, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR TREBLE DAMAGES IN SPECIFIED ACTIONS UPON A FINDING BY THE COURT THAT THE DEFENDANT ACTED WITH MALICE, WANTONNESS OR OPPRESSION; AMENDING CHAPTER 20, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2018, IDAHO CODE, TO PROVIDE FOR AN AWARD OF ATTORNEY'S FEES IN CASES WHERE TREBLE DAMAGES ARE NOT AWARDED; AND AMENDING SECTION 55-2017, IDAHO CODE, TO REDESIGNATE THE SECTION.

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

SECTION 1. That Section 55-2006, Idaho Code, be, and the same is hereby amended to read as follows:

55-2006. ADJUSTMENTS TO RENT, SERVICES, UTILITIES OR RULES. (1) A landlord may increase or decrease rents only after ninety (90) days' written notice to the tenants.

(2) Rental increases shall be uniform throughout the mobile home park. When rents within a mobile home park are structured by reason of lot or home size, amenities, lot location or otherwise, rental increases shall be uniform among all homes in the same rent tier.

(3) A landlord shall give written notice of such change to each affected mobile home owner at least ninety (90) days prior to any increase in lot rental amount, reduction in services or utilities provided by the landlord or changes in rules or regulations not to exceed one (1) change in any each category per six (6) month period.

(4) Notwithstanding the foregoing provisions, a rental agreement may include an escalation clause for a pro rata share of any increase or decrease in the mobile home park's ad valorem taxes, utility assessments, or other services as included in the monthly rental charge, after the effective date of such a change. Issues of public safety, health or property degradation may also be included in this section. The landlord shall give thirty (30) days' written notice to a tenant before such an increase or decrease.

SECTION 2. That Section 55-2007, Idaho Code, be, and the same is hereby amended to read as follows:

55-2007. REQUIRED PROVISIONS AND EXCLUSIONS -- DISCLOSURES. (1) Any rental agreement executed between the landlord and tenant shall contain:

(a) The terms for the payment of rent, including the time and place for payment, and a description of any additional charges to be paid to the landlord by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;

(b) A description of the utilities and services which are included in the monthly rent;

(c) The rules of the park;

(ed) The names and addresses of the manager of the mobile home park and the owner of the mobile home park or a person who resides in the state where the mobile home park is located who is authorized to act as agent for the owner; and

(de) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement.

(2) Any rental agreement executed between the landlord and tenant shall not contain:

(a) Any provision by which the tenant agrees to waive or forego rights or remedies under this chapter; or

(b) Any provision allowing the landlord to charge an "entrance fee" or an "exit fee." The expense of repairs or maintenance required by the landlord as a condition of the landlord's approval of a rental application shall not constitute an "entrance fee" or "exit fee" as those terms are used herein.

(c) Any provision which unreasonably restricts access to the mobile home park by invitees of the tenant.

(3) The following terms and conditions shall be an implicit part of any rental agreement between the landlord and tenant:

(a) The landlord shall provide a base upon which the mobile home is to be located, prepared in accordance with the provisions of section 44-2201, Idaho Code.

(b) The landlord shall, prior to removal of the wheels and axles, approve the positioning of the mobile home upon the mobile home lot.

(c) The landlord shall not permit any portion of the mobile home, including the tongue, to extend into a roadway.

(d) The landlord shall maintain street lights, entry lights and common area lighting, if any, in good working condition.

(e) The landlord shall have the right of entry upon the mobile home lot for maintenance of utilities, protection of the mobile home park and periodic inspection of the premises, but shall not, except in the case of emergency or suspected abandonment by the tenant, otherwise have the right of entry to such lot without the consent of the tenant.

(f) The landlord shall notify each tenant within fifteen (15) days after a petition has been filed by the landlord for a change in the zoning of the land upon which the mobile home park is situated.

(4) Upon request, the landlord shall, prior to the execution of a rental agreement, provide the tenant with a written statement containing the following information:

(a) The name, address and telephone number of the owner or manager of the mobile home park.

(b) A general description of the types of homes which may be brought into the mobile home park.

(c) A general description of the boundaries of the space to be

provided.

(d) A description of the utilities and services which are included in the rent.

(e) A description of other utilities and services which are available within the park.

(f) A description of the zoning under which the mobile home park operates, and the governmental entity having zoning jurisdiction.

(g) The date and amount of the most recent rent increase.

SECTION 3. That Section 55-2014, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a **NEW SECTION**, to be known and designated as Section 55-2014, Idaho Code, and to read as follows:

55-2014. **TENANT ACTION FOR DAMAGES -- SPECIFIC PERFORMANCE.** (1) A tenant of a mobile home park may file an action against a landlord for damages and specific performance for:

(a) Failure to maintain in good working order, to the terminal point of service, electrical, water or sewer services supplied by the landlord;

(b) Maintaining the premises in a manner hazardous to the health or safety of the tenant, including, but not limited to, a continuing violation of any of the following:

(i) Any rule adopted by the department of health and welfare governing public drinking water systems;

(ii) Any rule adopted by the department of health and welfare governing hazardous waste;

(iii) Any rule adopted by the public health district in which the mobile home park is located governing waste water and on-site sewage treatment systems;

(iv) Any provision of the uniform fire code, as amended by the provisions of any fire code adopted by the county or municipality in which the mobile home park is located;

(v) Any provision of the uniform building code, as amended by the provisions of any building code adopted by the county or municipality in which the mobile home park is located.

Nothing contained in the provisions of this subsection is intended to extend the application of any such rule or code provision to a previously existing condition which, as of July 1, 1993, was exempt from the enforcement of such rule or code provision.

(c) Failure to return a security deposit as and when required by law;

(d) Breach of any term or provision of the lease or rental agreement materially affecting the health and safety of the tenant, whether explicitly or implicitly a part thereof.

(2) Upon filing the complaint, a summons must be issued, served and returned as in other actions; provided however, that in an action exclusively for specific performance, at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint

and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court. If the plaintiff brings an action for damages under this section, or combines this action for damages with an action for specific performance, the early trial provision shall not be applicable, and a summons must be issued returnable as in other cases upon filing the complaint.

(3) In an action under this section, the plaintiff, in his complaint, must set forth the facts on which he seeks to recover, describe the premises, and set forth any circumstances which may have accompanied the failure or breach by the landlord.

(4) If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for such special damages as may be proven. General damages may be awarded but shall not exceed five hundred dollars (\$500). Judgment may also be entered requiring specific performance for any breach of agreement shown by the evidence, and for costs and disbursements.

(5) Before a tenant shall have standing to file an action under this section, he must give his landlord three (3) days' written notice, listing each failure or breach upon which his action will be premised and written demand requiring performance or cure. If, within three (3) days after service of the notice, any listed failure or breach has not been performed or cured by the landlord, the tenant may proceed to commence an action for damages and specific performance.

(6) The notice required in subsection (5) of this section shall be served either:

- (a) By delivering a copy to the landlord or his agent personally; or
- (b) If the landlord or his agent is absent from his usual place of business, by leaving a copy with an employee at the usual place of business of the landlord or his agent; or
- (c) By sending a copy of the notice to the landlord or his agent by certified mail, return receipt requested.

SECTION 5. That Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-2016, Idaho Code, and to read as follows:

55-2016. ARBITRATION. The landlord and tenant may agree in writing to submit a controversy arising under the provisions of this chapter to arbitration through the better business bureau, or similar private association, or as elsewhere provided in Idaho law.

SECTION 6. That Section 55-2016, Idaho Code, be, and the same is hereby amended to read as follows:

55-2016. PENALTIES. ~~A person who violates a provision of this chapter shall be liable for actual damages, and~~ If upon the trial of any action brought under the provisions of section 55-2014, Idaho Code, or those of section 6-302 or 6-303, Idaho Code, the court shall find that the defendant acted with malice, wantonness or oppression, judgment may be entered for three (3) times the amount at which actual

~~damages are assessed. In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs.~~

SECTION 7. That Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-2018, Idaho Code, and to read as follows:

55-2018. ATTORNEY'S FEES. In any action brought under the provisions of this chapter, or those of section 6-302 or 6-303, Idaho Code, except in those cases where treble damages are awarded, the prevailing party shall be entitled to an award of attorney's fees.

SECTION 8. That Section 55-2017, Idaho Code, be, and the same is hereby amended to read as follows:

55-2017~~9~~. VENUE. Venue for any action arising under this chapter shall be in the district court of the county in which the mobile home lot is located.

Approved April 1, 1993.

CHAPTER 381
(H.B. No. 437)

AN ACT

APPROPRIATING MONEYS TO THE STATE TREASURER FOR FISCAL YEAR 1994; AUTHORIZING AN AMOUNT FOR PAYMENT OF BANK SERVICE FEES; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES.

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

SECTION 1. There is hereby appropriated to the State Treasurer the following amounts from the listed funds, to be expended according to designated expense classes for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	\$ 77,400	\$198,400		\$ 275,800
Professional Services Fund	568,900	240,600	\$36,100	845,600
TOTAL	\$646,300	\$439,000	\$36,100	\$1,121,400

SECTION 2. Of the amount appropriated for Operating Expenditures in Section 1, \$300,000 or so much thereof as is necessary is to be used solely and only for the payment of bank service fees for the period July 1, 1993, through June 30, 1994, any other provisions of

law notwithstanding.

SECTION 3. It is legislative intent that an amount, not to exceed \$1,000 of the amount appropriated in Section 1, may be used at the discretion of the State Treasurer to assist in defraying expenses relating to or resulting from the discharge of the State Treasurer's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

Approved April 1, 1993.

CHAPTER 382
(H.B. No. 442)

AN ACT

APPROPRIATING MONEYS FROM THE PERMANENT BUILDING FUND TO THE PERMANENT BUILDING FUND ADVISORY COUNCIL AND THE DIVISION OF PUBLIC WORKS FOR THE PURPOSES SPECIFIED; DESIGNATING PROJECTS TO BE UNDERTAKEN WITH FUNDS TO BE TRANSFERRED TO THE PERMANENT BUILDING FUND; APPROPRIATING MONEYS TO THE PERMANENT BUILDING FUND ADVISORY COUNCIL FOR THE CAPITOL MALL FIBER-OPTIC BACKBONE; APPROPRIATING MONEYS TO THE PERMANENT BUILDING FUND ADVISORY COUNCIL FOR THE LIQUOR DISPENSARY WAREHOUSE PLANNING AND DESIGN; APPROPRIATING MONEYS TO THE PERMANENT BUILDING FUND ADVISORY COUNCIL FOR THE TRANSPORTATION DEPARTMENT POCATELLO OFFICE EXPANSION AND THE MOTOR VEHICLE OFFICES EXPANSION; APPROPRIATING CERTAIN UNEXPENDED BALANCES; EXPRESSING LEGISLATIVE INTENT REGARDING AN EXECUTIVE RESIDENCE COMMITTEE; APPROPRIATING MONEYS FROM THE GOVERNOR'S RESIDENCE FUND FOR THE PURPOSES SPECIFIED; APPROPRIATING MONEYS FROM THE FISH AND GAME FUND; EXPRESSING LEGISLATIVE INTENT CONCERNING THE USE OF MONEYS APPROPRIATED BY THIS ACT; EXEMPTING THE APPROPRIATIONS FROM THE PROVISIONS OF CHAPTER 36, TITLE 67, IDAHO CODE, AND FROM THE PROVISIONS OF SECTION 67-3516, IDAHO CODE; AUTHORIZING THE USE OF TAX ANTICIPATION NOTES; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby appropriated from the Permanent Building Fund to the Permanent Building Fund Advisory Council and the Division of Public Works the following amounts, or so much thereof as in each case may be necessary, for the purpose of paying the cost of any land, building, equipment, or the rebuilding, renovation or repair, of the following buildings, installations, facilities or structures at the places, institutions and agencies, or their successors, named and listed in this section. The Permanent Building Fund Advisory Council is hereby authorized and directed to anticipate revenues accruing to the Permanent Building Account for the purpose of undertaking the construction, renovation, repair and acquisitions herein authorized, without delay, and to determine the priority of construction pursuant to which the work hereunder will be undertaken.

A. Maintenance Projects in the following areas:	\$11,843,000
(1) Alteration and Repair	
(2) Asbestos Abatement	
(3) Underground Storage Tank Program	
(4) EPA Green Lights Program	
(5) Statewide ADA Compliance	
B. Department of Correction:	
South Idaho Correctional Institution	
Laundry, Kitchen and Offices	<u>\$ 600,000</u>
TOTAL	\$12,443,000

SECTION 2. The following projects are approved to be undertaken with funds to be transferred to the Permanent Building Fund from the respective agency funds as indicated below:

A. Department of Administration:	
Capitol Mall Fiber-Optic Backbone	\$200,000
B. State Liquor Dispensary:	
Warehouse Planning and Design	\$420,000
C. Idaho Transportation Department:	
Pocatello Office Expansion	\$790,000
Boise Motor Vehicle Offices Expansion	\$255,000

SECTION 3. There is hereby appropriated from the Permanent Building Fund to the Permanent Building Fund Advisory Council and the Division of Public Works the amount of \$200,000, or as much thereof as may be appropriated for the Capitol Mall Fiber-Optic Backbone in the respective agency operating budget and transferred to the Permanent Building Fund.

SECTION 4. There is hereby appropriated from the Permanent Building Fund to the Permanent Building Fund Advisory Council and the Division of Public Works the amount of \$420,000, or as much thereof as may be appropriated for the Liquor Dispensary Warehouse Planning and Design in the respective agency operating budget and transferred to the Permanent Building Fund.

SECTION 5. There is hereby appropriated from the Permanent Building Fund to the Permanent Building Fund Advisory Council and the Division of Public Works the amount of \$1,045,000, or as much thereof as may be appropriated for the Idaho Transportation Department Pocatello Office Expansion, and the Boise Motor Vehicle Offices Expansion in the respective agency operating budget and transferred to the Permanent Building Fund.

SECTION 6. There is hereby appropriated to the Permanent Building Fund Advisory Council and the Division of Public Works the \$1,110,222 balance of moneys remaining from the appropriation made in Chapter 278, Laws of 1989, Section 1, Subsection B, for the Department of Correction bond payment, and the \$38,000 balance of moneys remaining unexpended from the appropriation made in Chapter 232, Laws of 1991, Section 1, Subsection D, for the Department of Correction - Building Remodel/40-bed Unit, NICI-Cottonwood.

SECTION 7. It is legislative intent that the Chairman of the House Appropriations Committee and the Chairman of the Senate Finance Committee appoint an Executive Residence Committee composed of themselves and five additional distinguished and capable citizens of this state. The Executive Residence Committee shall review the current state-owned site for an Executive Residence, determine if any other existing site or structure could serve as an Executive Residence, and/or recommend an appropriate design for an Executive Residence.

SECTION 8. There is hereby appropriated \$150,000 from the Governor's Residence Fund for the purpose of planning and designing an Executive Residence. Funds may be expended by the Permanent Building Fund Advisory Council and the Division of Public Works for professional services of an architect, engineer or consultant as may be required by the Executive Residence Committee. The Division of Public Works is also authorized and directed to pay from the appropriation in this section, not more than \$2,500, for travel, meals and lodging expenses as may be incurred by the Executive Residence Committee.

SECTION 9. There is hereby appropriated \$317,000 from the Fish and Game Fund for deposit in the Permanent Building Fund.

SECTION 10. It is the express intention that the moneys appropriated in this act may be made available for matching any allocation of moneys now in existence or hereafter made available by agencies of the United States and/or private donations; and it is further the express intention of the Legislature to authorize the Division of Public Works to expend, for the purpose of paying the cost of any land, building, equipment or the rebuilding, renovation or repair of buildings, moneys appropriated for public works to various agencies as part of the respective agency operating budgets; provided the express approval by the Permanent Building Fund Advisory Council is granted to make application for such moneys in each instance. It is further the intention of the Legislature that this authority be effective from the effective date of this act.

SECTION 11. All appropriations made herein shall be exempt from the provisions of Chapter 36, Title 67, and Section 67-3516, Idaho Code, but shall be available for expenditure only after allotment in accordance with the other provisions of Chapter 35, Title 67, Idaho Code, and all appropriations made hereunder shall be subject to the provisions of Section 67-5711, Idaho Code, except as otherwise provided herein.

SECTION 12. The State Treasurer is hereby authorized and directed to anticipate the revenues in the Permanent Building Fund by the issuance of tax anticipation notes in accordance with authority conferred in Sections 63-3201 through 63-3205, Idaho Code, and in accordance with the procedures and subject to the limitations provided in those sections, in the same manner as though the revenues in the General Fund were being anticipated.

SECTION 13. 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, 1993.

CHAPTER 383
(H.B. No. 443)

AN ACT
EXPRESSING LEGISLATIVE INTENT; AND APPROPRIATING MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 1994.

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

SECTION 1. It is legislative intent that the expenditures for the Department of Agriculture not exceed the following amounts for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	\$ 2,152,100	\$ 557,700	\$ 3,500	\$187,000	\$ 2,900,300
Dedicated Funds	10,629,600	2,106,200	190,700	625,300	13,551,800
Federal Funds	234,500	141,500			376,000
Other Funds	404,500	489,000			893,500
TOTAL	<u>\$13,420,700</u>	<u>\$3,294,400</u>	<u>\$194,200</u>	<u>\$812,300</u>	<u>\$17,721,600</u>

SECTION 2. There is hereby appropriated to the Department of Agriculture 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, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	\$ 288,400	\$ 161,800			\$ 450,200
Administration and Accounting Fund	264,700	23,800			288,500
Facilities Maintenance Fund	40,500	173,100			213,600
TOTAL	<u>\$ 593,600</u>	<u>\$ 358,700</u>			<u>\$ 952,300</u>
B. ANIMAL INDUSTRIES:					
FROM:					
General Fund	\$ 566,500	\$ 23,800			\$ 590,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Agricultural Fees -					
Livestock Disease					
Control Fund	345,800	184,700	\$ 48,000		578,500
Agricultural Fees -					
Dairy Inspection					
Fund	335,900	100,800	23,700		460,400
Agricultural Fees -					
Commercial Fisheries					
Fund	6,000	4,000			10,000
Seminars and					
Publications					
Fund		139,200			139,200
TOTAL	\$ 1,254,200	\$ 452,500	\$ 71,700		\$ 1,778,400
C. AGRICULTURAL TECHNOLOGY:					
FROM:					
Water Pollution					
Control Fund	\$ 138,300	\$ 145,800			\$ 284,100
Agricultural Fees -					
Commercial Feed					
and Fertilizer					
Fund	134,400	43,900	2,100		180,400
Agricultural Fees -					
Pesticides					
Fund	634,100	284,600	24,900		943,600
Federal Grant					
Fund	234,500	141,500			376,000
TOTAL	\$ 1,141,300	\$ 615,800	\$ 27,000		\$ 1,784,100
D. PLANT INDUSTRIES:					
FROM:					
General Fund	\$ 268,000	\$ 99,900		\$ 90,900	\$ 458,800
Agricultural					
Inspection					
Fund	773,700	159,400	\$ 23,700		956,800
Agricultural Fees -					
Commercial Feed					
and Fertilizer					
Fund	149,800	44,500	13,300		207,600
Agricultural Fees -					
Honey Advertising					
Fund	300	12,700			13,000
TOTAL	\$ 1,191,800	\$ 316,500	\$ 37,000	\$ 90,900	\$ 1,636,200
E. AGRICULTURAL INSPECTIONS:					
FROM:					
General Fund	\$ 696,800	\$ 188,600	\$ 3,500		\$ 888,900
Agricultural					
Inspection					
Fund	154,200	51,700		\$ 3,500	209,400
Agricultural Fees -					
Fresh Fruit and					

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Vegetable Inspection Fund	7,621,700	826,800	55,000	288,900	8,792,400
Agricultural Fees - Egg Inspection Fund	103,400	23,200			126,600
Agricultural Fees - Organic Food Products Fund	47,400	9,400			56,800
TOTAL	\$ 8,623,500	\$1,099,700	\$ 58,500	\$292,400	\$10,074,100
F. AGRICULTURAL MARKETING AND DEVELOPMENT:					
FROM:					
General Fund	\$ 203,300	\$ 77,900			\$ 281,200
Agricultural Inspection Fund	27,400				27,400
Seminars and Publications Fund	40,100	61,800			101,900
Professional Services Fund	2,000	8,800			10,800
Agricultural Loans Fund	13,000	14,600		\$159,100	186,700
TOTAL	\$ 285,800	\$ 163,100		\$159,100	\$ 608,000
G. ANIMAL DAMAGE:					
FROM:					
General Fund				\$ 96,100	\$ 96,100
Animal Damage Control Fund				50,000	50,000
Agricultural Fees - Sheep Industry Regulation Fund		\$ 400		123,800	124,200
TOTAL		\$ 400		\$269,900	\$ 270,300
H. SHEEP COMMISSION:					
FROM:					
General Fund	\$ 29,100	\$ 5,700			\$ 34,800
Agricultural Fees - Sheep Industry Regulation Fund	103,700	26,600			130,300
TOTAL	\$ 132,800	\$ 32,300			\$ 165,100
I. QUALITY ASSURANCE LABORATORY:					
FROM:					
General Fund	\$ 100,000				\$ 100,000
Professional Services Fund	97,700	\$ 255,400			353,100
TOTAL	\$ 197,700	\$ 255,400			\$ 453,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
GRAND TOTAL	\$13,420,700	\$3,294,400	\$194,200	\$812,300	\$17,721,600

Approved April 1, 1993.

CHAPTER 384
(H.B. No. 445)

AN ACT

SUMMARIZING THE APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE FOR FISCAL YEAR 1994; APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR FISCAL YEAR 1994; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO DEVELOP AND IMPLEMENT A MANAGED CARE SYSTEM; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO RESEARCH AND REVIEW COPAYMENTS; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO SEEK MEDICARE REIMBURSEMENT; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO PARENTAL CONTRIBUTIONS; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO ESTABLISH AN ASSET LIMIT FOR THE PREGNANT WOMEN AND CHILDREN PROGRAM; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO DEVELOP A COMPARATIVE COST STUDY; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO MEDICAID REIMBURSEMENT RATES AND PROCEDURES; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO ALTER MEDICAL TRANSPORTATION REIMBURSEMENT RATES; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO REQUIRE THE USE OF GENERIC DRUGS AND TO REQUIRE PRIOR AUTHORIZATION OF CERTAIN PRESCRIPTION DRUGS; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO ALTER MEDICAID RULES REGARDING DENTAL COVERAGE; SUPERSEDING THE PROVISIONS OF SECTION 39-3606, IDAHO CODE; PROVIDING THAT THE STATE AUDITOR SHALL MAKE TRANSFERS FROM VARIOUS FUNDS; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO AUTHORIZED OR MANDATED SERVICES; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SUBSTANCE ABUSE PREVENTION; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AND AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED.

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

SECTION 1. In summary, the appropriation to the Department of Health and Welfare, as contained in Section 2 of this act, includes various amounts from the funds listed for the period July 1, 1993, through June 30, 1994:

FROM:

General Fund	\$192,512,400
Cooperative Welfare Fund (Other)	54,016,400
Domestic Violence Fund	421,200
Cancer Control Fund	375,300
Idaho Youth Corrections Fund	140,000
Emergency Medical Services Funds I and II	2,053,800

Medical Assistance Fund	18,500
Liquor Fund	650,000
Water Pollution Control Fund	16,022,600
Central Tumor Registry Fund	125,000
Alcoholism Treatment Fund	2,028,800
Hazardous Waste Monitoring Fund	2,119,400
State Agricultural Smoke Management Fund	30,000
State Youth Training Center Income Fund	564,000
State Hospital South Income Fund	905,100
Idaho Veterans Home Income Fund	331,100
State Hospital North Income Fund	571,500
Cooperative Welfare Fund (Federal)	<u>357,299,700</u>
TOTAL	<u>\$630,184,800</u>

SECTION 2. There is hereby appropriated to the Department of Health and Welfare the following amounts to be expended for the designated programs according to the designated expense classes from the various funds listed for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
I. INDIRECT SUPPORT SERVICES:						
FROM:						
General Fund	\$ 4,497,100	\$ 3,949,300	\$ 376,600			\$ 8,823,000
Cooperative Welfare Fund (Other)		122,300				122,300
Cooperative Welfare Fund (Federal)	4,527,700	3,481,900	352,500			<u>8,362,100</u>
TOTAL	\$ 9,024,800	\$ 7,553,500	\$ 729,100			<u>\$ 17,307,400</u>
II. DIVISION OF HEALTH SERVICES:						
A. PHYSICAL HEALTH SERVICES:						
FROM:						
General Fund	\$ 659,700	\$ 1,321,300		\$ 1,234,700		\$ 3,215,700
Cooperative Welfare Fund (Other)	450,800	372,300		354,100		1,177,200
Cancer Control Fund	19,700	355,600				375,300
Central Tumor Registry Fund				125,000		125,000
Cooperative Welfare Fund (Federal)	1,701,000	1,190,500		19,187,600		<u>22,079,100</u>
TOTAL	\$ 2,831,200	\$ 3,239,700		\$ 20,901,400		<u>\$ 26,972,300</u>
B. EMERGENCY MEDICAL SERVICES:						
FROM:						
Cooperative Welfare Fund (Other)		\$ 101,000		\$ 23,000		\$ 124,000
Emergency Medical Services Funds						
I & II	\$ 669,900	651,500	\$ 100,000	632,400		2,053,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
Cooperative Welfare Fund (Federal) 45,600		268,700				314,300
TOTAL \$ 715,500		\$ 1,021,200	\$ 100,000	\$ 655,400		\$ 2,492,100
C. LABORATORY SERVICES:						
FROM:						
General Fund \$ 1,238,300	\$ 313,300			\$ 166,700		\$ 1,718,300
Cooperative Welfare Fund (Other) 594,200	220,200	\$ 8,000		26,200		848,600
Water Pollution Control Fund 94,400	15,500					109,900
Hazardous Waste Monitoring Fund 69,800	42,300					112,100
Cooperative Welfare Fund (Federal) 253,400	208,900		10,900			473,200
TOTAL \$ 2,250,100	\$ 800,200	\$ 8,000	\$ 203,800			\$ 3,262,100
DIVISION						
TOTAL \$ 5,796,800	\$ 5,061,100	\$ 108,000	\$ 21,760,600			\$ 32,726,500
III. DIVISION OF WELFARE:						
A. ELIGIBILITY SERVICES:						
FROM:						
General Fund \$ 7,435,800	\$ 2,718,400					\$ 10,154,200
Cooperative Welfare Fund (Other) 58,400	14,700					73,100
Cooperative Welfare Fund (Federal) 7,612,700	2,569,100					10,181,800
TOTAL \$15,106,900	\$ 5,302,200					\$ 20,409,100
B. MEDICAL ASSISTANCE PAYMENTS:						
FROM:						
General Fund \$ 2,453,400	\$ 2,227,300	\$ 88,500	\$ 87,733,900			\$ 92,503,100
Cooperative Welfare Fund (Other) 250,900	122,800		12,952,500			13,326,200
Medical Assistance Fund			15,000			15,000
Liquor Fund			650,000			650,000
Cooperative Welfare Fund (Federal) 3,384,600	6,397,300	112,300	216,050,700			225,944,900
TOTAL \$ 6,088,900	\$ 8,747,400	\$ 200,800	\$317,402,100			\$332,439,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
C. ADULT AND ADC ASSISTANCE PAYMENTS:						
FROM:						
General						
Fund	\$ 130,500	\$ 563,600	\$ 35,000	\$12,854,800		\$13,583,900
Cooperative						
Welfare Fund						
(Other)				16,143,800		16,143,800
Cooperative						
Welfare Fund						
(Federal)	197,500	1,108,100	53,600	11,537,400		12,896,600
TOTAL	\$ 328,000	\$ 1,671,700	\$ 88,600	\$ 40,536,000		\$ 42,624,300
D. CHILD SUPPORT ENFORCEMENT:						
FROM:						
General						
Fund	\$ 390,400	\$ 343,700	\$ 2,400			\$ 736,500
Cooperative						
Welfare Fund						
(Other)	853,400	322,100				1,175,500
Cooperative						
Welfare Fund						
(Federal)	2,727,200	5,954,200	21,600			8,703,000
TOTAL	\$ 3,971,000	\$ 6,620,000	\$ 24,000			\$ 10,615,000
DIVISION						
TOTAL	\$25,494,800	\$22,341,300	\$ 313,400	\$357,938,100		\$406,087,600
IV. DIVISION OF FAMILY AND CHILDREN'S SERVICES:						
A. SOCIAL SERVICES:						
FROM:						
General						
Fund	\$ 6,324,500	\$ 1,176,900		\$ 2,614,400		\$ 10,115,800
Cooperative						
Welfare Fund						
(Other)	392,600	580,900		1,769,000		2,742,500
Cooperative						
Welfare Fund						
(Federal)	7,699,300	2,459,100		53,100		10,211,500
TOTAL	\$14,416,400	\$ 4,216,900		\$ 4,436,500		\$ 23,069,800
B. SUBSTANCE ABUSE:						
FROM:						
General						
Fund	\$ 29,500	\$ 22,600		\$ 935,400		\$ 987,500
Cooperative						
Welfare Fund						
(Other)		9,000				9,000
Alcoholism						
Treatment						
Fund	146,800	49,000		1,513,100		1,708,900
Cooperative						
Welfare Fund						
(Federal)	292,700	821,900		1,650,200		2,764,800
TOTAL	\$ 469,000	\$ 902,500		\$ 4,098,700		\$ 5,470,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
C. STATE YOUTH SERVICES CENTER:						
FROM:						
General						
Fund					\$ 4,699,400	\$ 4,699,400
Cooperative						
Welfare Fund					462,100	462,100
(Other)						
State Youth						
Training Center						
Income						
Fund					564,000	564,000
Cooperative						
Welfare Fund						
(Federal)					195,900	195,900
TOTAL					<u>\$ 5,921,400</u>	<u>\$ 5,921,400</u>
D. JUVENILE JUSTICE:						
FROM:						
General						
Fund	\$ 1,340,100	\$ 1,511,800		\$ 2,627,900		\$ 5,479,800
Cooperative						
Welfare Fund						
(Other)		133,200				133,200
Idaho Youth						
Corrections						
Fund		140,000				140,000
Cooperative						
Welfare Fund						
(Federal)		65,500		2,173,700		2,239,200
TOTAL	<u>\$ 1,340,100</u>	<u>\$ 1,850,500</u>		<u>\$ 4,801,600</u>		<u>\$ 7,992,200</u>
E. DETENTION AND ASSESSMENT:						
FROM:						
Cooperative						
Welfare Fund						
(Other)	\$ 404,600	\$ 84,300	\$ 1,600			\$ 490,500
F. FAMILY SELF-SUPPORT:						
FROM:						
General						
Fund	\$ 748,900	\$ 668,400		\$ 1,805,700		\$ 3,223,000
Cooperative						
Welfare Fund						
(Federal)	1,184,500	1,681,800	200	5,652,800		8,519,300
TOTAL	<u>\$ 1,933,400</u>	<u>\$ 2,350,200</u>	<u>\$ 200</u>	<u>\$ 7,458,500</u>		<u>\$ 11,742,300</u>
DIVISION						
TOTAL	\$18,563,500	\$ 9,404,400	\$ 1,800	\$ 20,795,300	\$ 5,921,400	\$ 54,686,400
V. DIVISION OF ENVIRONMENT:						
A. INEL OVERSIGHT:						
FROM:						
General						
Fund	\$ 111,900	\$ 51,900				\$ 163,800
Hazardous						
Waste						
Monitoring						
Fund	197,700	18,000				215,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
Cooperative						
Welfare Fund						
(Federal)	1,235,100	661,300	40,000	\$ 796,400		2,732,800
TOTAL	\$ 1,544,700	\$ 731,200	\$ 40,000	\$ 796,400		\$ 3,112,300
B. PLANNING AND SUPPORT SERVICES:						
FROM:						
General						
Fund	\$ 124,800	\$ 78,400				\$ 203,200
Cooperative						
Welfare Fund						
(Other)		17,400	\$ 500			17,900
Water						
Pollution						
Control						
Fund	463,300	245,400	68,100			776,800
Hazardous						
Waste Monitoring						
Fund	307,500	375,400	7,600			690,500
Cooperative						
Welfare Fund						
(Federal)	842,100	545,400				1,387,500
TOTAL	\$ 1,737,700	\$ 1,262,000	\$ 76,200			\$ 3,075,900
C. PERMITS AND ENFORCEMENT:						
FROM:						
General						
Fund	\$ 265,300	\$ 24,600				\$ 289,900
Cooperative						
Welfare Fund						
(Other)	1,441,000	517,000	315,500			2,273,500
Water						
Pollution						
Control						
Fund	388,800	56,100				444,900
Hazardous						
Waste						
Monitoring						
Fund	426,800	107,500	270,400			804,700
Cooperative						
Welfare Fund						
(Federal)	426,600	104,500	43,100			574,200
TOTAL	\$ 2,948,500	\$ 809,700	\$ 629,000			\$ 4,387,200
D. COMMUNITY PROGRAMS:						
FROM:						
General						
Fund	\$ 184,500	\$ 49,300				\$ 233,800
Cooperative						
Welfare Fund						
(Other)	933,400	189,700	\$ 124,000	\$ 200,000		1,447,100
Water						
Pollution						
Control						
Fund	1,978,000	1,446,900	\$ 180,500	\$11,085,600		14,691,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
Hazardous Waste						
Monitoring						
Fund	252,000	44,400				296,400
State Agricultural						
Smoke Management						
Fund		30,000				30,000
Cooperative						
Welfare Fund						
(Federal)	3,839,100	684,400	34,300	1,003,700		5,561,500
TOTAL	\$ 7,187,000	\$ 2,444,700	\$ 338,800	\$ 12,289,300		\$ 22,259,800
DIVISION						
TOTAL	\$13,417,900	\$ 5,247,600	\$1,084,000	\$ 13,085,700		\$ 32,835,200
VI. VETERANS SERVICES:						
FROM:						
General						
Fund					\$ 1,914,900	\$ 1,914,900
Cooperative						
Welfare Fund						
(Other)					4,289,600	4,289,600
Idaho Veterans Home						
Income Fund					331,100	331,100
Cooperative						
Welfare Fund						
(Federal)					2,156,700	2,156,700
TOTAL					\$ 8,692,300	\$ 8,692,300
VII. DIVISION OF COMMUNITY REHABILITATION:						
A. COMMUNITY DEVELOPMENTAL DISABILITIES:						
FROM:						
General						
Fund	\$ 5,712,100	\$ 1,234,700		\$ 1,379,700		\$ 8,326,500
Cooperative						
Welfare Fund						
(Other)	1,858,700	24,900		31,400		1,915,000
Cooperative						
Welfare Fund						
(Federal)	816,600	523,900		1,561,400		2,901,900
TOTAL	\$ 8,387,400	\$ 1,783,500		\$ 2,972,500		\$ 13,143,400
B. IDAHO STATE SCHOOL AND HOSPITAL:						
FROM:						
General						
Fund					\$ 5,455,600	\$ 5,455,600
Cooperative						
Welfare Fund						
(Other)					487,700	487,700
Medical Assistance						
Fund					3,500	3,500
Cooperative						
Welfare Fund						
(Federal)					13,555,500	13,555,500
TOTAL					\$19,502,300	\$ 19,502,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
C. COMMUNITY MENTAL HEALTH SERVICES:						
FROM:						
General						
Fund	\$ 5,887,000	\$ 958,100		\$ 718,700	\$ 71,200	\$ 7,635,000
Cooperative						
Welfare Fund						
(Other)	3,882,900	534,800		7,400		4,425,100
Cooperative						
Welfare Fund						
(Federal)	129,300	800,400		93,400		1,023,100
TOTAL	\$ 9,899,200	\$ 2,293,300		\$ 819,500	\$ 71,200	\$ 13,083,200
D. STATE HOSPITAL NORTH:						
FROM:						
General						
Fund					\$ 3,465,500	\$ 3,465,500
Cooperative						
Welfare Fund						
(Other)				282,300		282,300
Alcoholism Treatment						
Fund				319,900		319,900
State Hospital						
North Income						
Fund				571,500		571,500
Cooperative						
Welfare Fund						
(Federal)				74,600		74,600
TOTAL				\$ 4,713,800		\$ 4,713,800
E. STATE HOSPITAL SOUTH:						
FROM:						
General						
Fund				\$ 8,004,800		\$ 8,004,800
Cooperative						
Welfare Fund						
(Other)				1,831,800		1,831,800
State Hospital						
South Income						
Fund				905,100		905,100
TOTAL				\$ 10,741,700		\$ 10,741,700
F. STATE ECONOMIC OPPORTUNITY OFFICE:						
FROM:						
General						
Fund	\$ 41,800	\$ 4,900				\$ 46,700
Cooperative						
Welfare Fund						
(Federal)	441,900	152,300		\$ 12,821,900		13,416,100
TOTAL	\$ 483,700	\$ 157,200		\$ 12,821,900		\$ 13,462,800
G. ADULT SERVICES:						
FROM:						
General						
Fund	\$ 1,129,500	\$ 156,000		\$ 53,900		\$ 1,339,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
Cooperative Welfare Fund (Other)	190,900	27,500				218,400
TOTAL	\$ 1,320,400	\$ 183,500		\$ 53,900		\$ 1,557,800
DIVISION						
TOTAL	\$20,090,700	\$ 4,417,500		\$ 16,667,800	\$35,029,000	\$ 76,205,000
VIII. INDEPENDENT COMMISSIONS AND COUNCILS:						
A. DOMESTIC VIOLENCE COUNCIL:						
FROM:						
Domestic Violence Fund	\$ 73,600	\$ 80,300	\$ 200	\$ 267,100		\$ 421,200
Cooperative Welfare Fund (Federal)	8,000			610,600		618,600
TOTAL	\$ 81,600	\$ 80,300	\$ 200	\$ 877,700		\$ 1,039,800
B. DEVELOPMENTAL DISABILITIES COUNCIL:						
FROM:						
General Fund	\$ 17,500	\$ 18,500		\$ 8,600		\$ 44,600
Cooperative Welfare Fund (Federal)	213,200	86,600		111,700		411,500
TOTAL	\$ 230,700	\$ 105,100		\$ 120,300		\$ 456,100
C. COMMISSION ON ALCOHOL AND DRUG ABUSE:						
FROM:						
General Fund	\$ 60,200	\$ 38,200				\$ 98,400
D. COUNCIL FOR THE DEAF AND HEARING IMPAIRED:						
FROM:						
General Fund	\$ 50,100					\$ 50,100
DIVISION						
TOTAL	\$ 422,600	\$ 223,600	\$ 200	\$ 998,000		\$ 1,644,400
GRAND						
TOTAL	\$92,811,100	\$54,249,000	\$2,236,500	\$431,245,500	\$49,642,700	\$630,184,800

SECTION 3. The Department of Health and Welfare is hereby directed to develop and implement, as soon as possible, a new health care delivery system for those clients on Medicaid, utilizing a managed care concept.

SECTION 4. The Department of Health and Welfare is hereby directed to research and review a copayment requirement for those Medicaid services allowable under federal law and report to the Legislative Interim Committee on Health Care such findings and recommendations.

SECTION 5. The Department of Health and Welfare is hereby directed to develop a program to recover reimbursement from Medicare and private Medicare Supplemental insurance.

SECTION 6. It is legislative intent that parents of children living in nursing homes, ICF-MR facilities or receiving Medicaid benefits

under the Certain Disabled Children (Katie Beckett) Program be required to pay part of their child's cost of care. The amount they shall be required to pay shall be determined on the basis of their income after subtracting certain allowable deductions.

SECTION 7. The Department of Health and Welfare is hereby directed to establish an asset limit of \$5,000 for those receiving Medicaid benefits under the Pregnant Women and Children (PWC) Program.

SECTION 8. The Department of Health and Welfare is hereby directed to examine the Personal Care Services program by developing a comparative cost study between the Personal Care Services program, residential care and nursing home care for the following recipient categories: those clients over the age of sixty-five, those clients considered developmentally disabled and all other clients.

SECTION 9. It is the intent of the Legislature that the Department of Health and Welfare review the compensation package for Medicaid recipients. Specifically, the Department should review reimbursement rates for all procedures, evaluate the appropriateness of such procedures under Medicaid, and report to the Legislative Interim Committee on Health Care.

SECTION 10. The Department of Health and Welfare is hereby directed to alter medical transportation reimbursement rates from twenty-six cents per mile to twenty cents per mile.

SECTION 11. The Department of Health and Welfare is hereby directed to require the use of generic drugs in all cases, unless otherwise directed by a physician and to require prior authorization of certain prescription drugs, where cost effective.

SECTION 12. The Department of Health and Welfare is hereby directed to alter Medicaid rules and regulations to restrict dental coverage to that of emergency dental care only.

SECTION 13. It is legislative intent that the appropriation of moneys from the Water Pollution Control Fund specifically supersedes the provisions of Section 39-3606, Idaho Code.

SECTION 14. As appropriated, the State Auditor shall make transfers from the General Fund, the Water Pollution Control Fund and the Hazardous Waste Monitoring Fund to the Cooperative Welfare Fund, periodically, as requested by the Director of the Department of Health and Welfare and approved by the Board of Examiners.

SECTION 15. Notwithstanding any other provision of law, it is hereby declared to be the intent of the Legislature that the Department of Health and Welfare shall be required to provide those services authorized or mandated by law in each program, only to the extent of funding and available resources.

SECTION 16. It is legislative intent that, of those moneys appro-

riated for Substance Abuse Prevention, \$100,000 be used to purchase radio and television advertising, targeted to adolescents, with factual messages concerning alcohol, drugs, and tobacco. At least half of this amount is to be used for messages on alcohol.

SECTION 17. There is hereby reappropriated to the Department of Health and Welfare any unexpended and unencumbered balances of the Cooperative Welfare Fund moneys as appropriated for fiscal year 1993, to be used for nonrecurring expenditures only.

SECTION 18. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare is hereby authorized to expend all receipts collected as noncognizable funds.

Approved April 1, 1993.

CHAPTER 385
(H.B. No. 447)

AN ACT

APPROPRIATING MONEYS FOR THE DIVISION OF FINANCIAL MANAGEMENT FOR FISCAL YEAR 1994.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Division of Financial Management the following amounts, to be expended for the named programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. FINANCIAL MANAGEMENT:				
FROM:				
General Fund	\$ 992,600	\$220,400	\$3,000	\$1,216,000
Indirect Cost Recovery Fund		22,700		22,700
Miscellaneous Revenue Fund	51,300	9,700		61,000
TOTAL	\$1,043,900	\$252,800	\$3,000	\$1,299,700
II. RURAL DEVELOPMENT COUNCIL:				
FROM:				
Federal Grant Fund	\$ 68,400	\$ 51,600		\$ 120,000
Miscellaneous Revenue Fund		20,000		20,000
TOTAL	\$ 68,400	\$ 71,600		\$ 140,000
GRAND TOTAL	\$1,112,300	\$324,400	\$3,000	\$1,439,700

Approved April 1, 1993.

CHAPTER 386
(H.B. No. 449)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 1994.

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, 1993, through June 30, 1994:

	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. PARK DEVELOPMENT: FROM:			
Recreational Fuels Fund	\$500,000		\$ 500,000
B. RECREATION RESOURCES: FROM:			
Parks and Recreation Registration Fund		\$700,000	\$ 700,000
TOTAL	\$500,000	\$700,000	\$1,200,000

Approved April 1, 1993.

CHAPTER 387
(H.B. No. 452)

AN ACT

RELATING TO AUDITS; AMENDING CHAPTER 4, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-450B, IDAHO CODE, TO PROVIDE MINIMUM AUDIT REQUIREMENTS FOR ALL LOCAL GOVERNMENT ENTITIES; AMENDING SECTION 21-810, IDAHO CODE, TO PROVIDE FOR AUDIT REQUIREMENTS; AMENDING SECTION 31-1701, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 31-3517, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 31-4313, IDAHO CODE, TO PROVIDE FOR A FULL AND COMPLETE AUDIT OF FINANCIAL STATEMENTS AND TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 33-701, IDAHO CODE, TO PROVIDE FOR A FULL AND COMPLETE AUDIT OF THE FINANCIAL STATEMENTS AND TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 33-2726, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 39-6412, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 40-409, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 40-1317, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 42-619, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 42-3115, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 42-3209, IDAHO CODE,

TO REVISE AUDIT REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 42-4416, IDAHO CODE, TO PROVIDE FOR FINANCIAL STATEMENTS TO BE PREPARED ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 50-1010, IDAHO CODE, TO PROVIDE FOR A FULL AND COMPLETE AUDIT OF THE FINANCIAL STATEMENTS OF THE CITY AND TO REVISE AUDIT REQUIREMENTS; AMENDING SECTION 67-4909, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS; AND REPEALING SECTION 67-7604, IDAHO CODE.

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

SECTION 1. That Chapter 4, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-450B, Idaho Code, and to read as follows:

67-450B. INDEPENDENT FINANCIAL AUDITS BY GOVERNMENTAL ENTITIES -- FILING REQUIREMENTS. (1) The requirements set forth in this section are minimum audit requirements for all local government entities, and include, without limitation, all cities, counties, authorities and districts organized as separate legal and reporting entities under Idaho law, and include the councils, commissions and boards as appointed or elected and charged with fiscal management responsibilities of the local governmental entity.

Audits under these requirements are to be performed by independent auditors in accordance with generally accepted governmental auditing standards, as defined by the United States general accounting office. The auditor shall be employed on written contract.

The entity's governing body shall be required to include in its annual budget all necessary expenses for carrying out the provisions of this section.

The entity shall file two (2) copies of each completed audit report with the legislative council within ten (10) days after receiving the audit from the contracting independent auditor.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) The governing body of a local governmental entity whose annual budget (from all sources) exceeds two hundred fifty thousand dollars (\$250,000) shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) The governing body of a local governmental entity whose annual budget (from all sources) exceeds one hundred thousand dollars (\$100,000), but does not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial statements audited on a biennial basis and may continue biennial auditing cycles in subsequent years as long as the entity's budget does not exceed two hundred fifty thousand dollars (\$250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit.

(c) The governing body of a local governmental entity whose annual budget (from all sources) exceeds fifty thousand dollars (\$50,000), but does not exceed one hundred thousand dollars (\$100,000) may elect to have its financial statements reviewed and

compiled on a biennial basis and may continue biennial review and compilation cycles in subsequent years as long as the entity's annual budget does not exceed one hundred thousand dollars (\$100,000) during either year of any biennial period. Biennial reports of review and compilation shall include a review and compilation of each fiscal year since the previous review and compilation report.

(d) The governing body of a local governmental entity whose annual budget (from all sources) does not exceed fifty thousand dollars (\$50,000) has no minimum audit requirements under this section.

(e) Federal audit requirements applicable because of receipt of federal assistance supersede the minimum audit requirements provided in this section.

SECTION 2. That Section 21-810, Idaho Code, be, and the same is hereby amended to read as follows:

21-810. RECORDS -- AUDITS -- BONDS. The board shall provide for the proper and safe keeping of its permanent records and for the recording of the action of the authority. It shall keep a true and accurate account of its receipts and an annual audit shall be made of its books, records and accounts, as required in section 67-450B, Idaho Code. All officers and employees authorized to receive or retain the custody of money or to sign vouchers, checks, warrants or evidence of indebtedness binding upon the authority shall furnish surety bond for the faithful performance of their duties and the faithful accounting for all moneys that may come into their hands in an amount to be fixed and in a form to be approved by the board.

SECTION 3. That Section 31-1701, Idaho Code, be, and the same is hereby amended to read as follows:

31-1701. AUDIT OF COUNTY FINANCES -- FILING. The board of county commissioners of every county shall cause to be made, annually, a full and complete audit of the financial transactions of the county. Such audit shall be made by and under the direction of the board of county commissioners ~~by an independent auditor, in accordance with generally accepted auditing standards and procedures;~~

~~The board of county commissioners shall include in the annual county budget all necessary expense for carrying out the provisions of this section.~~

~~The board of county commissioners shall file one (1) copy of such completed audit report with the legislative auditor within ten (10) days after its delivery by the contracting auditor as required in section 67-450B, Idaho Code.~~

SECTION 4. That Section 31-3517, Idaho Code, be, and the same is hereby amended to read as follows:

31-3517. ESTABLISHMENT OF A CATASTROPHIC HEALTH CARE COST PROGRAM. (1) The governing board of the catastrophic health care cost program created by the counties pursuant to a joint exercise of powers

agreement, dated October 1, 1984, and serving on June 30, 1991, is hereby continued as such through December 31, 1992, to complete the affairs of the board, to continue to pay for those medical costs incurred by participating counties prior to October 1, 1991, until all costs are paid or the moneys in the catastrophic health care cost account contributed by participating counties are exhausted, and to pay the balance of such contributions back to the county of origin in the proportion contributed.

(2) Commencing October 1, 1991, a catastrophic health care cost program board is hereby established, and the board shall be the administrator of the catastrophic health care cost program. This board shall consist of seven (7) members, with six (6) county commissioners, one (1) from each of the six (6) districts or regions established by the Idaho association of counties, and one (1) member appointed by the governor.

(a) The commissioner members shall be elected by the boards of county commissioners of the member counties of each district or region, with each board of county commissioners entitled to one (1) vote. The process and procedures for conducting the election and determining the members shall be determined by the board itself, except that the election must be conducted, completed and results certified by December 31 of each year in which an election for members is conducted. The board recognized in subsection (1) of this section shall authorize and conduct the election in 1991.

(b) The term of office of a member shall be two (2) years, commencing on January 1 next following election or appointment, except that for commissioner members elected in 1991, the commissioner members from districts or regions 1, 3 and 5 shall serve for a term of one (1) year, and the commissioner members from districts or regions 2, 4 and 6 shall serve for a term of two (2) years. Members may be reelected or reappointed. Election or appointment to fill vacancies shall be for the balance of the unexpired term.

(c) Members shall be compensated as provided in section 59-509(b), Idaho Code, from the catastrophic health care cost account.

(d) At the first meeting of the board in January of each year, the board shall organize by electing a chair, a vice-chair, and such other officers as desired.

(3) The administrator is authorized to contract with a health insurance company, group health services organization or other provider of third party payment for health services authorized to do business in this state, or to establish a self-insurance fund in order to implement a catastrophic health care costs program.

The contract shall provide that the health insurance company, group health service organization or other third party payer, shall, for consideration, which shall be set by the administrator, assume the risk of providing for recipients under the catastrophic health care cost provisions of this chapter.

The administrator shall develop rules for a catastrophic health care cost program after consulting with the counties, organizations representing the counties, health care providers, and organizations representing health care providers.

~~The administrator shall cause an independent, certified audit of the program, including the operations of the catastrophic health care cost account to be performed annually, and the audit shall be submitted by the administrator, with an annual report of the program, to the Idaho Association of Counties and the legislature. The report shall be filed not later than the fifteenth day of the legislative session with the germane committees of the senate and the house of representatives~~
a full and complete audit of the financial statements of the program as required in section 67-450B, Idaho Code.

(4) The administrator shall submit a request to the governor and the legislature in accordance with the provisions of chapter 35, title 67, Idaho Code, for an appropriation for the maintenance and operation of the catastrophic health care program.

SECTION 5. That Section 31-4313, Idaho Code, be, and the same is hereby amended to read as follows:

31-4313. FISCAL YEAR -- AUDIT. The fiscal year of each district shall commence on the first day of October of each year. The directors shall cause a full and complete audit of the financial transactions statements of the district to be made every year by a recognized practicing public accountant and shall pay the cost thereof from district funds as required in section 67-450B, Idaho Code.

SECTION 6. That Section 33-701, Idaho Code, be, and the same is hereby amended to read as follows:

33-701. FISCAL YEAR -- PAYMENT AND ACCOUNTING OF FUNDS. The fiscal year of each school district shall be a period of twelve (12) months commencing on the first day of July in each year.

The board of trustees of each school district shall have the following powers and duties:

1. To determine and order paid all lawful expenses for salaries, wages and purchases, whether or not there be money in the treasury for payment of warrants drawn against any fund of the district. Warrants shall be signed by the treasurer of the district and countersigned by the chairman or vice chairman of the board of trustees.

Whenever any school district has sufficient funds on deposit so to do, it may pay any allowed claim for salaries, wages or purchases by regular bank check signed by the treasurer or assistant treasurer of the district and countersigned by the chairman, or vice-chairman, of the board of trustees.

The total amount of warrants or orders for warrants drawn on any fund, together with disbursements from such fund in any other manner made, shall not exceed ninety-five percent (95%) of the estimated income and revenue accrued or accruing to such fund for the same school year, until such income and revenue shall have been paid into the treasury to the credit of the district;

2. To invest all or part of any plant facilities reserve fund, or any fund accumulated for the payment of interest on, and the redemption of, outstanding bonds, or other obligations of the district in bonds or certificates of indebtedness of the United States of America, or in bonds or warrants of the state of Idaho, or in warrants or tax

anticipation notes of any county or school district of the state of Idaho, when such investments shall be due and payable on or before the date any plant facilities reserve fund shall be required to be expended or any bonds or other obligations, or interest thereon, of the investing district shall become payable.

Whenever in the judgment of the board of trustees, the proceeds of any bond issue should be temporarily invested pending the expenditure of such proceeds for the purposes for which such bonds were issued, the proceeds may be invested in the manner and form hereinabove prescribed. Any interest, or profits accruing from such investments shall be used for the purposes for which the bonds were issued. Unless otherwise provided by law, any interest or profits accruing from the investment of any funds shall be credited to the general fund of the district;

3. To insure any school house and other property, and the district, against any loss by fire, casualty, or liability, and the board, its officers and employees, and to preserve its property for the benefit of the district. In case of loss of any insured property, any proceeds from insurance:

(a) may be expended in constructing a temporary or permanent structure, but no sum greater than the insurance proceeds shall be so expended except upon approval of a majority of the school district electors voting in an election called for that purpose; or

(b) may be placed in and made a part of the school plant facilities reserve fund of the district, if the district has such a fund; or

(c) may be placed in a separate account in the bond interest and redemption fund of the district to repay any kind of obligation incurred by the district in replacing or restoring the property for which the insurance proceeds were received, and shall not be included in the computations of bond and bond interest levies as provided in section 33-802A, Idaho Code.

If the proceeds of any insurance received by a school district by reason of loss on real property shall be less than five thousand dollars (\$5,000), such proceeds may be credited to the general fund of the district;

4. To pay from the general fund of the district the expense of any member of the board incurred while traveling on the business of the board, or attending any meeting called by the state board of education or by the state superintendent of public instruction, or attending any annual or special meetings of the state school trustees association, and to pay the membership fee of the board of trustees in said association. Whenever any member of the board of trustees resides at such distance from the meeting place of the board as to require, in the judgment of the board, such member to incur extraordinary expense in traveling from his home to and from said meeting place, the board may approve payment to such member of the extraordinary expense incurred in attending any meeting of the board.

For the purpose of this paragraph, the term "expense" or "extraordinary expense" shall include allowance for mileage or actual travel expense incurred;

5. To prepare, or cause to be prepared and published, in the manner hereinafter prescribed, within one hundred twenty (120) days from

the last day of each fiscal year, an annual statement of financial condition and report of the school district as of the end of such fiscal year in a form prescribed by the state superintendent of public instruction. Such annual statement shall include, but not be limited to the amounts of money budgeted and received and from what sources, and the amounts budgeted and expended for salaries and other expenses by category. Salaries may be reported in gross amount. Each school district shall have available at the administrative office, upon request, a full and complete list of vendors and the amount paid to each and a list of the number of teachers paid at each of the several stated gross salary levels in effect in the district.

Nothing herein provided shall be construed as limiting any school district as to any additional or supplementary statements and reports it may elect to make for the purpose of informing the public of its financial operations, either as to form, content, method, or frequency; and if all the information required herein to be published shall have been published as provided herein at regular intervals during the fiscal year covering successive portions of the fiscal year, then such information may be omitted from the annual statement of financial condition and report for such portions of the fiscal year as already have been reported.

The annual statement of financial condition and report shall be published within the time above prescribed in one (1) issue of a newspaper printed and published within the district, or, if there be none, then 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, in the county in which the school district is located, or, if more than one (1) newspaper is published in said district or county, then in the newspaper most likely to give best general notice of the contents of such annual statement of financial condition and report to the residents of said district; provided, that if no newspaper is published in the district or county, then such statement of financial condition and report shall be published in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the contents to the residents of said district.

The chairman, clerk and treasurer of each school district shall certify the annual statement of financial condition and report to be true and correct, and the certification shall be included in each published statement.

In the event the board of trustees of any school district shall fail to prepare or cause to be prepared or to publish the annual statement of financial condition and report as herein required, the state superintendent of public instruction shall cause the same to be prepared and published, and the cost thereof shall be an obligation of the school district. One (1) copy of the annual statement of financial condition and report shall be retained in the office of the clerk of the board of school trustees, where the same shall be open at all times to examination and inspection by any person;

6. To cause to be made each year, a full and complete audit of all of the financial transactions statements of the district, and of the activity or student body funds, except that in elementary school districts such audit shall be made at intervals of not more than two

~~(2) years. Any audit shall be made by and under the direction of the board of trustees by an independent auditor, in accordance with generally accepted auditing standards and procedures as required in section 67-450B, Idaho Code.~~

The auditor shall be employed on written contract.

One (1) copy of the audit report ~~of the audit~~ shall be filed with the legislative auditor, ~~and one (1) copy shall be filed~~ with the state department of education, after its acceptance by the board of trustees, but not later than October 15;

7. To file annually with the state department of education such financial and statistical reports as said state superintendent of public instruction may require;

8. To order and have destroyed any canceled check or warrant, or any form of claim or voucher which has been paid, at any time after five (5) years from the date the same was canceled and paid;

9. To review the school district budget periodically and make appropriate budget adjustments to reflect the availability of funds and the requirements of the school district. Revenue derived from maintenance and operation levies made pursuant to section 33-802 2, Idaho Code, shall be excluded from budget adjustments as provided in this paragraph. Any person or persons proposing a budget adjustment under this section shall notify in writing each member of the board of trustees one (1) week prior to the meeting at which such proposal will be made. Prior to the final vote on such a proposal, notice shall be posted and published once, as prescribed in section 33-402, Idaho Code. A budget adjustment shall not be approved unless voted affirmatively by sixty percent (60%) of the members of the board of trustees. Such amended budgets shall be submitted to the state superintendent of public instruction;

10. To invest any money coming into the hands of the school district in investments permitted by section 67-1210, Idaho Code. Unless otherwise provided by law, any interest or profits accruing from the investment of any funds shall be credited to the general fund of the district.

SECTION 7. That Section 33-2726, Idaho Code, be, and the same is hereby amended to read as follows:

33-2726. FISCAL YEAR -- ANNUAL REPORTS -- AUDIT. The fiscal year of each library district shall commence on the first day of October of each year. The board of trustees of each library district shall annually, not later than the first day of January, file with the state library board a report of the operations of the district for the fiscal year just ended. The report shall be of such form and contain such information as the state library board may require, but in all cases must include a complete accounting of all financial transactions for the fiscal year being reported.

~~At intervals of not more than two (2) years the board of trustees of each library district shall cause to be made a full and complete audit of the books and accounts of the district. The audit shall be made by and under the direction of the library board by an independent auditor, in accordance with the generally accepted industry audit guide, generally accepted audit standards, or generally accepted gov-~~

~~ernmental--audit--standards,--as--applicable,--Within--ten--(10)--days--of--acceptance--of--the--audit--report--by--the--board--a--copy--thereof--shall--be--filed--with--the--legislative--auditor~~ as required in section 67-450B, Idaho Code.

SECTION 8. That Section 39-6412, Idaho Code, be, and the same is hereby amended to read as follows:

39-6412. ORGANIZATION. (1) After appointment, the members of the council shall choose one (1) member as chairman of the council and shall elect a secretary and a treasurer of the council who may or may not be members of the council. The secretary and the treasurer may be one (1) person. The secretary shall keep a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection to all other interested parties.

(2) The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the council in permanent records. He shall file with the clerk of the court, at the expense of the council, a corporate fidelity bond in an amount not less than five thousand dollars (\$5,000), conditioned on the faithful performance of the duties of his office.

(3) Members of the council shall serve without compensation. No member shall receive any compensation as an employee of the council or otherwise, other than that herein provided, and no member of the council shall be interested in any contract or transaction with the council except in his official representative capacity.

(4) It shall be the duty of the council to cause an audit to be made of all financial affairs of the council during each year ending December 31. ~~A financial statement shall be certified by the person making such audit~~ as required in section 67-450B, Idaho Code.

SECTION 9. That Section 40-409, Idaho Code, be, and the same is hereby amended to read as follows:

40-409. REAL PROPERTY GRANTS AUTHORIZED -- ANNUAL REPORT -- INTEREST IN CONTRACT PENALIZED. (1) Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the board. Each project shall also be operated by tolltakers and other operating employees as the board may in its discretion employ. Nothing contained in this chapter shall in any way affect the regular duties prescribed for state and local police officers.

(2) All political subdivisions and all public departments, agencies and commissions of the state of Idaho, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the board at its request, upon terms and conditions as the proper authorities of political subdivisions and departments, agencies and commissions of the state deem reasonable and fair, and without the necessity for advertisement, order of a court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the

board, including public highways and other real property already devoted to public use.

(3) On or before December 1 each year the board shall make an annual report of its activities for the preceding fiscal year relating to turnpike projects to the governor and to the legislature. Each report shall set forth a complete operating and financial statement covering its operations during the year. The board shall cause an audit of its books and accounts to be made ~~at least once each year by certified public accountants~~ as required in section 67-450B, Idaho Code, and the cost of audits shall be treated as a part of the cost of construction or of operation of the turnpike project.

(4) Any member, agent or employee of the board who is interested, either directly or indirectly, in any contract of another with the board, or in the sale of any property, either real or personal, to the board shall be guilty of a felony and punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than five (5) years, or by both fine and imprisonment.

SECTION 10. That Section 40-1317, Idaho Code, be, and the same is hereby amended to read as follows:

40-1317. ANNUAL FINANCIAL STATEMENT OF DISTRICT -- AUDIT. (1) On or before the first day of November of each year, the highway district shall make and file in its office a full, true and correct statement of the financial condition of the highway district on the first day of October, giving a statement of the liabilities and assets of the highway district on the first day of October, and a copy of the statement shall be published in at least one (1) issue of some newspaper published in the county.

(2) All highway districts shall have an annual audit made of the financial affairs of the district as required in section 67-450B, Idaho Code, by the first day of December following the close of the fiscal year. ~~However, lacking more stringent requirements by contract or government law, rule, or regulation, any highway district whose annual budget for all purposes does not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial transactions audited on a biennial basis and may continue biennial auditing cycles in subsequent years provided that the highway district's annual budget does not exceed two hundred fifty thousand dollars (\$250,000) during any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit and the permissible cycle shall include two (2) fiscal years, which combined, commence and end on odd-numbered years. The audit shall be a public record and available for public inspection.~~

SECTION 11. That Section 42-619, Idaho Code, be, and the same is hereby amended to read as follows:

42-619. ALTERNATE PLAN FOR PAYMENT OF DISTRICT EXPENSES. (1) The county commissioners of any county having determined that providing the service of payment of water district expenses by the county treasurer from water district funds pursuant to section 42-613, Idaho Code, is an undue burden upon the county and shall no longer be pro-

vided, shall notify the director of the department of water resources of this action by December 1 in the year preceding the year for which the action shall first be effective by providing to the director a certified copy of the resolution of the commissioners taking such action.

(2) Notice of the action of the county commissioners shall be given to the water users of the district by the department of water resources together with the notice of the annual meeting given pursuant to section 42-605, Idaho Code.

(3) At each annual meeting of a district for which the county commissioners have taken the action provided for in subsection (1) of this section, the water users shall provide for the election or appointment of a water district treasurer. If a water district treasurer is not elected at the annual meeting, and one is found to be necessary, the director of the department of water resources shall appoint a water district treasurer. The water district treasurer shall keep a complete, accurate and permanent record of all moneys received by and disbursed for and on behalf of the district. The water district treasurer shall deposit all moneys of the district in a designated depository approved at the annual meeting, and shall comply with the public depository law as contained in chapter 1, title 57, Idaho Code.

(4) Before undertaking the duties of the office, the water district treasurer shall take and subscribe to an oath before an officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of the office, and shall file the oath with the director of the department of water resources. Upon issuance by the director of a certificate confirming the election or appointment of a water district treasurer, the actions taken by the water district treasurer in fulfillment of the duties of the office are covered by the state group surety bond as provided in sections 59-801 through 59-804, Idaho Code.

(5) The water district treasurer shall serve until a successor is elected or appointed, and qualified. A water district treasurer may be removed from office by the director for failure to perform the duties of the office in the manner provided for removal of a watermaster.

(6) Compensation for the services of the water district treasurer shall be set at the annual meeting and may be established on a fixed-sum, per diem, or voluntary basis. If a water district treasurer is appointed by the director in the absence of being elected at the annual meeting, the director shall fix the compensation to be paid, if any.

(7) With respect to any district for which the county commissioners have taken the action provided for in subsection (1) of this section, or for which the water users have taken the action provided for in subsection (10) of this section and have notified the county thereof, the county auditor shall in the time and manner provided by section 63-2104, Idaho Code, transmit to the water district treasurer of the water district a settlement of all moneys belonging to such district paid into the county treasury and apportioned to such water district on or after the second Monday of the preceding month; provided, however, that in the months of July and January the money may be transmitted no later than the 25th of the month. The treasurer of the water district shall immediately deposit the funds in the desig-

nated depository for the district.

(8) The treasurer of the water district shall only disburse moneys from the water district account upon submission of a written voucher approved by the watermaster for expenses incurred for water district purposes related to the delivery of water or by a voucher approved by the chairman of the advisory committee for activities pursuant to resolutions adopted by the water users from district funds or funds retained pursuant to section 42-613A, Idaho Code.

(9) It shall be the duty of the water district treasurer to prepare a statement of the financial affairs of the district at the end of each fiscal year and to file the statement with the director of the department of water resources. An audit of the financial affairs of the district, ~~by an independent public accounting firm,~~ shall be made ~~at district expense at intervals of not more than three (3) years for districts having an annual expense of more than three thousand dollars (\$3,000), and at intervals of not more than five (5) years for districts having an annual expense of three thousand dollars (\$3,000) or less as required in section 67-450B, Idaho Code.~~ A certified copy of the audit shall be filed with the director of the department of water resources following the audit.

(10) In any water district for which the county commissioners have not taken the action provided for in subsection (1) of this section, the water users may at the annual meeting of the district approve a resolution authorizing the election or appointment of a water district treasurer who shall exercise all duties and responsibilities of a treasurer provided for in this section.

(11) In water districts with an annual budget of three thousand dollars (\$3,000) or less, the water users may by resolution adopted at the annual meeting authorize the watermaster to serve as water district treasurer. Watermasters in water districts with annual budgets in excess of three thousand dollars (\$3,000) shall not be authorized to act as water district treasurer.

SECTION 12. 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 three (3) mills for each dollar of assessed valuation, provided however that a higher levy may be approved and ratified by the qualified voters at an election to be held 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 assessed

evaluation valuation of the real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the flood control district to the board, or boards, of county commissioners on or before September 1 of each year.

Such levies shall be levied and collected in the manner provided by law, and the moneys collected shall be turned over to the treasurer or treasurers, of the county, or counties, in which said district is located.

Said moneys shall be public funds and subject to the provisions of the public depository laws of the state.

2. To employ such personnel as may be necessary to carry out the purposes and objects of this act, with the full power to bind said district for the compensation of such personnel.

3. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its power and to promulgate, amend and repeal rules and regulations not consistent with the provisions of this act.

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 five thousand dollars (\$5,000), without first advertising for sealed competitive bids as herein provided. However, where it is determined by order of the board that there is an existing emergency, or where it is determined that the district is in a flood fight resulting from unanticipated conditions, the requirement for sealed competitive bids shall not apply.

6. To prescribe the duties of officers, agents and employees as may be required.

7. To establish the fiscal year of the district and to keep records of all business transactions of the district.

8. To prepare a statement of the financial condition of the district at the end of each fiscal year, in a form to be prescribed by the director or by the legislative auditor council, 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 auditor council on or before February 2 of each year.

9. To have an audit, ~~by an independent public accounting firm,~~ of the financial affairs of the district. ~~The audit shall be made at intervals of not more than two (2) years for districts having an annual expense of more than three thousand dollars (\$3,000) and shall be made at intervals of not more than three (3) years for districts having an annual expense of three thousand dollars (\$3,000) or less as required in section 67-450B, Idaho Code.~~ A certified copy of said audit shall be filed with the director and with the legislative audi-

tor 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 act; to lease any of its property or interest therein in furtherance of the purposes and provisions of this act, 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 act.

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 act, 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 for that purpose, according to the provisions of this act.

16. To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided herein.

17. To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of this act, any flood control project within or without the boundaries of the district undertaken in cooperation with the United States or any of its agencies, or with the state of Idaho or any of its agencies, or any combinations thereof.

18. To accept donations, gifts and contributions in money, services, or materials, or otherwise, from the United States or any of its agencies, or the state of Idaho or any of its agencies or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations.

19. To exercise all other powers necessary, convenient or incidental to carrying out the purposes and provisions of the act.

SECTION 13. That Section 42-3209, Idaho Code, be, and the same is hereby amended to read as follows:

42-3209. ORGANIZATION OF BOARD -- ACCOUNTS OF TREASURER -- COMPENSATION OF MEMBERS -- ANNUAL AUDIT -- REMOVAL OF DIRECTORS. After taking oath and filing bonds, the board shall choose one (1) of its members as chairman of the board and president of the district, and shall elect a secretary and a treasurer of the board and of the district, who may or may not be members of the board. The secretary and the treasurer may be one person. Such board shall adopt a seal and the secretary shall keep, in a well-bound book, a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection of all owners of real property in the district, as well as to all other interested parties.

The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the district, in permanent records. He shall file with the clerk of the court, at the expense of the district, a corporate fidelity bond in an amount not less than five thousand dollars (\$5,000), conditioned on the faithful performance of the duties of his office.

Each member of the board shall receive as compensation for his service a sum not in excess of twenty-five dollars (\$25.00) per meeting, payable monthly. No member of the board shall receive any compensation as an employee of the district or otherwise, other than that herein provided, and no member of the board shall be interested in any contract or transaction with the district except in his official representative capacity.

It shall be the duty of the board of directors to cause an audit to be made of all financial affairs of the district during each year ending November 30th; ~~which audit shall be made during the last month of each calendar year. A financial statement shall be certified by the person making such audit, which shall be published in a newspaper of general circulation in the district, in one (1) issue during the first week of January following the audit. Such audit shall be made by a registered accountant or certified public accountant, who is not otherwise employed by the district as required in section 67-450B,~~ Idaho Code.

The court having jurisdiction of the district shall have the power

to remove directors for cause shown, on petition, notice and hearing.

SECTION 14. 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 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. 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 ~~in a form to be prescribed by the legislative auditor~~ 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 ~~and the legislative auditor on or before February 2 of each year.~~

(9) To have an audit, ~~by an independent public accounting firm,~~ of the financial affairs of the district. ~~The audit shall be made at intervals of not more than two (2) years for districts having an annual expense of more than three thousand dollars (\$3,000) and shall be made at intervals of not more than three (3) years for districts having an annual expense of three thousand dollars (\$3,000) or less. A certified copy of said audit shall be filed with the legislative auditor on or before February 2 following the audit 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 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 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 voting at an election to be held 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 15. That Section 50-1010, Idaho Code, be, and the same is hereby amended to read as follows:

50-1010. AUDIT OF CITY FINANCES -- AUDIT TO BE FILED. It shall be the duty of the council in every city to cause to be made a full and complete audit of ~~all the financial transactions statements~~ of such city ~~every year; however, lacking more stringent requirements by contract or government law, rule, or regulation, any city whose annual budget for all purposes does not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial transactions audited on a biennial basis and may continue biennial auditing cycles in subsequent years provided that the city's annual budget does not exceed two hundred fifty thousand dollars (\$250,000) during any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit and the permissible cycle shall include two (2) fiscal years, which combined, commence and end on odd-numbered years. Such audit shall be made by and under the direction of said council by an independent auditor, in accordance with generally accepted auditing standards and procedures as required in section 67-450B, Idaho Code.~~

The council shall be required to include all necessary expenses for carrying out the provisions of this section in its annual budget.

~~The council is hereby required to file one (1) copy of such completed audit report with the legislative auditor within ten (10) days after its delivery by the contracting auditor.~~

SECTION 16. That Section 67-4909, Idaho Code, be, and the same is

hereby amended to read as follows:

67-4909. ORGANIZATION OF BOARD -- ACCOUNTS OF TREASURER -- COMPENSATION OF MEMBERS -- ANNUAL AUDIT -- REMOVAL OF DIRECTORS. After taking oath and filing bonds, the board shall choose one (1) of its members as chairman of the board and president of the district, and shall elect a secretary and a treasurer of the board and of the district, who may or may not be members of the board. The secretary and the treasurer may be one (1) person. Such board shall adopt a seal and the secretary shall keep, in a well-bound book, a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection to all interested parties.

The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the district, in permanent records. He shall file with the clerk of the court, at the expense of the district, a corporate fidelity bond in an amount not less than five thousand dollars (\$5,000), conditioned on the faithful performance of the duties of his office.

Each member of the board shall receive as compensation for his service a sum not in excess of sixty dollars (\$60.00) per annum. No member of the board shall receive any compensation as an employee of the district or otherwise, other than that herein provided and no member of the board shall be interested in any contract or transaction with the district except in his official representative capacity.

It shall be the duty of the board of directors to cause an audit to be made of all financial affairs of the district during each year ending November 30th, ~~which audit shall be made during the last month of each calendar year. A financial statement shall be certified by the person making such audit, which shall be published in a newspaper of general circulation in the district, in one (1) issue during the first week of March following the audit. Such audit shall be made by a registered accountant or certified public accountant, who is not otherwise employed by the district as required in section 67-450B, Idaho Code.~~

The court having jurisdiction of the district shall have the power to remove directors for cause shown, on petition, notice and hearing.

SECTION 17. That Section 67-7604, Idaho Code, be, and the same is hereby repealed.

Approved April 1, 1993.

CHAPTER 388

(H.B. No. 453, As Amended in the Senate)

AN ACT

RELATING TO POST AUDITS OF GOVERNMENTAL AGENCIES; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 16, TITLE 67, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE THAT THE STATE AUDITOR IS AUTHORIZED TO APPOINT A DIRECTOR OF POST AUDIT TO CONDUCT FINAN-

CIAL AND COMPLIANCE POST AUDITS, TO CREATE THE DIVISION OF POST AUDIT WITHIN THE STATE AUDITOR'S OFFICE, TO PRESCRIBE THE POST AUDIT FUNCTIONS AND DUTIES OF THE DIRECTOR OF POST AUDIT, TO PROVIDE THAT THE STATE AUDITOR'S OFFICE IS A DEPOSITORY FOR AUDITS OF THE SEVERAL DEPARTMENTS AND PUBLIC INSTITUTIONS AND POLITICAL SUBDIVISIONS, AND TO PROVIDE AUTHORITY TO CHARGE FOR AUDITS; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE REFERENCE TO THE STATE AUDITOR; PROVIDING THAT PERSONNEL BENEFITS OF CURRENT STATE EMPLOYEES SHALL NOT BE DENIED OR DIMINISHED BECAUSE OF TRANSFER TO THE DIVISION OF POST AUDIT; AND PROVIDING AN EFFECTIVE DATE.

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 16, Title 67, Idaho Code, and to read as follows:

CHAPTER 16
POST AUDITS

67-1601. DEFINITIONS. As used in this chapter, and elsewhere as appropriate:

(1) "Entity" means every unit of state government, any unit of local government, and any other agency or institution receiving state funds, or having legal authority to expend public moneys.

(2) "Financial and compliance audit" means a post audit which determines:

(a) Whether the financial statements of an audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles; and

(b) Whether the audited entity has complied with laws and regulations that may have a material effect upon the financial statements.

(3) "Special audit" means an audit of limited scope.

67-1602. STATE AUDITOR TO APPOINT DIRECTOR TO CONDUCT POST AUDITS. In order to carry out a portion of the constitutional and statutory duties of the state auditor, the state auditor is authorized to appoint a director of post audit, as provided in section 67-1603, Idaho Code, to conduct audits of entities, who shall be independent of any executive or administrative officers of the state.

67-1603. DIVISION OF POST AUDIT CREATED -- DIRECTOR -- EMPLOYEES.

(1) There is hereby created within the office of the state auditor a division of post audit. The division shall be headed by a director appointed by the state auditor, subject to the advice and consent of the senate and the house of representatives evidenced by the adoption of a concurrent resolution consenting to the appointment. The director of the division of post audit shall be appointed for a term of six (6) years, and may be reappointed. The state auditor shall fix the compensation for the director. During the term of office, the director shall not be subject to removal from office except for cause.

(2) The director of post audit shall be a citizen of the United States, a certified public accountant licensed to practice in this state, and shall, prior to appointment, have at least ten (10) years' experience in the field of private, public or governmental accounting, budgeting or administration.

(3) The director of post audit may employ personnel and make expenditures within the limits of the appropriation made therefor. Employees of the division of post audit shall be nonclassified employees and shall serve at the pleasure of the director of post audit.

67-1604. POST AUDIT FUNCTIONS AND DUTIES OF DIRECTOR OF POST AUDIT. (1) The director of post audit has the duty, responsibility and authority:

(a) To examine and to certify at any time during a fiscal year and as of the close of each fiscal year, financial statements showing the condition of the state's finances.

(b) To audit any and every fund in the state treasury at least once in every two (2) fiscal years or upon the written request of the state auditor or upon the written request of the governor or upon the written request of a presiding officer of either house of the legislature.

Audits shall be performed in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies. The audits shall be conducted to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial controls, the causes of inefficiencies or uneconomical practices, and compliance with all applicable laws, both state and federal, as the director of post audit shall determine necessary. If during the conduct of a post audit, an inefficiency or uneconomical practice is found, such inefficiency or uneconomical practice shall be reported to the joint legislative oversight committee.

In the event that any state entity receives federal funding, the audit shall be performed in accordance with federal audit requirements under the direction of the director of post audit.

(c) To issue subpoenas requiring any person who has had financial transactions with the state to appear before him and to answer under oath, orally or in writing, as to facts concerning these transactions; and for the purpose of obtaining any such facts the director of post audit is empowered to administer oaths.

(d) To require, in his discretion, all persons who have had the disposition or management of any property of this state to render statements regarding it to him, and each of these persons must render the statements at such times and in such form as the director of post audit may require.

(e) To make the necessary audit to ascertain whether all revenues due to the state have been collected and remitted to the state treasurer, and except where otherwise provided by law, institute suits in relation to the assessment, collection, and payment of its revenues against persons who by any means have become entrusted with public moneys or property and have failed to pay over or deliver the same and against all debtors of the state.

(f) To stop the payment of the salary of any state official or

state employee who refuses to settle his accounts or render such statements as may be required with respect to the custody and disposition of public funds or other state property or who refuses, neglects or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds or who fails to correct any delinquencies, improper procedures and errors brought to his attention.

(g) To demand and receive reports from the state treasurer and any other officer or agency, and from the several state depositories.

(h) To review or have reviewed the work papers or other documentation utilized in the audit of a state department or public institution of the state and its political subdivisions, and to reject for filing in the official depository any report based upon unsatisfactory work papers or inadequately supported documentation.

(i) To report to the attorney general for such action, civil or criminal, as the attorney general may deem necessary, all facts showing illegal expenditure of the public money or misappropriation of the public money or misappropriation of the public property.

(2) (a) If necessary, the state auditor may contract with an independent firm of certified public accountants to perform any audit within the authority and jurisdiction of the director of post audit. In addition, the state auditor may contract with an independent firm of certified public accountants, or an independent legislative audit group, to audit the annual statewide financial and compliance report of the state in accordance with generally accepted accounting principles, and state and federal laws and regulations.

(b) Any contract or agreement to provide audits or audit type services to or for any unit of state government must be approved by the state auditor prior to its execution, and shall provide for the standards to be used in the audit.

(3) In determining the scope for a particular audit, responsible audit and entity officials shall consider the needs of the potential users of audit findings.

(4) The division of post audit shall be a law enforcement agency for the purposes of section 9-335, Idaho Code.

67-1605. DEPOSITORY FOR AUDITS. The office of the state auditor is an official depository of all audits of the several departments and public institutions of the state and its political subdivisions; the filing of an audit with the state auditor shall satisfy all requirements for the filing of an audit with the state.

67-1606. CHARGES FOR AUDIT. (1) The annual appropriation to the state auditor from the general fund shall provide for authorized audits and services to general fund departments, agencies, commissions or institutions without charge to the unit receiving such services.

(2) The cost and expenses incurred by the state auditor's office in conducting audits or in carrying out other work authorized by law

in dedicated funds, shall be paid from the appropriation to the office, department, board, commission, or institution and/or the dedicated funds under the control of the office, department, board, commission or institution for whom the work is done. The audit fee or costs of work performed in such dedicated fund agencies shall be based on an hourly rate computed by the state auditor and shall be sufficient to defray all costs and expenses incurred, including, but not limited to, related salary, travel and office overhead expenses. However, any costs for which general funds are appropriated may not be charged to the audit function. The state auditor's office may require partial payments, during the course of the audit, for services rendered and expenses incurred. All charges shall be paid within thirty (30) days after billing is received.

SECTION 2. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

- (1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.
- (2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section mean information, including a formula, pattern, compilation, program, computer program, device, method, technique or process that:
 - (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
 - (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- (3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.
- (4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.
- (5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.
- (6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.
- (7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.
- (8) Records gathered by a local agency or the Idaho department of

commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

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

(e) Vital statistics records.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

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

(14) Any personal records, other than names and addresses, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(15) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

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

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

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

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment.

(27) Records of a person maintained pursuant to chapter 18, title

16, Idaho Code.

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

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision making.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) (a) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the state auditor prior to release of the related final audit and all other records or materials in the possession of the office of the state auditor that would otherwise be confidential or exempt from disclosure.

(b) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative auditor prior to release of the related final audit and all other records or materials in the possession of the office of the legislative auditor that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

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

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of

correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

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

(378) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

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

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(379) 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.

SECTION 3. Any accumulated personnel benefits of current state employees who are transferred from other state employment to the division of post audit in the state auditor's office shall not be diminished or denied because of such transfer.

SECTION 4. This act shall be in full force and effect on and after July 1, 1994.

Approved April 1, 1993.

CHAPTER 389
(H.B. No. 454)

AN ACT

RELATING TO THE IDAHO CODE; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-350, IDAHO CODE, TO PROVIDE THAT THE IDAHO CODE IS THE PROPERTY OF THE STATE OF IDAHO, AND THE STATE OF IDAHO AND THE TAXPAYERS SHALL BE DEEMED TO HAVE A STATE COPYRIGHT ON THE IDAHO CODE, TO PROVIDE FOR ROYALTY FEES, TO PROVIDE FOR ACTIONS FOR COPYRIGHT VIOLATION, TO PROVIDE FOR ATTORNEY'S FEES AND COSTS, AND TO AUTHORIZE THE IDAHO CODE COMMISSION TO LICENSE AND CHARGE FEES FOR THE USE OF THE IDAHO CODE AND TO AUTHORIZE WAIVER OF FEES IN CERTAIN INSTANCES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-350, Idaho Code, and to read as follows:

9-350. IDAHO CODE IS PROPERTY OF THE STATE OF IDAHO. (1) The Idaho Code is the property of the state of Idaho, and the state of Idaho and the taxpayers shall be deemed to have a copyright on the Idaho Code. If a person reproduces or distributes the Idaho Code for the purpose of direct or indirect commercial advantage, the person shall owe to the Idaho code commission, as the agent of the state of Idaho, a royalty fee in addition to the fee charged for copying the Idaho Code. Any person who reproduces or distributes the Idaho Code in violation of the provisions of this section, shall be deemed to be an infringer of the state of Idaho's copyright. The Idaho code commission, through the office of the attorney general, is entitled to institute an action for any infringement of that particular right committed while the Idaho code commission or its designated agent has custody of the Idaho Code.

(2) A court having jurisdiction of a civil action arising under this section may grant such relief as it deems appropriate. At any

time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of all copies claimed to have been made or used in violation of the Idaho code commission's copyright pursuant to this section.

(3) An infringer of the state of Idaho's copyright pursuant to this section is liable for any profits the infringer has incurred by obtaining the Idaho Code for commercial purposes or is liable for statutory damages as provided in subsection (4) of this section.

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

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

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

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, 1993.

CHAPTER 390
(H.B. No. 455)

AN ACT

RELATING TO PROPERTY TAXATION; AMENDING SECTION 63-2225, IDAHO CODE, TO PROVIDE THAT A DISTRICT MAY NOTIFY DISTRICT RESIDENTS BY MAIL IN LIEU OF NEWSPAPER ADVERTISEMENT; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-2225, Idaho Code, be, and the same is hereby amended to read as follows:

63-2225. RESOLUTION PROPOSING TAX OR BUDGET INCREASES. (1) No request for an amount of ad valorem tax revenues for a taxing district's annual budget that exceeds one hundred five percent (105%) of the amount of ad valorem tax revenues certified for its annual bud-

get in the previous year or an ad valorem tax rate increase may be certified to the board of county commissioners or to the state tax commission until a resolution has been adopted by the governing body of a taxing district, or by the board of county commissioners in the case of county levies and functions, in accordance with the following procedures:

(a) The taxing district shall advertise its intent to request an amount of ad valorem tax revenues for its annual budget that exceeds one hundred five percent (105%) of the amount of ad valorem tax revenues certified for its annual budget in the previous year or exceeds the amount of its previous year's tax rate in at least the newspaper of largest paid circulation that is published in the county, or if more than one (1) newspaper is published in the county, then in a newspaper published within the district where the advertisement is required to be published or, if no newspaper is published within the district, then in a newspaper published nearest to the district where the advertisement is required to be published. 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 annual 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 no less than one-quarter (1/4) standard ad unit full page in size and the type used shall be no smaller than 18 point, and surrounded by a one-quarter (1/4) inch border. The advertisement shall be requested to be run in the newspaper's main news section, far forward and the rate to be paid for advertising placed under this section shall be no more than the current rate card rate posted by the newspaper for similar forms of advertising, in volume and frequency to that which is ordered, in order to meet the requirements of this section; provided further, that the rates and type requirements provided in section 60-105, Idaho Code, for public agency advertisements shall not apply to advertisements published under the requirements of this section. The advertisement shall be run once each week for the two (2) weeks preceding the adoption of the final budget. The advertisement shall state that the taxing district will meet on a certain day, time and place fixed in the advertisement, which shall be not less than seven (7) days after the first advertisement is published, for the purpose of hearing comments regarding any proposed increase and to explain the reasons for the proposed increase. Alternatively to the required advertisement, pursuant to section 60-109A, Idaho Code, a taxing district may substitute a single mailing notice to all district residents providing the same information is given and providing the meeting shall be held not less than seven (7) days after mailing of the notice.

(b) The form and content of the notice shall be substantially as follows:

"NOTICE OF TAX INCREASE

The (name of the taxing district) has proposed to increase its

annual budget by an amount of ad valorem tax revenues that exceeds one hundred five percent (105%) of the ad valorem tax revenues certified for its annual budget during the previous year by (percentage of increase) percent or its ad valorem property tax rate by (percentage of increase) percent which will (increase/decrease) its property tax revenue by (percentage of increase) percent.

The following schedule is an estimate of what this change may mean to a taxpayer:

	Last year's taxable value	This year's estimated taxable value	Last year's actual taxes	This year's estimated taxes
For a typical home of \$50,000 taxable value last year (amount)		(amount)	(amount)	(amount)
For a typical farm of \$100,000 taxable value last year (amount)		(amount)	(amount)	(amount)
For a typical business of \$200,000 taxable value last year (amount)		(amount)	(amount)	(amount)

All citizens are invited to attend a public hearing on the increased budget request or increased tax rates.

CAUTION TO TAXPAYER: The amounts shown in this schedule do NOT reflect tax charges that are made because of voter approved bond levies, override levies, supplemental levies, or levies applicable to newly annexed property, or levies applicable to newly created taxing districts."

(2) After the hearing has been held in accordance with the above procedures, the governing body of the taxing district may adopt a resolution to request an amount of ad valorem tax revenues for its annual budget that exceeds one hundred five percent (105%) of the amount of ad valorem tax revenues certified for its annual budget in the previous year or increases the tax rate in excess of that certified for the previous year. If the resolution is not adopted on the day of the public hearing, the scheduled time and place for consideration and adoption of the resolution shall be announced at the public hearing. If the resolution is to be considered at a day and time that is more than two (2) weeks after the public hearing, the governing body shall advertise the date of the proposed adoption of the resolution in the same manner as provided under subsection (1) of this section.

(3) All hearings shall be open to the public. The governing body of the taxing district shall permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits.

(4) Each taxing district shall notify the board of county commissioners of the date, time, and place of its public hearing. Taxing districts with a fiscal year commencing the first day of July in each year shall so notify the board of county commissioners no later than June 1 each year. All other taxing districts shall so notify the board of county commissioners no later than August 1 each year. No taxing district may schedule its hearing at the same time as another overlap-

ping taxing district in the same county, but all taxing districts in which the power to fix a tax levy, or to request a tax levy, is vested in the same governing board may consolidate the required hearings into one (1) hearing. The board of county commissioners shall resolve any conflicts in hearing dates and times after consultation with each affected taxing district.

(5) For all county functions for which a budget is required, the public hearing shall be held on the Tuesday following the first Monday of September.

(6) (a) Each county clerk shall submit a report to the state tax commission by the fourth Monday of July each year which shall show the aggregate taxable value of certain categories of property (as provided by regulation) with appropriate adjustments for annexation for each taxing district within the county. On or before the second Monday of August the state tax commission shall determine the difference in taxable value by taxing district within each county and shall submit a report to each county clerk showing "this year's estimated taxable value" by taxing district for:

(i) a typical home of fifty thousand dollars (\$50,000) taxable value last year;

(ii) a typical farm of one hundred thousand dollars (\$100,000) taxable value last year;

(iii) a typical business of two hundred thousand dollars (\$200,000) taxable value last year.

(b) The county clerk shall provide such information to any member of the public or any taxing district upon request.

(c) It shall be the duty of the state tax commission to make, adopt, and publish rules and regulations to effect this subsection (6).

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, 1993.

Approved April 1, 1993.

CHAPTER 391
(H.B. No. 460)

AN ACT

RELATING TO REGULATION OF BINGO AND RAFFLES; REPEALING CHAPTER 77, TITLE 67, IDAHO CODE; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 77, TITLE 67, IDAHO CODE, TO PROVIDE PURPOSE AND POLICY, TO DEFINE TERMS, TO PROVIDE FOR THE CONDUCT OF BINGO AND RAFFLES AND TO PROVIDE PENALTIES, TO PROVIDE LIMITS ON BINGO SESSIONS AND LIMITS ON PRIZES, TO PROVIDE FOR ACCOUNTING AND USE OF BINGO PROCEEDS, TO PROVIDE FOR THE CONDUCT OF RAFFLES, TO PROVIDE LICENSING PROCEDURES, TO PROVIDE LICENSE FEES AND SUSPENSION OR REVOCATION OF LICENSES, TO PROVIDE FOR VARIANCES, TO PROVIDE EXEMPTIONS FROM LICENSURE, FEES OR REPORTS, TO PROVIDE FOR RULES

AND FORMS; DECLARING AN EMERGENCY, PROVIDING AN EFFECTIVE DATE AND PROVIDING A SUNSET CLAUSE.

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

SECTION 1. That Chapter 77, Title 67, Idaho Code, be and the same is hereby repealed.

SECTION 2. 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 77, Title 67, Idaho Code, and to read as follows:

CHAPTER 77
BINGO AND RAFFLES

67-7701. PURPOSE AND POLICY. It is hereby declared that all bingo games and raffles in Idaho must be strictly controlled and administered, and it is in the public interest for the state to provide for the administration of charitable bingo games and raffles to protect the public from fraudulently conducted bingo games and raffles, to assure that charitable groups and institutions realize the profits from these games, to prohibit professionals conducting bingo games or raffles for fees or a percentage of the profit and to provide that all expenditures by a charitable organization in conducting bingo games and raffles are in the best interest of raising moneys for charitable purposes.

67-7702. DEFINITIONS. As used in this chapter:

(1) "Bingo game" means a specific game of chance played with individual cards having numbered squares ranging from one (1) to seventy-five (75), in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers. Bingo shall not include "instant bingo" which is a game of chance played by the selection of one (1) or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card.

(2) "Charitable organization" means an organization that has been in continuous existence in the county of operation of the bingo game or raffle for at least one (1) year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the Internal Revenue Code and is exempt from income taxation under title 63, Idaho Code, as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad. If the organization has local branches or chapters, the term "charitable organization" means the local branch or chapter operating the bingo game.

(3) "Gross revenues" shall mean all moneys paid by players during a bingo game for the playing of bingo and shall not include money paid for concessions.

(4) "Raffle" means a game in which the prize is won by random drawing of the name or number of one (1) or more persons purchasing chances.

67-7703. CONDUCT OF BINGO. It is lawful for a charitable organization to conduct bingo games in accordance with the provisions of this chapter. Any charitable organization, or any member of such charitable organization, or any person that conducts a bingo game in violation of any provision of this chapter may be assessed a civil penalty not in excess of ten thousand dollars (\$10,000). Additionally any person knowingly conducting a bingo game in violation of the provisions of this chapter may be charged under the gambling laws contained in chapter 38, title 18, Idaho Code.

67-7704. LIMIT ON SESSIONS AND BINGO PRIZES. The number of sessions of bingo conducted or sponsored by a charitable organization shall be limited to three (3) sessions per week and such sessions shall not exceed a period of eight (8) hours per day. The maximum prize in cash or merchandise at fair market value that may be offered or paid for any one (1) game of bingo is one thousand two hundred dollars (\$1,200). The maximum aggregate amount of prizes, in cash or merchandise at fair market value that may be offered or paid at any one (1) session of bingo is five thousand dollars (\$5,000).

67-7705. ACCOUNTING AND USE OF BINGO PROCEEDS. (1) All funds received in connection with a bingo game which is required to be licensed pursuant to this chapter shall be placed in a separate bank account. No funds may be disbursed from this account except the charitable organization may expend proceeds for prizes, advertising, utilities and the purchase of supplies and equipment in conducting the raffle or in playing bingo, taxes and license fees related to bingo or raffles, and the payment of compensation as authorized in this subsection, and for the purposes set forth below for the remaining proceeds. Any proceeds available in the account after payment of the above expenses shall inure to the charitable organization to be used for religious, charitable, civic, scientific testing, public safety, literary or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land, or a building or improvements thereto, owned by and for the charitable organization and used for civic purposes or made available by the charitable organization for use by the general public from time to time, or to foster amateur sports competition or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended directly or indirectly to compensate officers or directors. No employees of the charitable organization may be compensated from bingo proceeds except as provided in this subsection. All gross revenues received from bingo games by a charitable organization must be disbursed in the following manner for every three (3) month period: not more than sixty-five percent (65%) of the gross revenues shall be utilized for prizes in the bingo game, not less than eighteen percent (18%) of gross revenues shall be used for charitable purposes enumerated in this subsection and not more than seventeen percent (17%) of the gross revenues shall be used for administrative expenses associated with the bingo game. One hundred fifty dollars (\$150) per bingo session may be paid as wages for the conduct of the bingo game. Such pay shall be on an hourly basis and shall be directly related to the preparation, conduct of and cleaning following a bingo game. Such

wages shall be part of the seventeen percent (17%) gross revenues used for administrative expenses.

(2) Any person or entity conducting bingo games or raffles pursuant to this chapter shall prepare a statement one (1) year from the date of the issuance of the license and shall file such statement with the county clerk of the county where the bingo game or raffle has been operated. The county clerk shall send a copy of the statement to the state lottery within five (5) working days of its receipt by the clerk. The statement shall be prepared on a form prescribed by the lottery commission and shall include, at a minimum, the following information:

- (a) The number of bingo games conducted or sponsored by the charitable organization;
 - (b) The location and date at which each bingo game was conducted;
 - (c) The gross revenues of each bingo game;
 - (d) The fair market value of any prize given at each bingo game;
 - (e) The amount paid in prizes at each game;
 - (f) The amount paid to the charitable organization;
 - (g) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee; and
 - (h) An accounting of all gross revenues and the disbursements required in subsection (1) of this section.
- (3) Any person who shall willfully or knowingly furnish, supply or otherwise give false information in any statement filed pursuant to this section shall be guilty of a misdemeanor.
- (4) All books, papers, records and documents relevant to determining whether an organization has acted or is acting in compliance with this section shall be kept as determined by the state lottery and shall be open to inspection by the county sheriff of the county, or the chief of police of the city, or the prosecuting attorney of the county where the bingo game or raffle was held, or the attorney general or the state lottery at reasonable times and during reasonable hours.

67-7706. RAFFLES. (1) It is lawful for any charitable organization to conduct raffles in accordance with the provisions of this chapter. Any person or charitable organization who conducts a raffle in violation of any provision of this chapter may be assessed a civil penalty not in excess of ten thousand dollars (\$10,000). Additionally, any person knowingly conducting a raffle in violation of any provision of this chapter may be charged under the gambling laws of the state contained in chapter 38, title 18, Idaho Code. It shall not constitute a violation of state law to advertise a raffle conducted pursuant to this section. It is lawful to participate in a raffle conducted pursuant to this chapter. A raffle conducted lawfully pursuant to this chapter is not gambling for purposes of chapter 38, title 18, Idaho Code.

(2) Raffles shall be limited to twelve (12) per charitable organization per year.

(3) The maximum cash prize that may be offered or paid for any one (1) raffle is one thousand dollars (\$1,000) and if merchandise is used as a prize and it is not redeemable for cash, there shall be no

limit on the maximum amount of value for the merchandise.

(4) As used in this subsection, "net proceeds of a raffle" mean the receipts less the cost of prizes awarded. No less than ninety percent (90%) of the net proceeds of a raffle shall be used by the charitable organization for charitable, religious, educational, civic or other nonprofit purposes.

67-7707. LICENSING PROCEDURE. (1) Any charitable organization not exempt pursuant to section 67-7710, Idaho Code, desiring to operate bingo games or raffles shall make application for a license to the county clerk of the county where the bingo game or raffle will be operated or where the applicant resides on forms prescribed by the state lottery. The county clerk shall analyze the contents of the application, and either approve or deny the application. If the application is approved, the county clerk shall submit the application to the state lottery within five (5) working days following approval. The state lottery shall review the license application and shall approve or deny the issuing of a license within fifteen (15) calendar days of receipt of the license application from the county clerk if the state lottery concurs in the determination of the county clerk. If the state lottery takes no action on the application within the fifteen (15) calendar day time period, the application shall be deemed approved. The county clerk or the state lottery may deny the application if either determines that the applicant has not met requirements imposed in this act and rules promulgated pursuant hereto. Whenever an application is denied, it shall be returned to the applicant by the denying entity with specific reasons for the denial. When a license application is approved by the state lottery or becomes approved by lack of a denial, the state lottery shall notify the county clerk and the clerk shall issue a license to the applicant. If the state lottery does not notify the county clerk of a denial in the time required in this subsection, the county clerk shall issue a license to the applicant. A copy of the license shall be provided to the applicant by the county clerk. No person or charitable organization shall operate or conduct a bingo game or raffle until it has received a license from the county clerk and such license is in force and effect. Such license shall expire one (1) year after the issuance of the license by the county clerk. A copy of the license shall be furnished to the county sheriff of the county or the chief of police of the city in which the licensee intends to operate a bingo game or sell raffle tickets before a bingo game or a raffle is conducted by the licensee.

(2) In lieu of the licensure procedure contained in subsection (1) of this section, when an applicant is going to conduct a raffle in more than one (1) county, the applicant may make application to the state lottery for licensure and shall indicate on the application the counties of operation of the raffle. The fee for such license shall be two hundred dollars (\$200) and such license shall expire one (1) year after the issuance of the license by the state lottery. A copy of the license issued pursuant to this subsection shall be furnished to the county clerk and county sheriff of the county in which the applicant resides. The state lottery shall utilize the procedures available to it in subsection (1) of this section for approval or denial. The state lottery shall have the power of the county clerk as enumerated in sub-

section (2) of section 67-7708, Idaho Code, for suspension or revocation of the license issued pursuant to this subsection.

(3) Each application and renewal application shall contain the following information:

(a) The name and address of the applicant and if the applicant is a corporation, association or other similar legal entity, the name and home address of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization;

(b) The name and home address of each of the person or persons responsible for managing the game;

(c) A copy of the application for recognition of exemptions and a determination letter from the internal revenue service and the state tax commission that indicates that the organization is a charitable organization and stating the section under which that exemption is granted, except that if the organization is a state or local branch, lodge, post or chapter of a national organization, a copy of the determination letter of the national organization shall satisfy this requirement; and

(d) The location at which the applicant will conduct the bingo games or drawings for the raffles.

(4) The operation of bingo games or raffles shall be the direct responsibility of, and controlled by, a special committee selected by the governing body of the charitable organization. If the governing body has not appointed a special committee, the members of the governing body shall be held responsible for the conduct of the bingo games or raffles. No directors or officers of a charitable organization shall receive any compensation derived from the proceeds of a bingo game or raffle regulated under the provisions of this chapter. A charitable organization shall not contract with any person for the purpose of conducting a bingo game or raffle.

67-7708. LICENSE FEES -- SUSPENSION OR REVOCATION. (1) Each charitable organization that makes application to the county clerk for a license pursuant to this chapter shall pay the county clerk a nonrefundable license fee of one hundred dollars (\$100) which shall be due upon submission of the application. When the county clerk submits the application to the state lottery, it shall also remit twenty-five dollars (\$25.00) with each application for licensure to the state lottery to assist the state lottery in carrying out its duties under this chapter.

(2) Any license issued pursuant to this chapter shall be suspended or revoked by the county clerk or state lottery if it is found that the licensee or any person connected therewith has violated any provision of this chapter or any rule of the lottery commission or ordinance of a county adopted pursuant to this chapter or:

(a) Has continued to operate bingo games after losing its tax exempt status or ceases to exercise independent control over its activities or budget as required under the provisions of this chapter;

(b) Has violated or has failed or refused to comply with the provisions of this chapter, or has violated the provisions of a rule of the lottery commission or an ordinance of the county, or has

allowed such a violation to occur upon premises over which the licensee has substantial control;

(c) Has knowingly caused, aided or abetted, or conspired with another to cause, any person to fail or refuse to comply with the provisions, requirements, conditions, limitation or duties imposed in this chapter, or to fail or refuse to comply with a rule adopted by the lottery commission or any ordinance adopted by a county;

(d) Has obtained a license or permit by fraud, misrepresentation or concealment, or through inadvertence or mistake;

(e) Has been convicted, forfeited bond, or has been granted a withheld judgment, upon a charge involving forgery, theft, willful failure to make required payments or reports to a governmental agency at any level, or filing false reports to a governmental agency, or any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor, involving gambling activity, physical injury to individuals or moral turpitude;

(f) Denies the county or its designee or the state lottery access to any place where a licensed game is conducted, denies such access to any law enforcement officer, or fails promptly to produce for inspection or audit any records or items as required by law;

(g) Fails to have the license available for verification where the licensed game is conducted;

(h) Misrepresents or fails to disclose to the county or state lottery any material fact;

(i) Fails to demonstrate to the county or state lottery by clear and convincing evidence, qualifications for the license according to state law and the rules of the state lottery establishing such qualifications;

(j) Is subject to current prosecution or pending charges, or to a conviction regardless of whether it has been appealed, for any offense described in paragraph (e) of this subsection. At the request of an applicant for an original license, the county may defer decision upon the application during the pendency of the prosecution or appeal;

(k) Has pursued or is pursuing economic gain in a manner or context which violates criminal or civil public policy of this state and creates a reasonable belief that the participation of such person in charitable gaming operations would be harmful to the proper operation of a lawful charitable gaming operation.

(3) The county or state lottery may, upon its own motion or upon a written verified complaint of any other person, investigate the action and operation of any charitable gaming hereunder. If the county or state lottery shall have reasonable cause to believe that any charitable gaming violates any of the provisions of this chapter or rules relating to charitable gaming, it may, in its discretion revoke, cancel, rescind or suspend for a period not to exceed one (1) year, any license, or it may refuse to grant a renewal of the license or it may take such other action as may be appropriate under this act and any rules promulgated pursuant thereto. If the county clerk or state lot-

tery shall refuse to grant a license or refuse to grant a renewal of a license or revoke, cancel, rescind or suspend a license, it shall give the applicant or licensee and the state lottery fifteen (15) calendar days' written notice of its intended action stating generally the basis for its action. Within the fifteen (15) calendar day notice period, the applicant or licensee shall indicate its acceptance of the decision of the county clerk or state lottery or shall request a hearing to be held in the same manner as hearings in contested cases pursuant to chapter 52, title 67, Idaho Code. The hearing shall be conducted within twenty-one (21) days of the request. The applicant or licensee may appeal the decision of the county clerk or state lottery after the hearing within the same time and manner as provided for judicial review of actions pursuant to chapter 52, title 67, Idaho Code. Failure to make the request for a hearing as provided herein, shall render the decision of the county or state lottery final and not subject to further appeal.

(4) Violations will be prosecuted by the county prosecuting attorney on behalf of the county or the state lottery.

67-7709. VARIANCES. A charitable or philanthropic group that does not strictly meet the definition of a charitable organization as provided in section 67-7702, Idaho Code, may apply for a variance to allow the group to conduct bingo or raffles or both. The application shall be made on forms prescribed by the lottery commission. If the county clerk and state lottery are satisfied that the group is established for charitable or philanthropic purposes and that the bingo or raffles involved will provide donations or gifts to relieve the needs of indigent, ill or helpless persons or other philanthropic causes, a license may be issued. Granting a variance is discretionary and any organization granted a variance pursuant to this section shall fully comply with the provisions of this chapter and rules promulgated pursuant thereto. All variances granted pursuant to this section shall be valid for no more than one (1) year. For the first sixty (60) days this act is in effect, all charitable organizations, as defined in section 67-7702, Idaho Code, may operate bingo and raffle games without a license provided it complies in all other respects with the terms of this act.

67-7710. EXEMPTION FROM LICENSURE REQUIREMENTS. A charitable organization conducting a bingo game shall not be required to obtain a license, file reports or pay fees pursuant to this chapter if the charitable organization conducts a bingo game and the maximum prize offered or paid for any one (1) game of bingo does not exceed one hundred dollars (\$100) and the maximum amount of prizes, in cash and/or merchandise at fair market value offered during any one (1) session of bingo does not exceed five hundred dollars (\$500). A charitable organization conducting a raffle shall not be required to register, obtain a license, file reports or pay fees pursuant to this chapter if the charitable organization conducts a raffle in which the aggregate amount of prizes does not exceed one hundred dollars (\$100) in cash or if merchandise used as a prize or prizes does not have a maximum fair market value in excess of one thousand dollars (\$1,000).

67-7711. RULES AND FORMS. The lottery commission is authorized to promulgate rules consistent with this act in compliance with chapter 52, title 67, Idaho Code, to implement the provisions of this act and shall prescribe standardized forms for implementation of this act.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after May 1, 1993. This act shall be null, void and of no force and effect on and after July 1, 1994.

Approved April 1, 1993.

CHAPTER 392
(H.B. No. 461)

AN ACT

TRANSFERRING MONEYS TO THE GENERAL FUND FROM THE LIQUOR FUND FOR FISCAL YEAR 1994.

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

SECTION 1. Notwithstanding the provisions of Section 23-404, Idaho Code, there is hereby transferred from the Liquor Fund to the General Fund the amount of \$420,000.

Approved April 1, 1993.

CHAPTER 393
(H.B. No. 462)

AN ACT

RELATING TO THE LEGISLATIVE ACCOUNT; AMENDING SECTION 67-451, IDAHO CODE, TO REDUCE THE AMOUNT OF MONEYS TRANSFERRED TO THE LEGISLATIVE ACCOUNT FROM THE GENERAL ACCOUNT BY THE STATE AUDITOR COMMENCING ON JULY 1, 1993.

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

SECTION 1. That Section 67-451, Idaho Code, be, and the same is hereby amended to read as follows:

67-451. LEGISLATIVE ACCOUNT CREATED -- DUTIES OF AUDITOR -- DISBURSEMENTS FROM ACCOUNT -- REPORT OF DISBURSEMENTS. (1) There is hereby created in the state operating fund in the state treasury the legislative account. The legislative account shall consist of such moneys as are placed into it by other appropriations, by receipts paid into the legislative account, and the moneys appropriated and trans-

ferred into it according to the provisions of this act.

(2) There is hereby appropriated out of the general account in the state operating fund and transferred into the legislative account, and commencing March July 1, 1991, the state auditor is authorized and directed to make such transfers in the amounts shown on each of the following dates in each year:

January 1	\$1,250175,000
March 1	\$1,250175,000
June 1	\$1,000925,000
September 1	\$1,150075,000

(3) The presiding officers of each house of the legislature are hereby authorized to make expenditures out of the legislative account for any necessary expenses of the legislature and the legislative account is hereby perpetually appropriated for any necessary expenses of the legislature. Necessary expenses of the legislature shall include, but are not necessarily limited to salaries and wages of officers, members, and employees of the legislature, consultants and other expert or professional personnel, travel expenses of officers, members, and employees of the legislature, other current expenses incurred in any operation or function of the legislature, premiums for life, accidental death and dismemberment, hospital, medical, surgical and major medical insurance for members of the legislature during their terms of office, and for employees of the legislature during the period of their employment, and capital outlay items necessary for any operation or function of the legislature. The signature of a presiding officer on any voucher or claim for payment shall be sufficient authority for the state auditor to pay the same. Expenses for any interim activity of the legislature or legislators shall be paid in the same manner. Expenses for any interim legislative committees shall be paid in the same manner, if previously authorized by concurrent resolution.

(4) The state auditor is hereby directed to devise and implement a financial reporting and control system for the purposes of this act that exempts legislative expenditures from any other provision of law, and the legislative account shall be specifically exempt from the provisions of chapter 35, title 67, Idaho Code, and shall be specifically exempt from the provisions of chapter 36, title 67, Idaho Code. Such system must produce a report as of the end of each calendar month that clearly shows additions to the account, the unexpended balance in the account, the expenditures to date, and the expenditures for the month reported, suitably detailed in such manner as the presiding officers may instruct the state auditor. A copy of such report must be delivered to the presiding officer of each house of the legislature and to the governor by no later than the fifth working day of the following month.

Approved April 1, 1993.

CHAPTER 394
(H.B. No. 464)

AN ACT

TRANSFERRING MONEYS FROM THE LIQUOR FUND TO THE BUDGET RESERVE FUND FOR FISCAL YEAR 1994; AND SETTING FORTH CONDITIONS FOR ENACTMENT.

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

SECTION 1. Notwithstanding the provisions of Section 23-404, Idaho Code, there is hereby transferred from the Liquor Fund to the Budget Reserve Fund the amount of \$3,255,800 in four allotments as follows:

October 15, 1993	\$ 748,800
January 14, 1994	748,800
April 15, 1994	879,100
June 30, 1994	879,100
TOTAL	<u>\$3,255,800</u>

SECTION 2. This act shall take effect only if Section 2 of House Bill 406, as amended, First Regular Session, Fifty-second Idaho Legislature, fails to become law.

Approved April 1, 1993.

CHAPTER 395
(H.B. No. 465)

AN ACT

APPROPRIATING MONEYS FROM THE PERMANENT BUILDING FUND TO THE PERMANENT BUILDING FUND ADVISORY COUNCIL AND THE DIVISION OF PUBLIC WORKS FOR THE PURPOSE SPECIFIED; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby appropriated from the Permanent Building Fund to the Permanent Building Fund Advisory Council and the Division of Public Works the following amount, or as much thereof as may be necessary, for the purpose specified:

A. Idaho State University, Physical Science Building	\$185,000
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SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 1, 1993.

CHAPTER 396
(H.B. No. 4)

AN ACT

RELATING TO ERRORS AND OMISSIONS INSURANCE FOR REAL ESTATE LICENSEES; AMENDING CHAPTER 20, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-2029A, IDAHO CODE, TO PROVIDE THAT ERRORS AND OMISSIONS INSURANCE SHALL BE A CONDITION OF LICENSURE FOR REAL ESTATE LICENSEES.

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

SECTION 1. That Chapter 20, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-2029A, Idaho Code, and to read as follows:

54-2029A. ERRORS AND OMISSIONS INSURANCE. A. Each licensee who is actively licensed under this chapter shall, as a condition to licensing, carry errors and omissions insurance to cover all licensed activities under the provisions of this chapter.

B. 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.

C. 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.

D. 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.

E. 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.

F. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the license renewal date by each licensee who elects not to participate in the insurance program administered by the commission.

G. 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 hundred dollars (\$100) per year, per licensee, the requirement of insurance coverage as provided in this section shall be void during the applicable contract period.

H. 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 G of this section applies only to premium cost and not to any administrative fee charged.

I. The errors and omissions insurance coverage required in this section shall become effective as a condition of license granting or renewing active licenses on December 31, 1993, and thereafter. If practical, the commission may offer the coverage on a voluntary basis before such date.

Approved April 1, 1993.

CHAPTER 397
(H.B. No. 126, As Amended)

AN ACT

RELATING TO AGREEMENTS IN WRITING; AMENDING SECTION 9-505, IDAHO CODE, TO PROVIDE THAT A PROMISE OR COMMITMENT BY A PERSON ENGAGED IN THE BUSINESS OF LENDING MONEY OR EXTENDING CREDIT SHALL BE MADE IN WRITING WHEN LENDING MONEY OR EXTENDING CREDIT IN AMOUNTS OF FIFTY THOUSAND DOLLARS OR MORE, PROVIDING FOR DISCLOSURE, AND TO CORRECT A REFERENCE; AND AMENDING CHAPTER 1, TITLE 29, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 29-116, IDAHO CODE, TO REQUIRE PERSONS OR ENTITIES ENGAGED IN THE BUSINESS OF LENDING MONEY OR EXTENDING CREDIT IN AN ORIGINAL PRINCIPAL AMOUNT OF FIFTY THOUSAND DOLLARS OR MORE TO POST A COPY OF SECTION 29-116, IDAHO CODE, AND SECTION 9-505, IDAHO CODE, IN A PROMINENT PLACE IN EACH OF ITS PLACES OF BUSINESS AT WHICH LOANS OR EXTENSIONS OF CREDIT ARE MADE; AND PROVIDING THAT SECTION 29-116, IDAHO CODE, SHALL EXPIRE AND BE AUTOMATICALLY REPEALED ON AND AFTER JULY 1, 1995.

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

SECTION 1. That Section 9-505, Idaho Code, be, and the same is hereby amended to read as follows:

9-505. CERTAIN AGREEMENTS TO BE IN WRITING. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in ~~the next~~ section 9-506, Idaho Code.

3. An agreement made upon consideration of marriage, other than a mutual promise to marry.

4.5- An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in

writing, subscribed by the party sought to be charged.

5. A promise or commitment to lend money or to grant or extend credit in an original principal amount of fifty thousand dollars (\$50,000) or more, made by a person or entity engaged in the business of lending money or extending credit, hereinafter a "covered transaction." The person or entity making the promise or commitment must disclose the foregoing provision to the borrower in writing at the time of closing of any covered transaction between them. Such disclosure may be in the note or other loan instrument or may be contained in a separate writing. Rendering of financial advice by a creditor to a debtor is not a covered transaction.

SECTION 2. That Chapter 1, Title 29, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 29-116, Idaho Code, and to read as follows:

29-116. CONTRACTS FOR LOANS OF FIFTY THOUSAND DOLLARS OR MORE. A person or entity engaged in the business of lending money or extending credit in an original principal amount of fifty thousand dollars (\$50,000) or more shall post, in a prominent place in each of its places of business at which loans or extensions of credit are made, a copy of this section and of section 9-505, Idaho Code.

SECTION 3. Section 2 of this act is effective through and including June 30, 1995. On July 1, 1995, section 29-116, Idaho Code, shall expire and be automatically repealed and shall on and after that date be null, void and of no further force or effect.

Approved April 1, 1993.

CHAPTER 398

(H.B. No. 175, As Amended in the Senate)

AN ACT

RELATING TO TEACHERS' SEVERANCE ALLOWANCE AT RETIREMENT; AMENDING SECTION 33-1228, IDAHO CODE, TO PROVIDE THAT SCHOOL DISTRICTS MAY PROVIDE TO RETIREES OTHER BENEFITS IN ADDITION TO THE MEDICARE SUPPLEMENT PROGRAM.

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

SECTION 1. That Section 33-1228, Idaho Code, be, and the same is hereby amended to read as follows:

33-1228. SEVERANCE ALLOWANCE AT RETIREMENT. (1) Upon separation from public school employment by retirement in accordance with chapter 13, title 59, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 1976, as provided by section 33-1218, Idaho Code, and shall be reported by the employer to the public employee retirement system. A sum equal to one-half (1/2) of the monetary value of such unused sick

leave, calculated at the rate of pay for such employee at the time of retirement, shall be transferred from the sick leave account provided by subsection (2) of this section and shall be credited to such employee's retirement account. Such sums shall be used by the Idaho public employees' retirement board to continue to pay:

(a) Premiums for the retiree and the retiree's dependents at the rate for the active employee's group health, accident and dental insurance programs as maintained by the employer for the active employees until the retiree and/or the retiree's spouse becomes eligible for medicare at which time the district shall make available a supplemental program to medicare for the eligible individual. Upon the death of the retiree the surviving spouse's health coverage shall be available and continued under the same terms and conditions as the retiree. Coverage may be continued for the retiree's surviving dependent spouse and dependents until remarriage of the spouse or until the retiree's surviving dependent spouse is eligible for a group health program by an employer. The medicare supplement program will provide the same premium and benefits for all retirees of all the employers served by the same insurance carrier. However, a school district may make available to all retirees from that district other benefits in addition to the medicare supplement program and the retiree or the district shall pay for such additional benefits.

(b) Premiums at the time of retirement for the retiree for the life insurance program maintained by the employer which may be reduced to a minimum of five thousand dollars (\$5,000) of coverage.

(2) The retiree may continue to pay the premiums for the health, accident, dental and life insurance to the extent of the funds credited to the employee's account pursuant to this section and when these funds are expended the premiums may be deducted from the retiree's allowance. Upon a retiree's death, any unexpended sums remaining in the retiree's account shall revert to the sick leave account. If funds are not available for payment by the Idaho public employee retirement system from the retiree's surviving dependent spouse's allowance, the insurance carrier shall implement a direct billing procedure to permit the retiree's surviving spouse to continue coverage.

(3) Each employer shall contribute to a sick leave account maintained by the public employee retirement system exclusively for the purpose of the provisions of this section. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined by the board, and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. All moneys payable to the sick leave account are hereby perpetually appropriated to the board, and shall not be included in its departmental budget.

(4) For purposes of this section public school employment shall be defined to permit inclusion of employees of organizations funded by school districts or of contributions of employees of school districts.

CHAPTER 399
(H.B. No. 183, As Amended, As Amended)

AN ACT

RELATING TO OPERATING FEES FOR MOTOR VEHICLES; AMENDING SECTION 49-434, IDAHO CODE, TO PROVIDE THAT OWNERS WHO ARE SUBJECT TO REPORTING AND PAYMENT OF THE MILEAGE USE FEE SHALL ESTABLISH A USE FEE ACCOUNT OR MAY PURCHASE A TRIP PERMIT, AND TO PROVIDE THAT AN OWNER IS GUILTY OF AN INFRACTION IF HE HAS NOT ESTABLISHED A USE FEE ACCOUNT OR HAS NOT PURCHASED A TRIP PERMIT PRIOR TO OPERATING VEHICLES IN IDAHO; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

In addition, an annual registration fee shall be required for each trailer or semitrailer in a combination of vehicles in the amount of fifteen dollars (\$15.00). An annual registration fee of eight dollars (\$8.00) shall be required for each rental utility trailer having a maximum laden or gross weight of up to two thousand (2,000) pounds, or fifteen dollars (\$15.00) for each rental utility trailer having a maximum laden or gross weight in excess of two thousand (2,000) pounds. For a fee of fifteen dollars (\$15.00) per year for each trailer or semitrailer, or a fee of eight dollars (\$8.00) or fifteen dollars (\$15.00) per year, as applicable, for each rental utility trailer, the department may issue a trailer, rental utility trailer or semitrailer license plate that shall remain valid for a period of five (5) years. The license plate shall become void if the owner's interest in the trailer, rental utility trailer or semitrailer changes during the five (5) year period. If the owner fails to enter the licensed trailer, rental utility trailer or semitrailer on the annual renewal application during the five (5) year period, the registration record shall be purged. Any unrenewed, unexpired plate shall be returned to the

department if it is not entered on the renewal application.

(3) An administrative fee of four dollars (\$4.00) shall be paid on all registrations completed by the department under this section.

(4) In addition to the registration and license fees provided by subsections (1) and (2), there shall be paid on all commercial vehicles having a maximum gross weight in excess of sixty thousand (60,000) pounds, a use fee in accordance with the following schedule. The use fees shall be based on mills per mile of operation, subject to the provisions of subsection (79) of this section.

Maximum Gross Weight of Vehicle (Pounds)	Mills per Mile
60,001-62,000	30.05
62,001-64,000	31.35
64,001-66,000	32.60
66,001-68,000	33.90
68,001-70,000	35.15
70,001-72,000	36.40
72,001-74,000	38.55
74,001-76,000	40.65
76,001-78,000	42.75
78,001-80,000	44.90

(5) In addition to the registration and license fees of this section, there shall be paid on all farm vehicles, and any commercial vehicle exclusively engaged in the transportation of logs, pulp wood, stull, poles, piling, rough lumber, ores, ore concentrates, sand and gravel aggregates in bulk, livestock and vehicles used for the sole purpose of transporting milk from the farm to processing plant, having a maximum gross weight in excess of sixty thousand (60,000) pounds, a use fee of 22.45 mills per mile.

(6) If any motor vehicle, trailer or semitrailer, or combinations thereof, which hauls reducible loads is authorized under the provisions of chapter 10, title 49, Idaho Code, to move on the highways of the state, and the vehicle exceeds the maximum gross weight of eighty thousand (80,000) pounds, then and in that event there shall be paid for that vehicle, in addition to the other fees required in this section, an additional use fee of 2.1 mills per mile for each two thousand (2,000) pounds or fraction thereof of the maximum registered gross weight of the vehicle.

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

(78) Any owner operating vehicle combinations may apply to the department for authority to report multiple weights and pay use fees based upon the maximum gross weight of each configuration in the combination being operated. The owner shall declare a maximum gross weight for each configuration being operated but not more than three (3) maximum gross weights for a vehicle combination may be declared. Any owner who receives authority to report and pay use fees at multi-

ple maximum gross weights shall register the motor vehicle in a combination at the highest maximum gross weight of the vehicle.

(89) An applicant for registration of a commercial vehicle, a noncommercial vehicle or a farm vehicle shall set forth the maximum gross weight of the vehicle or combination of vehicles and the applicant shall pay any annual registration fees and any annual license fees on trailers and semitrailers required at the time he makes application for registration subject to the provisions of subsections (1) and (2). No part of the registration or license fees shall be subject to refund. The use fee payment required shall be computed according to the schedule in either subsection (4) or (5) on the mileage operated over the highways of the state of Idaho and the owner of any vehicle against which a use fee is assessed, shall at the time of making his next quarterly report pay the use fee, if any, for the three (3) calendar months immediately prior. In determining the mileage subject to the use fee, there shall be deducted the miles traveled on roadways maintained with private funds by agreement with the public agency or agencies having jurisdiction over them. In no event shall the total money credited to the owner for the mileage exceed the actual cost of maintenance expended by him.

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

SECTION 2. This act shall be in full force and effect on and after January 1, 1994.

Approved April 1, 1993.

CHAPTER 400
(H.B. No. 186)

AN ACT

RELATING TO STANDARDS FOR WINDSHIELDS AND WINDOWS OF MOTOR VEHICLES; AMENDING SECTION 49-944, IDAHO CODE, TO REVISE STANDARDS FOR WINDOW OR WINDSHIELD TINTING AND TO ALLOW NONREFLECTIVE WINDOW TINTING FILM OR SUNSCREENING DEVICES FOR MEDICAL PURPOSES; TO PROVIDE AN EXTENSION OF THE COMPLIANCE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 49-944, Idaho Code, be, and the same is hereby amended to read as follows:

49-944. STANDARDS FOR WINDSHIELDS AND WINDOWS OF MOTOR VEHICLES -- PROHIBITED ACTS -- PENALTY. (1) It is unlawful for any person to place, install, affix or apply any window tinting film or sunscreening device to the windows of any motor vehicle, except as follows:

(a) Nonreflective window tinting film or suncreening devices shall not be applied to the windshield below the AS-1 line; if no AS-1 line is identifiable on the windshield, nonreflective window tinting film or sunscreening devices shall not be applied to the windshield below a line extending six (6) inches below and parallel to the roof-line exposed windshield;

(b) Nonreflective window tinting film or sunscreening devices that have a light transmission of not less than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) and a luminous reflectance of no more than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) may be applied to the front side vents, front side windows to the immediate right and left of the driver, and the rear window;

(c) Nonreflective window tinting film or sunscreening devices that have a light transmission of not less than twenty percent (20%) with a tolerance limit of plus or minus three percent (3%) and a luminous reflectance of no more than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) may be applied to the side windows to the rear of the driver;

(d) Window tinting films or sunscreening devices are materials or devices which are designed to be used in conjunction with approved vehicle glazing materials for the purpose of reducing the effects of the sun;

(e) Light transmission is the ratio of the amount of total light, expressed in percentages, which is allowed to pass through the product or material to the amount of total light falling on the product or material ~~and the glazing~~;

(f) Luminous reflectance is the ratio of the amount of total light, expressed in percentages, which is reflected outward by the product or material to the amount of total light falling on the product or material.

(2) No person shall operate on the public highways, sell, or offer to sell any motor vehicle with a windshield or windows which are not in compliance with the provisions of this section.

(3) Persons who own a motor vehicle with a windshield or windows not in compliance with the provisions of this section on June 30, 1992, shall not be charged with a violation of the provisions of this section until January 1, 1993. Persons owning a motor vehicle with a windshield or windows not in compliance with the provisions of this section on June 30, 1992, shall have until January 1, 1993, to obtain a certificate from the department of law enforcement indicating that the person owned the motor vehicle containing a windshield or windows not in compliance with the provisions of this section on or before June 30, 1992. The certificate shall be carried in the vehicle. A person operating a motor vehicle with a valid certificate as provided in this subsection shall not be deemed to be violating the provisions of this section on or after January 1, 1993. The department of law enforcement may promulgate rules and regulations in order to implement the provisions of this section.

(4) Nonreflective window tinting film or suncreening devices that have a light transmission of not less than seventy percent (70%) plus or minus three percent (3%) for the front windshield and not less than twenty percent (20%) plus or minus three percent (3%) for the windows, with a luminous reflectance of no more than thirty-five percent (35%) plus or minus three percent (3%) in each instance, is permitted for a motor vehicle operated by, or carrying as a passenger, a person who possesses written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight or heat for medical reasons associated with past or current treatment; such written verification shall be carried in the vehicle.

(5) Nothing in this section shall be construed to make illegal the operation or sale of any motor vehicle, the windshield or windows of which are composed of, covered by, or treated with, any material, substance, system, or component with which the motor vehicle was sold when new or could have been equipped for sale when new as standard or optional equipment from the manufacturer or authorized dealer under any United States government statute or regulation governing such sale at the time of manufacture.

(56) Any person convicted of a violation of the provisions of this section shall be guilty of an infraction.

SECTION 2. For the period January 1, 1993 through June 30, 1993, an extension is granted to the January 1, 1993 compliance date specified in subsection (3) of section 49-944, Idaho Code. During the period January 1, 1993 through June 30, 1993, the Idaho Department of Law Enforcement shall present written warning cards for any violation of the provisions of this act. Such cards will serve notice that window tint levels are outside legal limits and must be corrected within ten (10) days. As of July 1, 1993, any violation of the provisions of this act shall be an infraction under the provisions of subsection (6) of section 49-144, Idaho Code.

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

Approved April 1, 1993.

CHAPTER 401
(H.B. No. 189)

AN ACT

RELATING TO DUTIES OF THE STATE FIRE MARSHAL; AMENDING SECTION 41-267, IDAHO CODE, TO AUTHORIZE GRANTING ADJUSTMENTS OR VARIANCES FOR REASONS OF FINANCIAL HARDSHIP AND TO PROVIDE LIMITATIONS ON LIABILITY.

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

SECTION 1. That Section 41-267, Idaho Code, be, and the same is

hereby amended to read as follows:

41-267. **HARDSHIP RESULTING FROM APPLICATION OF ACT -- ADJUSTMENTS AND VARIANCES.** When the state fire marshal finds that practical difficulties, unnecessary hardship, including financial hardship, or consequences inconsistent with the general purposes of this act relating to fire protection and fire prevention may result from the application of such statutes and regulations, he may upon receipt of a verified application from the owner or occupant of the property affected stating fully the grounds of the application and facts relied upon, and upon his own further investigation, grant adjustments or variances with such conditions and safeguards as he may determine in harmony with the general purpose, intent and spirit of such statutes and regulations, so that the public health, safety and welfare shall be secured and substantial justice done, provided however, that neither the state nor the state fire marshal shall be liable on any claim for damages that is alleged to have resulted from the granting of any relief, adjustment or variance requested by any such applicant.

Approved April 1, 1993.

CHAPTER 402
(H.B. No. 268)

AN ACT

RELATING TO SALES TAX EXEMPTIONS; AMENDING SECTION 63-36220, IDAHO CODE, TO CLARIFY THE EXEMPTION FROM SALES TAX GRANTED FOR CERTAIN HEALTH-RELATED ENTITIES.

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

SECTION 1. That Section 63-36220, Idaho Code, be, and the same is hereby amended to read as follows:

63-36220. **NONPROFIT ORGANIZATIONS.** There are exempted from the taxes imposed by this chapter sales to, donations to, and purchases by food banks or soup kitchens, sales of clothes to, donations of clothes to and purchases of clothes by nonsale clothiers, and sales to or purchases by hospitals, health-related entities, educational institutions, forest-protective associations and canal companies which are nonprofit organizations. As used in this subsection, these words shall have the following meanings:

(a) "Educational institution" shall mean resident nonprofit colleges, universities, primary and secondary schools and nonresident nonprofit colleges, universities, primary and secondary schools which have a branch campus, or facility located in this state, the income of which is devoted solely to education and in which systematic instruction in the usual branches of learning is given. This definition does not include schools primarily teaching business, dancing, dramatics, music, cosmetology, writing, gymnastics, exercise and other special accomplishments nor parent-teacher associations, parent groups, alumni or other auxiliary organizations with purposes related to the educa-

tional function of an institution or collective group of institutions.

(b) "Hospital" shall include nonprofit institutions licensed by the state for the care of ill persons. It shall not extend to nursing homes or similar institutions.

(c) "Health-related entities" shall mean the Idaho Cystic Fibrosis Foundation, Idaho Epilepsy League, Idaho Lung Association, March of Dimes, American Cancer Society, Mental Health Association, ~~Idaho--Association--of--Retarded--Citizens~~ The Arc, Idaho Heart Association, United Cerebral Palsy, Arthritis Foundation, Muscular Dystrophy Foundation, National Multiple Sclerosis Society, Rocky Mountain Kidney Association, American Diabetes Association, and Easter Seals, together with said entities' local or regional chapters or divisions.

(d) "Canal companies" shall include nonprofit corporations which are incorporated solely for the purpose of operating and maintaining and are engaged solely in operation and maintenance of dams, reservoirs, canals, lateral and drainage ditches, pumps or pumping plants.

(e) "Forest protective associations" shall mean associations whose purpose is the furnishing, operating and maintaining of a protective system for the detection, prevention and suppression of forest or range fires. Forest protective associations shall include only those associations with which the state of Idaho has contracted or become a member of pursuant to chapter 1, title 38, Idaho Code.

(f) "Food banks or soup kitchens" shall mean the Idaho ~~F~~Foodbank ~~w~~Warehouse, inc. and any nonprofit corporation or association one of whose primary purposes is the furnishing or providing of food or food products to others without charge.

(g) "Nonsale clothier" shall mean any nonprofit corporation or association one of whose primary purposes is the furnishing or providing of clothes to others without charge.

(h) "Clothes" shall mean garments in general, designed or intended to be worn by humans and shall include footwear in addition to wearing apparel.

Approved April 1, 1993.

CHAPTER 403

(H.B. No. 317, As Amended in the Senate)

AN ACT

RELATING TO THE MANAGEMENT OF GRIZZLY BEARS; AMENDING CHAPTER 7, TITLE 36, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 36-716, IDAHO CODE, ESTABLISHING A GRIZZLY BEAR OVERSIGHT COMMITTEE FOR THE PURPOSE OF GUIDING THE DEVELOPMENT OF CONSERVATION PLANS FOR EACH OF THE RECOVERY AREAS IN IDAHO AND ESTABLISHING THE DUTIES OF THE DEPARTMENT OF FISH AND GAME AND DEPARTMENT OF LANDS REGARDING THE ENDANGERED SPECIES ACT; DECLARING AN EMERGENCY AND PROVIDING A SUNSET DATE.

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

SECTION 1. That Chapter 7, 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 36-716, Idaho Code, and to read as follows:

36-716. ESTABLISHMENT OF A GRIZZLY BEAR MANAGEMENT OVERSIGHT COMMITTEE. (1) An approved conservation plan is a prerequisite to the removal of a species from the federal threatened and endangered species list. A grizzly bear management oversight committee will be established to work with and provide advice to the department of fish and game in the development of conservation plans for managing grizzlies in each of the grizzly bear recovery areas located in Idaho. This conservation plan shall be submitted to the legislature for review by January 1, 1995.

These conservation plans could form the basis for state management of grizzly bears in Idaho with approval of the United States fish and wildlife service. The oversight committee will be composed of nine (9) members: the chair of the house resources and conservation committee or his designee; the chair of the senate resources and environment committee or his designee; three (3) members from the industries primarily affected by grizzly bear management (mining, timber, livestock), to be appointed by the director of the department of lands from industry nominees; one (1) member representing recreation, one (1) member representing wildlife, one (1) member representing the department of fish and game, to be appointed by the director of the department of fish and game, and one (1) member representing the Idaho state board of animal damage control to be appointed by the governor.

It is intended that this committee reflect a cross-section of the major interest groups associated with the recovery areas. The department of fish and game and the Idaho department of lands will provide staff and support. The committee will select a chair at the initial meeting and establish their own organization. The committee shall serve without compensation, but shall be reimbursed actual expenses for attending meetings of the committee from funds provided by the appointing authority, except that the member of the board of animal damage control shall be paid from funds of the board at the prevailing state rates. The committee will hold public meetings in each of the designated recovery areas to exchange information about grizzly bears and will provide periodic reports to the legislature and public regarding its findings.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval. The provisions of this section shall be null and void and of no force and effect on and after July 1, 1995.

Approved April 1, 1993.

CHAPTER 404

(H.B. No. 345, As Amended in the Senate)

AN ACT

RELATING TO THE STATE BOARD OF EDUCATION; AMENDING SECTION 33-101,

IDAHO CODE, TO SPLIT THE STATE BOARD OF EDUCATION INTO A COUNCIL FOR HIGHER EDUCATION AND A COUNCIL FOR PUBLIC SCHOOLS; AMENDING SECTION 33-102, IDAHO CODE, TO INCREASE THE NUMBER OF MEMBERS ON THE STATE BOARD OF EDUCATION AND PROVIDE APPOINTMENT TO THE RESPECTIVE COUNCILS; AMENDING SECTION 33-102A, IDAHO CODE, TO CREATE THE OFFICE OF THE EXECUTIVE OFFICER OF THE COUNCIL FOR HIGHER EDUCATION; AND AMENDING SECTION 33-2802, IDAHO CODE, TO PROVIDE THAT THE UNIVERSITY OF IDAHO SHALL BE GOVERNED BY THE COUNCIL FOR HIGHER EDUCATION AND BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO.

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

SECTION 1. That Section 33-101, Idaho Code, be, and the same is hereby amended to read as follows:

33-101. CREATION OF BOARD. For the general supervision, government governance and control of all state educational institutions, a state board of education is created. The board shall comprise two (2) separate councils, distinguished as follows:

(1) For general supervision of all state institutions of higher education, and such institutions as may be designated by law, to wit: University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, School for the Deaf and the Blind the College of Southern Idaho, North Idaho College, and for any other state higher educational institutions which may hereafter be founded, and for a council for higher education and board of regents of the University of Idaho is hereby created.

(2) For general supervision, government and control of the public school system of the state, including public--community--colleges the School for the Deaf and the Blind and any other state educational institution not connected with higher education which may hereafter be founded, a state-board-of-education council for public schools is created. The said-board-shall-be-known-as-the-state--board--of--education and-board-of-regents-of-the-University-of-Idaho.

(3) For the general supervision, governance and control of general educational institutions and programs of common access to both higher education and public school systems, including Eastern Idaho Technical College, vocational education, the State Library Board, Idaho work study program, public broadcasting system, Idaho state historical society, and other matters where required by law, the state board of education shall regularly convene as a whole.

For the purposes of section 20, article IV, of the constitution of the state of Idaho, the state board of education and all of its offices, agencies, divisions and departments shall be an executive department of state government.

Where the term "state board" shall hereafter appear, it shall mean the state board of education ~~and-board-of-regents-of-the-University-of-Idaho~~ and, notwithstanding any other provision of law to the contrary, where appropriate, pursuant to the assignment of duties provided in this section, where such reference is relative to postsecondary institutions and programs or associated arrangements such reference shall mean the council for higher education and board of regents of the University of Idaho, and, where such reference is relative solely to pub-

lic schools, elementary through secondary levels, and associated programs, such reference shall mean the council for public schools.

SECTION 2. That Section 33-102, Idaho Code, be, and the same is hereby amended to read as follows:

33-102. MEMBERSHIP -- APPOINTMENT -- TERM OF OFFICE -- QUALIFICATIONS -- PLACE OF OFFICE. The state board of education shall consist of the state superintendent of public instruction, who shall be an ex-officio voting member and who shall serve as executive secretary of the board for all elementary and secondary school matters, and ~~seven (7)~~ eight (8) members appointed by the governor, each for a term of five (5) years of whom four (4) members shall be selected for the council for public schools and four (4) members shall be selected for the council for higher education and board of regents. The additional member appointed pursuant to this act shall serve an initial term of four (4) years, and thereafter the term shall be for five (5) years. The state superintendent of public instruction shall be an ex-officio voting member of both councils. Annually on the first day of March the governor shall appoint members to fill the board positions for which the terms of office have expired. The governor shall, by appointment, fill any vacancy on the board, such appointment to be for the unexpired term of the retiring member. Appointment to the board shall be made solely upon consideration of the ability of such appointees efficiently to serve the interests of the people, and education, without reference to locality, occupation, party affiliation or religion. Any person appointed to said board shall have been a resident of the state for not less than three (3) years prior to the date of appointment; and shall qualify and assume the duties in accordance with laws governing similar appointments to, and qualifications for, office on other state boards. All appointments of members to the state board of education made after the effective date of this act must be confirmed by the senate.

Members of the state board of education holding office on the effective date of this act shall continue in office for the balance of the term to which they were appointed and shall be designated, by the governor, to the respective council of which they shall be a member in such a manner as to assure that no two (2) members of either council are serving terms which expire in the same year.

The state board shall have and maintain its office at the state capitol.

SECTION 3. That Section 33-102A, Idaho Code, be, and the same is hereby amended to read as follows:

33-102A. OFFICE OF THE STATE BOARD -- EXECUTIVE OFFICER -- APPOINTMENT -- COMPENSATION -- DUTIES AND POWERS. There is hereby created as an executive agency of the state board of education the office of the state board of education, council for higher education. ~~The state board of~~ council for higher education is hereby authorized to appoint an executive officer of the office of the state board of education council who shall serve at the pleasure of the board council and shall receive such salary as fixed by the board council. The exec-

utive secretary may be appointed as the executive officer. The executive officer shall, under the direction of the ~~state-board-of-education~~ council, have such duties and powers as prescribed by the said board of regents and the ~~state-board-of~~ council for higher education, not otherwise assigned by law.

SECTION 4. That Section 33-2802, Idaho Code, be, and the same is hereby amended to read as follows:

33-2802. BOARD OF REGENTS COUNCIL FOR HIGHER EDUCATION. The general supervision, government and control of the University of Idaho is vested in a ~~state-board-of~~ the council for higher education which also constitutes the board of regents of the university and is known as the ~~state-board-of~~ council for higher education and board of regents of the University of Idaho.

Approved April 1, 1993.

CHAPTER 405

(H.B. No. 389, As Amended in the Senate)

AN ACT

RELATING TO ASSESSMENT OF PROPERTY; AMENDING SECTION 63-202, IDAHO CODE, TO PROVIDE TECHNICAL CORRECTIONS AND TO PROVIDE THAT THE RULES OF THE STATE TAX COMMISSION SHALL PROVIDE FOR THE UTILIZATION OF A METHOD WHICH ASSESSES THE VALUE OF SIX OR MORE LOTS IN A SUBDIVISION BY RECOGNIZING THE TIME PERIOD OVER WHICH THE LOTS MUST BE SOLD IN ORDER TO REALIZE CURRENT MARKET VALUES FOR THOSE LOTS UNTIL SUCH TIME AS A BUILDING PERMIT IS ISSUED FOR EACH LOT; AND TO PROVIDE AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-202, Idaho Code, be, and the same is hereby amended to read as follows:

63-202. ~~RULES AND REGULATIONS~~ PERTAINING TO MARKET VALUE -- DUTY OF ASSESSORS. It shall be the duty of the state tax commission to prepare and distribute to each county assessor and each board of county commissioners within the state of Idaho, rules ~~and--regulations~~ prescribing and directing the manner in which market value for assessment purposes is to be determined for the purpose of taxation. The rules ~~and-regulations~~ promulgated by the state tax commission shall require each assessor to find market value for assessment purposes of all property within his county according to recognized appraisal methods and techniques as set forth by the state tax commission; provided, that the actual and functional use shall be a major consideration when determining market value for assessment purposes.

To maximize uniformity and equity in assessment of different categories of property, such rules ~~and-regulations~~ shall, to the extent practical, require the use of reproduction or replacement cost less

depreciation as opposed to historic cost less depreciation whenever cost is considered as a single or one of several factors in establishing the market value of depreciable property. The state tax commission shall also prepare and distribute from time to time amendments and changes to the rules ~~and-regulations~~ as shall be necessary in order to carry out the intent and purposes of this act. The rules ~~and--regulations~~ shall be in the form as the commission shall direct, and shall be made available upon request to other public officers and the general public in reasonable quantities without charge. In ascertaining the market value for assessment purposes of any item of property, the assessor of each county shall, and hereby is required to, abide by, adhere to and conform with rules ~~and-regulations~~ hereinabove required to be promulgated by the state tax commission.

The rules shall provide that if property consists of six (6) or more lots within one (1) subdivision, and the lots are held under one (1) ownership and which lots are held for resale, the lots shall be valued under a method which recognizes the time period over which those lots must be sold in order to realize current market values for those lots until such time as a building permit is issued for each lot.

SECTION 2. This act shall be in full force and effect on and after January 1, 1994.

Approved April 1, 1993.

CHAPTER 406
(H.B. No. 441)

AN ACT

APPROPRIATING MONEYS TO THE SECRETARY OF STATE FOR FISCAL YEAR 1994;
AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES.

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

SECTION 1. There is hereby appropriated to the 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, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	\$ 659,800	\$268,100			\$ 927,900
B. CENTRALIZED UNIFORM COMMERCIAL CODE:					
FROM:					
UCC Administrative					
Fund	\$ 393,900	\$233,000	\$ 83,000		\$ 709,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
C. COMMISSION ON UNIFORM LAWS:					
FROM:					
General Fund		\$ 15,000			\$ 15,000
D. IDAHO COMMISSION ON THE ARTS:					
FROM:					
General Fund	\$ 259,400	\$171,900	\$ 3,500	\$289,700	\$ 724,500
Federal Grant Fund	191,400	113,000		318,600	623,000
Miscellaneous Revenues Fund		<u>104,000</u>		<u>15,800</u>	<u>119,800</u>
TOTAL	\$ 450,800	\$388,900	\$ 3,500	\$624,100	\$1,467,300
GRAND TOTAL	\$1,504,500	\$905,000	\$ 86,500	\$624,100	\$3,120,100

SECTION 2. It is legislative intent that an amount not to exceed \$1,000 of the amounts appropriated in Section 1, may be used at the discretion of the Secretary of State to assist in defraying expenses relating to or resulting from the discharge of the Secretary of State's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

Approved April 1, 1993.

CHAPTER 407
(S.B. No. 1101)

AN ACT

RELATING TO LOCAL IMPROVEMENT DISTRICTS FOR IRRIGATION DISTRICTS; AMENDING TITLE 43, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 25, TITLE 43, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO AUTHORIZE AND EMPOWER IRRIGATION DISTRICTS TO CREATE LOCAL IMPROVEMENT DISTRICTS, TO PROVIDE FOR INITIATION OF ORGANIZATION OF A LOCAL IMPROVEMENT DISTRICT, TO PROVIDE FOR A RESOLUTION OF INTENTION TO CREATE THE DISTRICT, TO PROVIDE FOR NOTICE OF INTENTION AND HEARINGS, TO PROVIDE FOR PROTESTS AND HEARINGS, TO PROVIDE FOR A RESOLUTION CREATING LOCAL IMPROVEMENT DISTRICTS AND A PROCEDURE FOR CONSTRUCTION BIDS, TO PROVIDE FOR LIMITATION ON ASSESSMENTS AGAINST PROPERTY, TO PROVIDE FOR PREPARATION OF AN ASSESSMENT ROLL, TO PROVIDE FOR NOTICE OF HEARING ON AN ASSESSMENT ROLL, TO PROVIDE FOR HEARING OBJECTIONS TO THE ASSESSMENT ROLL AND CONFIRMATION, TO PROVIDE FOR CONFIRMATION OF THE ASSESSMENT ROLL, TO PROVIDE FOR NOTICE AND PAYMENT OF ASSESSMENTS, TO PROVIDE FOR AN INSTALLMENT DOCKET, TO PROVIDE AN APPEAL PROCEDURE AND ITS EFFECT, TO PROVIDE FOR ADDITIONAL IMPROVEMENTS, TO PROVIDE FOR REASSESSMENT OF BENEFITS, TO PROVIDE FOR A LIEN OF ASSESSMENT AND FORECLOSURE, TO PROVIDE FOR SEGREGATION OF ASSESSMENTS, TO PROVIDE

FOR BONDS, REGISTERED WARRANTS AND INTERIM WARRANTS, TO PROVIDE FOR LIABILITY OF THE DISTRICT, TO PROVIDE FOR BOND AND INTEREST FUNDS, TO PROVIDE FOR REISSUE OF BONDS, TO PROVIDE RIGHTS AGAINST ASSESSMENTS, TO PROVIDE FOR PUBLICATION AND CONCLUSIVENESS OF PROCEEDINGS, TO PROVIDE FOR CONSOLIDATED LOCAL IMPROVEMENT DISTRICTS, TO PROVIDE FOR DELINQUENT INSTALLMENTS, TO PROVIDE FOR DELINQUENT CERTIFICATES, TO PROVIDE FOR A DELINQUENT CERTIFICATE REGISTER, TO PROVIDE FOR ASSIGNMENT OF DELINQUENT CERTIFICATES, TO PROVIDE A FORM OF ASSIGNMENT AND ASSIGNMENT BY PURCHASER, TO PROVIDE FOR REDEMPTION, TO PROVIDE FOR DEEDS, TO PROVIDE FOR NOTICE OF EXPIRATION OF TIME OF REDEMPTION, TO PROVIDE PROOF OF NOTICE, TO PROVIDE THE EFFECT OF A DEED AS EVIDENCE, TO PROVIDE FOR DELINQUENCY CERTIFICATES FOR SUBSEQUENT INSTALLMENTS, TO PROVIDE FEES OF TREASURERS, TO PROVIDE ACTIONS TO QUIET TITLE, TO PROVIDE SALE OF PROPERTY DEEDED TO A DISTRICT, TO PROVIDE FOR SALE OF PROPERTY AFTER MATURITY OF BONDS, TO PROVIDE FOR DISPOSITION OF FUNDS, TO PROVIDE ASSIGNABILITY OF DELINQUENT CERTIFICATES, TO PROVIDE DUTIES OF OFFICERS, TO PROVIDE FOR A LOCAL IMPROVEMENT GUARANTEE FUND, TO PROVIDE FOR PAYMENTS FROM THE LOCAL IMPROVEMENT GUARANTEE FUND, TO PROVIDE FOR SUBROGATION PROCEDURES, TO PROVIDE FOR MAINTENANCE AND OPERATION AND SOURCES OF THE FUND, TO PROVIDE FOR REPLENISHMENT OF THE LOCAL IMPROVEMENT GUARANTEE FUND, TO PROVIDE FROM WHICH BONDS AND WARRANTS REVENUES ARE PAYABLE, TO PROVIDE FOR BONDS PAYABLE FROM THE LOCAL IMPROVEMENT GUARANTEE FUND, TO PROVIDE FOR DISPOSITION OF EXCESS MONEYS IN THE FUND AND TO AUTHORIZE THE CREATION OF A RESERVE FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Title 43, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 25, Title 43, Idaho Code, and to read as follows:

CHAPTER 25 LOCAL IMPROVEMENT DISTRICTS

43-2501. SHORT TITLE. Chapter 25, title 43, Idaho Code, shall be known and cited as the "Local Improvement District Code for Irrigation Districts."

43-2502. DEFINITIONS. The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively given herein.

(1) "Board" means the board of directors of an irrigation district.

(2) "Costs and expenses" mean the contract price of all improvements, including any costs or expenses incurred for engineering, clerical, printing and legal services as well as for advertising, surveying, inspection of work, collection of assessments, interest upon bonds or warrants, and an amount for contingencies as shall be considered necessary by the board.

(3) "District or irrigation district" means irrigation districts organized pursuant to the provisions of chapter 1, title 43, Idaho

Code.

(4) "Engineer" means the official engineer of the irrigation district or one specially retained for purposes of operating under the provisions of this chapter.

(5) "Local improvement district" means a local improvement district created within the boundaries of an irrigation district or irrigation districts under the authority of this chapter.

(6) "Owner" or "owners" mean the owner of property within the limits of a local improvement district, or a proposed local improvement district; and a corporation, joint stock association, partnership, individual proprietor or other form of business enterprise owning real property, within any such district or proposed district.

(7) "Secretary," "treasurer" or "other irrigation district officer" means the appropriate irrigation district officers with regard to irrigation district local improvement districts.

43-2503. POWERS CONFERRED. (1) The board shall have the power to make or cause to be made any one (1) or more, or combination of, the following improvements:

(a) To acquire, construct, operate, maintain, repair and replace pumping stations and pipelines and all necessary fittings, controls, components and equipment and other water facilities for the purpose of supplying water under pressure or by gravity flow for the irrigation of a described area within the boundaries of the district.

(b) To acquire, construct, reconstruct, extend, maintain or repair parks and other recreational facilities;

(c) To remove any nonconforming existing facility or structure in the areas to be improved;

(d) To construct, reconstruct, extend, maintain or repair optional improvements;

(e) To acquire by purchase, gift, condemnation, or otherwise, any real or personal property within the limits of the district as in the judgment of the board may be necessary or convenient in order to make any of such improvements;

(f) To make any other improvements now or hereafter authorized by any other law, the cost of which in whole or in part can properly be determined to be of particular benefit to a particular area within the district;

(g) To construct and install all such structures, equipment and other items and to do all such other work and to incur any such costs and expenses as may be necessary or appropriate to complete any of such improvements in a proper manner.

(2) For the purpose of making and paying for all or a part of the cost of any of such improvements, including optional improvements, the board may create local improvement districts pursuant to this chapter within the boundaries of the irrigation district, levy assessments on the property within such a district which is benefited by the making of the improvements and issue interim or registered warrants and local improvement bonds as provided in this chapter.

43-2504. INITIATION OF ORGANIZATION OF LOCAL IMPROVEMENT DISTRICT. The organization of any local improvement district herein pro-

vided for may be initiated upon a petition signed by not less than sixty percent (60%) of the owners of property subject to assessment within such local improvement district, or by resolution of the board adopted by an affirmative vote of a majority of the members of the full board at a regular or special meeting thereof. The terms of a petition shall include a description of the boundaries of a proposed local improvement district, the improvements to be made and the property to be assessed.

43-2505. RESOLUTION OF INTENTION TO CREATE DISTRICT. Upon the filing of a petition or upon initiation of a local improvement district by board action, the board shall, at a regular or special meeting, adopt a resolution giving notice of its intention to create the local improvement district, to make the improvements and to levy assessments to pay all or a part thereof. The notice shall contain:

(1) A description of the boundaries of the local improvement district to be created and the property to be assessed, sufficient to inform the owners thereof that their property is to be assessed.

(2) A general description of the improvements contemplated, together with an estimate of the total cost and expenses of the same, and a statement of the percentage or other calculation of the total cost and expenses of the improvements which will be paid from a levy of assessments on property benefited and the percentage or calculation of the total costs and expenses, if any, which will be paid from the general funds of the district or from such other source specified in the notice.

(3) A statement that the costs and expenses of the improvements will be assessed against the lots and lands to which irrigation water shall be delivered from the main system of the district to the lots and lands benefited by such improvements and included in the local improvement district to be created according to a gross acreage method, and the board shall state the method in said notice.

(4) A statement that the local improvement district is to be an enlarged local improvement district within the meaning of this act, if the same is true, and the boundaries of such enlarged local improvement district shall be given.

(5) A statement of the time within which and the place at which protests shall be filed and of the time and place at which the board will conduct a public hearing to consider such protests.

43-2506. NOTICE OF INTENTION AND HEARING. The notice of intention shall be published in the official newspaper of the district in three (3) consecutive issues if a daily newspaper, or in two (2) issues if a weekly newspaper or in case no newspaper is published in such district then by posting for five (5) days in three (3) public places within the proposed local improvement district. A copy of such notice shall be mailed to each owner of property, if known, or his agent, if known, within the limits of the proposed local improvement district, addressed to such person at his post office address if known, or if unknown, to a post office in the district where the improvement is to be made. Ownership of property shall be determined as of the date of the adoption of the resolution of intent to create. The hearing shall take place not less than ten (10) days from the date of the first of

said publications or postings or the date of said mailing, whichever is later.

43-2507. PROTESTS AND HEARINGS. Any owner of property to be assessed in the proposed local improvement district described in the notice of intention shall have the right, in advance of the hearing, to file, in writing, a protest to the creation of the district or making any other objections in relation thereto. At the date, time and place specified in the notice of intention the board shall, in open and public session, consider all protests which have been filed in writing in advance of the hearing, and the hearing may be adjourned from time to time to a fixed future time and place for the same until all such protests have been heard. The decision of the board as to all protests shall be conclusive and final, and if it should so determine, the board may delete any improvements on any property which had originally been contemplated in the said notice. If owners of more than two-thirds (2/3) of the property to be assessed protest any of the proposed improvements which affect their property, the board shall not proceed further with the work so protested unless a majority of the members of the full board shall vote to proceed with such work. The vote on the hereinafter mentioned resolution creating the local improvement district shall constitute the vote as to whether or not the board will proceed. Any property owner who fails to file a protest within the time specified, or having filed one withdraws said protest, shall be deemed to have waived any objection to the creation of the local improvement district, the making of the improvements, and the inclusion of his property in the local improvement district. Such waiver shall not preclude his right to object to the amount of the assessment at the later hearing provided for such purpose.

In cases where written protests are filed and sixty percent (60%) of the owners or the owners of two-thirds (2/3) of the lots and lands within such proposed local improvement district have signed such protest, the board shall not be allowed to proceed with the creation of the local improvement district for a period of one hundred eighty (180) days. During this one hundred eighty (180) day period, the city council shall act as a review board for as much of the proposed local improvement district as is situated within the boundaries of any city, and the board of county commissioners shall act as a review board for that portion of the proposed local improvement district as is situated within the unincorporated portion of the county. As a review board, the city council or board of county commissioners shall review the record of the proposal, including conformance with procedural provisions of law. The city council or board of county commissioners shall also evaluate the necessity or desirability of the proposed local improvement district, and shall take into consideration the creation of the proposed local improvement district as it relates to the financial impact of the creation and implementation of the objectives of the proposed local improvement district upon the property owners within the proposed local improvement district, especially in light of projects recently undertaken or contemplated for the near future within the district.

After its evaluation, the city council shall approve, modify or reject the proposal for the creation of a local improvement district

for as much of the proposed district as is situated within the boundaries of the city, and the board of county commissioners shall approve, modify or reject the proposal for the creation of a local improvement district for as much of the proposed district as is situated within the unincorporated portion of the county.

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.

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 secre-

tary 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.

43-2509. LIMITATION ON ASSESSMENTS AGAINST PROPERTY. No district shall order any improvement to be paid for by local assessment where the estimated costs of such improvement, if such costs are to be assessed to the property in the local improvement district, or that portion of the estimated costs to be assessed, if a portion only of said total costs are to be assessed, when added to all other outstanding and unpaid local improvement assessments against the property included in the local improvement district, excluding penalties and interest, shall exceed the actual value of the real property in the local improvement district, including the value of the improvements thereon.

The board shall provide, by resolution, the method of determining the actual value of the real property including the improvements thereon in the local improvement district and when the valuation is so determined, such valuation shall be final and conclusive in the absence of fraud or gross mistake.

43-2510. PREPARATION OF ASSESSMENT ROLL AND NOTICE OF HEARING THEREON. After the contract has been awarded and at such time as the board shall determine, the engineer shall prepare a duly certified report to the board showing in detail the total cost and expenses of the improvements and the dollar amounts of the same payable from assessments and from other sources. The report shall also contain a form of assessment roll numbering each assessment, giving the name, if known, of the owner of each lot or parcel of property assessed, and showing the amount chargeable to each lot or parcel of property according to the method of assessment originally contemplated by the board subject to any variations therefrom as a result of the engineer's recommendation that benefits to be received by any lot or parcel of property warrant such a variation from the method chosen. Each lot or parcel of property shall be described with sufficient clearness to identify it, and if the engineer recommends any variations from the contemplated method of assessment, those variations shall be pointed out and the reasons for the same shall be given in the report.

Upon receipt of the report, the board shall cause the assessment roll contained therein to be filed in the office of the treasurer where it shall be available for public inspection. The board shall thereupon fix a time and place when and where the board will meet in open session and consider the report and the assessment roll and hear all objections to the assessment roll by the property owners of the

local improvement district.

43-2511. NOTICE OF HEARING ON ASSESSMENT ROLL. After the board fixes the time and place for said hearing on the assessment roll, the secretary of the district shall give notice by publication in the official newspaper of such district in three (3) successive issues if published in a daily newspaper, or by publication in two (2) issues if published in a weekly newspaper, the first of which publication shall be at least fifteen (15) days before the date fixed for hearing objections to said assessment roll, that such assessment roll is on file in his office. The notice shall further state the date, time and place at which the board will hear and consider objections to the assessment roll by the parties aggrieved by such assessments. The secretary shall, not less than fifteen (15) days before the date fixed for hearing objections to said assessment roll, mail a substantially similar notice to each owner of property if known, or his agent if known, within the limits of the local improvement district, addressed to such person at his post office address if known, or if unknown, to the post office in such district where the improvement is to be made. The mailed notice shall also state the amount of the individual assessment and that at the specified time and place the board will hold a hearing to hear and determine all objections to the regularity of the proceedings in making such assessment, the correctness of the assessment, and the amount levied on the particular lot or parcel in relation to the benefits accruing thereon and in relation to the proper proportionate share of the total cost of the improvements in the project. It shall further state that each owner of property within the district is given notice that in revising the assessment roll at or after the hearing, the board may increase any assessment or assessments up to twenty percent (20%) of the original amount thereof without giving further notice and holding a new hearing thereon. The owner or owners of any property which is assessed in such assessment roll, whether named or not in such roll, may, before the date and time fixed for the hearing, file with the secretary his objections in writing to said assessment.

43-2512. HEARING OBJECTIONS TO ASSESSMENT ROLL AND CONFIRMATION. At the time appointed for hearing objections to such assessment roll, the board shall consider the engineer's report and the assessment roll and shall hear and determine all objections which have been filed by any owner of property, or his agent, to the regularity of the proceedings in making such assessment, to the correctness of such assessment, to the amount levied on any particular lot or parcel of land, including the benefits accruing thereon and the proper proportionate share of the total cost of the improvements to be borne thereby and to the inclusion of any lot or parcel of land in the proposed district. The board shall have the power: to adjourn such hearing from time to time and, in its discretion, to revise, correct, conform or set aside any assessment and to order that such assessment be made de novo; and to exclude any lot or parcel of land from an assessment roll which, in the judgment of the board, it finds will not be benefited by improvements to be made. If any assessments are increased in an amount greater than twenty percent (20%) of the amount of the assessments as set out in the notice of the hearing, then a new notice of the hearing

shall be given and a new hearing held as aforesaid. No new hearing shall be required in the event that any assessments are decreased in any amount or are increased in an amount up to twenty percent (20%) of the original amount.

43-2513. CONFIRMATION OF ASSESSMENT ROLL. After said hearing the board shall pass a resolution confirming the assessment roll as corrected by them in relation to the benefits accruing thereon as a result of the improvements being made. The resolution shall be the final determination of the regularity, validity and correctness of the assessment roll, of each assessment contained therein, and of the amount thereof levied on each lot or parcel of land, which resolution shall contain a finding that each lot or parcel of land is benefited to the amount of assessment levied thereon subject to appeal as provided herein. Upon passage of the resolution, the secretary shall certify and file the confirmed assessment roll with the treasurer of the district and the assessments therein shall be due and payable to the treasurer within thirty (30) days from the date of the adoption of the resolution. The confirmed assessment roll and the assessments made by the confirmed assessment roll shall be a lien upon the property assessed from and after the date the following notice is recorded. Immediately upon passage of the confirming resolution the secretary shall file with the county recorder a notice which shall contain the date of the confirming resolution and a description of the area or boundaries of the local improvement district. If any assessment is not paid in full within said thirty (30) day period, such assessment shall become delinquent and shall be collected in the same manner and with the same penalties and interest added thereto as hereinafter provided for delinquent assessments. The board may, in the alternative, determine to make assessments unpaid at the end of said thirty (30) day period payable in installments and to issue and sell registered warrants or installment bonds payable from such unpaid installments as herein provided. If the board chooses to do so, it shall provide in said resolution that any property owner who has not paid his assessment in full within said thirty (30) day period will be conclusively presumed to have chosen to pay the same in installments, and the resolution shall then establish the number of years said installments shall run, the dates of payment of the same and the rate of interest that the unpaid assessments shall bear, which rate shall not be less than the rate of interest borne by the warrants or bonds payable therefrom, said interest running from the date of the passage of the assessment resolution, irrespective of the date of its official publication, and being payable at the same time and place as the installment payments of assessments. Said installments shall be due and payable in not to exceed thirty (30) years to the treasurer or other proper officer as provided by the board. The resolution shall establish the due date of the first installment payment and that the local or special assessments may be carried on the rolls of the district and collected as hereinafter provided. If any installment is not paid within twenty (20) days from the date it is due, the same shall become delinquent and the treasurer shall add a penalty of two percent (2%) thereto. In addition to any other method of collection provided in this code, the board may certify delinquent installments to the trea-

surer, and when so certified they shall be extended on the assessment rolls and collected as other assessments levied upon lands in the district. In the event that any property owner should choose to pay his assessment in full after such time as it has been conclusively presumed that he will pay in installments, such payment in full shall include the full amount of the unpaid assessment plus penalties and all interest payable on the same plus additional interest thereon at the rate provided in the bonds from the date of the last installment due to one (1) year after the next interest date of said bonds.

Any errors in description, ownership of property or amounts in any assessment resolution adopted pursuant to this section may be corrected by the passage of an amendatory resolution which need set forth only the corrected descriptions or amounts. The passage of such amendatory resolution shall serve only to postpone the thirty (30) day period for payment in full of the assessments actually affected by such amendatory resolution and the due dates of installments of such affected assessments shall be the same as the due dates of installments not affected. Notice of any assessments so affected shall be given in the same manner as hereinafter provided for the giving of notice of assessments.

43-2514. NOTICE AND PAYMENT OF ASSESSMENTS. Upon passage of the assessment roll, the treasurer of the district shall mail a postcard or letter to each property owner assessed at his post-office address if known, or if unknown, to the post office in the district where the improvement is being made, stating the total amount of his assessment, plus the substance of the terms of payments of the same as set out in the resolution confirming the assessment roll.

An affidavit of the mailing of the notice shall be filed, before the date of delinquency, in the office of the treasurer in the file of the local improvement district, but the failure of the treasurer to give any notice required in this section or to do any other act or thing required in this section, shall not affect the validity of the assessments or installments thereof due nor extend the time for payment, but shall subject the district to liability to a property owner for any damage sustained by the latter by reason of such failure.

43-2515. INSTALLMENT DOCKET. Whenever any improvement bonds or warrants are issued as herein provided, the treasurer shall immediately thereafter mark on the assessment roll of such local improvement district opposite each assessment which has been paid, the word "paid" together with the date of payment, and shall immediately thereafter enter in a docket to be kept for that purpose, known as "local improvement installment docket" under separate heads for each local improvement district, all unpaid assessments as shown on such assessment roll, said docket to be made up from the assessment roll, and shall contain in separate columns the number of the assessment, the name of the owner, the description of the property, the amount of the total assessment, the amount and date when due of each annual installment with interest added, and a blank column in which shall be marked the date of payment of each installment. Such docket shall stand thereafter as a lien docket for such assessments so shown until paid.

43-2516. APPEAL PROCEDURE -- EXCLUSIVE REMEDY. Any person who properly has filed objections to the assessment roll or any other person who feels aggrieved by the decision of the board in confirming the same shall have the right to appeal to the district court of any county in which the local improvement district or any portion thereof may be situated. Such appeal shall be made within thirty (30) days from the date of publication of the resolution confirming the assessment roll by filing a written notice of appeal with the secretary of the district and with the clerk of the district court aforesaid describing the property and objections of the appellant. The appellant shall also provide a bond to the district in a sum to be fixed by the court, but not less than two hundred dollars (\$200) with sureties to be approved by the court, conditioned to pay all costs to be awarded to the respondent upon such an appeal. After said thirty (30) day appeal period has run, no one shall have any cause or right of action to contest the legality, formality or regularity of said assessments for any reason whatsoever and, thereafter, said assessments and the liens thereon shall be considered valid and incontestable without limitation.

If an appeal is filed within said period, the case shall be docketed by the clerk of said court in the name of the person taking the appeal against the district as "an appeal from assessments." Said cause shall then be at issue and have precedence over all civil cases pending in said court, except proceedings under the act relating to eminent domain by cities and actions of forcible entry and detainer. Such appeal shall be tried in said court as in the case of equitable causes except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment insofar as the same affects the property of the appellant, from which judgment an appeal may be taken to the supreme court as provided by law. In case the assessment is confirmed, the fees of the secretary of the district for copies of the record shall be taxed against the appellant with other costs.

43-2517. ADDITIONAL IMPROVEMENTS. Whenever any assessment is levied on any property for further, separate or additional improvement under the provisions of this code or any law of this state, such assessment shall be a subsequent lien upon the property so assessed to the lien of the unpaid assessments theretofore made for the original improvement. Whenever any assessment is made for such further, separate or additional improvement on property on which an existing assessment has been levied for improvements, such further, separate or additional assessment for improvement shall not be construed or considered as for one and the same improvement, or for the same purpose or for the same benefit, or as a double assessment for improvements against the property being assessed for the payment of the cost and expense of such improvement but shall be considered and construed as a separate, distinct, single and independent improvement on and of benefit to the property so assessed. All assessments so levied or bonds or warrants issued payable from the same shall be considered and construed as assessments levied or bonds or warrants issued for separate, distinct, single and independent improvements and benefits on and to the property so assessed.

43-2518. REASSESSMENT OF BENEFITS. In all cases of assessments for local improvements of any kind against any property wherein said assessments have failed to be valid in whole or in part for want of form or sufficiency, informality, irregularity or nonconformance with the bylaws, resolutions or laws governing such assessments, the board shall be and is hereby authorized to reassess such assessments and to enforce their collection in accordance with the provisions of law existing at the time the reassessment is made. No mistake in description of the property or the name of the owner thereof shall affect the validity of any assessment or any lien created thereby under the provisions of this code, or any law of this state, unless such mistake or error renders it impossible to identify the property so assessed.

When for any cause, mistake or inadvertence, the amount assessed on any property is insufficient to pay the cost and expenses of the improvement made and enjoyed by the owner of such property, it shall be lawful, and the board is hereby directed and authorized, to make reassessments on said property sufficient in amount to pay for such improvements, the reassessment to be made and collected in accordance with the provisions of law existing at the time of its levy.

43-2519. LIEN OF ASSESSMENT -- FORECLOSURE. Assessments levied to pay the cost and expense of any improvement authorized by the provisions of this chapter shall constitute a lien upon and against the property upon which such assessment or assessments are made and levied from and after the date upon which the resolution levying such assessment or assessments is passed, which lien shall be superior to the lien of any mortgage or other encumbrance, whether prior in time or not, and shall constitute such lien until paid, and until paid, such lien shall not be subject to extinguishment for any reason whatsoever, including but not limited to the sale of the property assessed on account of the nonpayment of general taxes or the conveyance of such property by any means to the United States of America, or any agency thereof, the state of Idaho, or any county, city, irrigation district, school district, college district or other public body, agency or taxing unit in said state. When bonds have not been issued and said assessments made payable in installments as herein provided, such assessments shall be collected, or the property therein shall be foreclosed and sold for such assessments and costs, in a suit for that purpose by the district.

Such suit shall be in the name of the district as plaintiff and against any one (1) or more owners of property failing to pay such assessment or assessments as defendants. In any such proceedings where the court, trying the same, shall be satisfied that the improvements have been made or have been contracted for, which according to the true intent of this code would be properly chargeable to such property, a recovery shall be permitted and the lien enforced to the extent of the cost and expenses of the improvement which would be chargeable on such property notwithstanding any informality, irregularity or defect in any of the proceedings of such district or any of its officers, and such property shall be ordered sold for the payment of the assessment or assessments against it and the costs and expenses of such suit including reasonable attorney's fees to be fixed by the court and prorated to each separate piece of property to be sold.

43-2520. SEGREGATION OF ASSESSMENTS. Whenever any land against which there has been levied any special assessment by any district shall have been sold in part or subdivided, the board of that district shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the district which levied the assessment. If the board determines that a segregation should be made, it shall by resolution order the treasurer to make segregation on the original assessment roll of the local improvement district as directed in the resolution and in accordance with section 43-701, Idaho Code. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be filed with the county recorder. The board may require, as a condition to the order of segregation, that the person seeking the segregation pay the district the reasonable engineering and clerical costs incident to making the segregation. No segregation need be made if the board shall find that by such segregation the security of the lien for the assessment will be so jeopardized as to reduce the security for any outstanding local improvement district obligations payable from such assessment.

43-2521. BONDS -- REGISTERED WARRANTS -- INTERIM WARRANTS -- ELECTION NOT REQUIRED. If the board determines to make assessments payable in installments as is provided in section 43-2515, Idaho Code, it shall by resolution authorize to be issued, in the name of the district, improvement bonds of the local improvement district payable from assessments levied against the property within the local improvement district. Such bonds shall be payable each year from and after the date of the bonds and shall be of such denomination and bear interest, payable annually, at such rate as is determined by the board, but in no event shall such rate of interest be greater than the rate of interest borne by the unpaid assessments.

The bonds shall be in such form and denomination as may be provided by the board and they shall mature serially over a period not exceeding thirty (30) years. The board may reserve the right to redeem any of the bonds at its option on any interest payment at such price or prices as determined by the board. The bonds shall be signed by the president of the district, and shall be countersigned by the treasurer and attested by the secretary of the district. No bond or coupon shall be invalid because an officer whose manual or facsimile signature thereon has ceased to hold office at the time of the delivery of the bonds so long as he held the office at the time such signature was placed on the bond or coupon. The coupons attached thereto shall bear the facsimile signatures of said officers and each bond shall have the seal of the district affixed thereto. Each bond shall provide that the principal thereof and the interest thereon are payable solely from the principal of and interest on the unpaid assessments levied in the local improvement district to pay the total cost and expenses of the

project concerned.

In lieu of bonds, registered warrants may be issued under the same circumstances and in the same manner as bonds, such warrants to be issued in payment of any or all costs or expenses of the improvements to the amount said costs or expenses were set out in the engineer's report. The warrants shall be redeemable in numerical order and further shall be subject to all provisions of this code relating to local improvement bonds so far as the same may be applicable.

If the board shall determine to issue and sell bonds, it may for the purpose of meeting any costs and expenses of making the improvements, as the same are installed prior to the sale of the bonds, issue interim warrants of the local improvement district, payable to the contractor or other proper person upon estimates of the engineer, bearing interest at a rate provided by the board, which interim warrants together with the interest due thereon at the date of the issue of the bonds, shall be redeemed and retired from the proceeds of the sale of the bonds or prepayment of assessments.

Bonds issued hereunder shall have all the requisites of negotiable paper under the uniform commercial code, and shall not be invalid for irregularity or defect in the proceedings for their issuance, sale or delivery, and shall be incontestable in the hands of bona fide purchasers or holders for value thereof. Nothing herein contained shall prohibit any district from issuing bonds or warrants in the denomination of one hundred dollars (\$100), or an even multiple thereof, except that bond number one (1) of any issue may be of a denomination other than one hundred dollars (\$100).

No election shall be required for the approval of issuance of bonds, registered warrants or interim warrants of any local improvement district formed under the provisions of this chapter, and specifically, but not by way of limitation, districts issuing bonds or warrants under the provisions of this chapter shall not be required to comply with the election requirements contained in section 43-401, Idaho Code.

43-2522. LIABILITY OF DISTRICT. The holder of any bond, issued under the authority of this code, shall have no claim therefor against the district by which the same is issued, except to the extent of the funds created and received by assessments for the applicable bond issue against the property within any local improvement district as herein provided and to the extent of the local improvement guarantee fund for the applicable bond issue which may be established by any such district under the provisions of this code, but the district shall be held responsible for the lawful levy of all special taxes or assessments herein provided and for the faithful accounting of settlements and payments of the special taxes and assessments levied for the payment of the bonds as herein provided. The owners and holders of such bonds shall be entitled to complete enforcement of all assessments made for the payment of such bonds. A copy of this section shall be plainly written, printed or engraved on the face of each bond so issued.

43-2523. BOND AND INTEREST FUNDS. Once bonds are issued as provided herein, any funds paid as installment payments of assessments

pledged to the payment of such bonds shall be kept in a fund known as the bond fund of the local improvement district and any funds paid as interest on said installment payments of assessments shall be kept in a fund known as the interest fund of the local improvement district. The funds shall be deposited in such bank or banks as are designated as depositories of public moneys of such irrigation districts under the laws of this state, or invested in bonds or warrants of the district. Interest received on such funds so deposited or invested shall be placed to the credit of the fund from which it is earned. Maturing bonds shall be paid from the bond fund and the interest on the bonds, when due, shall be paid from the interest fund. If there is sufficient money in the bond fund to pay the principal of one (1) or more bonds, the treasurer may call in and pay such bonds as of the next interest payment date in such manner as may be provided by the board at the time of the issuance of the bonds. The bonds to be called shall be selected by lot and shall, in the event less than all of the outstanding bonds are to be redeemed, insofar as can be done taking into consideration the denominations of the outstanding bonds, represent an equal amount of bonds from each maturity outstanding at the time of the redemption.

43-2524. REISSUE OF BONDS. Where any bonds issued under this code are declared invalid or void by order or decree of court, which may be legally reissued, the board of such district shall, by resolution, provide for the reissuance thereof at the same rate of interest and in such amount as will cover the principal and interest due on said bonds, and the resolution providing for such reissue shall provide for the surrender and cancellation of such bonds upon which there has been a default or which have been declared invalid or void and the lien created by the levy of such assessment or assessments as herein provided shall not be deemed to have been lost or waived by such reissue but shall remain in full force and effect.

43-2525. RIGHTS AGAINST ASSESSMENTS. The said bonds of any local improvement district as herein provided, when sold as hereinbefore provided, shall transfer to the owner or holder of such bonds all the rights and interest of such district in and with respect to every such assessment and the lien thereby created against the property of each owner assessed as shall not have availed himself of the provisions of this chapter, in regard to the redemption of his property as aforesaid, and shall authorize owners and holders of such bonds to receive and have collected the assessment or assessments embraced in any such bonds through any of the methods provided by law for the collection of assessments for local improvements.

Whenever any installment of an assessment or the interest thereon made for the payment of principal, or interest on such bonds so issued, is not paid when due and shall become delinquent, the district may by a resolution duly adopted declare all unpaid installments against any property to pay the cost and expenses of such improvement to be immediately due, payable and delinquent, and may thereupon cause a delinquency certificate to be issued against said property for the whole of the unpaid assessment against it in the manner hereinafter provided for issuance of delinquency certificates upon any installment

of such assessment(s) becoming delinquent, and any such board must pass such resolution upon the written request of the holders of one-half (1/2) of any such bond issue, filed with the secretary.

43-2526. PUBLICATION AND CONCLUSIVENESS OF PROCEEDINGS. The board may provide for the publication of any resolution or other proceeding adopted by it pursuant to this code in the official newspaper of the district. For a period of thirty (30) days after such publication any person in interest shall have the right to contest the legality of such resolution or proceeding or any bonds which may be authorized thereby. No contest or proceeding to question the validity or legality of any resolution or proceeding, or any bonds which may be authorized thereby, passed or adopted under the provisions of this code shall be brought in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the date when the resolution or proceeding was published, and after such time the validity, legality and regularity of such resolution or proceeding or any bonds authorized thereby shall be conclusively presumed. If the question of validity of any bonds issued pursuant to this code is not raised within thirty (30) days from the date of publication of the resolution or proceeding issuing said bonds and fixing their terms, the authority to issue the bonds, the legality thereof and of the assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

43-2527. CONSOLIDATED LOCAL IMPROVEMENT DISTRICTS AUTHORIZED. Solely for the purpose of issuing bonds, registered warrants or interim warrants, the board of any district may authorize the establishment of consolidated local improvement districts. The original local improvement districts so consolidated need not be contiguous. If the board orders the creation of such consolidated local improvement districts, the moneys received from the installment payment of the principal of and interest on assessments levied within the original local improvement districts shall be deposited in a consolidated local improvement district bond fund and interest fund to be used to pay the principal of and interest on the outstanding consolidated local improvement district bonds or warrants.

43-2528. DELINQUENT INSTALLMENTS. If any installment or payment is not made as provided hereinbefore and is in default, it shall then become delinquent.

43-2529. DELINQUENT CERTIFICATES. As soon as any assessment or installment thereof, of any local improvement district shall become delinquent, the treasurer shall, if such assessment be collected in one (1) payment, mark the same delinquent on the assessment roll, or if for an installment of an assessment, on the local improvement installment docket, and shall add to the amount shown on said assessment roll, or installment docket, a penalty of two percent (2%) thereon. Within ten (10) days thereafter the treasurer shall prepare and issue to the district in which such local improvement district is located, a delinquency certificate to the property included in each such delinquent assessment or installment, which certificate shall

have the force and effect of a sale of said property to the district for the amount of the delinquent assessment or installment plus penalty, said certificate shall bear date as of the time such assessment or installment became delinquent and shall be for the amount thereof plus the penalty charged thereon. Such certificate shall contain: the description of the property to be sold; the name of the person assessed, if known, or if unknown, that fact; the amount of the assessment or installment, plus penalty thereon; the number of the assessment and the name of the local improvement district in which assessed; and the date when such certificate will go to deed and shall bear interest from date thereof at the rate of ten percent (10%) per annum. Such certificates shall be made in duplicate, bound together in books in numerical order and filed in the office of the treasurer; provided, that after one (1) such certificate has been issued no further delinquency certificate shall be issued for subsequent installments of the same assessment, except as hereinafter provided, and whenever any subsequent installment shall thereafter become delinquent the treasurer shall so mark the same in the installment docket and add the penalty thereto, as hereinbefore provided, and the same shall draw interest at the rate of ten percent (10%) per annum from date of delinquency until the end of the month in which it is paid.

43-2530. DELINQUENT CERTIFICATE REGISTER. Within twenty (20) days after preparing and issuing any delinquency certificate the treasurer shall enter the same in a book to be kept by said treasurer known as "Local Improvement District Delinquency Certificate Register," which register shall contain, in proper columns: the number of the assessment; the name of the local improvement district in which assessed; name of the person to whom assessed, if known; description of the property sold, corresponding with the description in the certificate and the assessment roll; and the amount of assessment and penalty, and the treasurer must regularly number each entry in said register on the margin of said book and put a corresponding number on each original and duplicate delinquency certificate. Such register must contain blank spaces following each entry of a delinquency certificate therein, in which may be entered the name of an assignee thereof, the date of such assignment and the amount paid to the assignee, the name of a redemptioner thereof, the date of such redemption and the amount paid by such redemptioner. Such book or register shall be retained by the treasurer and become a part of the records of his office. From and after entry in such register and until two (2) years from its date, any such certificate, unless redeemed, may be purchased from the treasurer in the manner hereinafter provided.

43-2531. ASSIGNMENT OF DELINQUENT CERTIFICATES. Whenever any person shall tender to the treasurer in cash the amount of any such certificate and interest thereon at the rate of ten percent (10%) per annum from date of such certificate to the end of the month in which such purchase is made, together with any subsequent installments then due with penalties and interest thereon, the treasurer shall assign such delinquency certificate to the purchaser by making and executing for and on behalf of the district the blank assignment on both the original and duplicate thereof, and shall deliver the original certif-

icate so assigned to the purchaser. Whenever the purchaser shall be required to pay subsequent assessments in addition to the amount of such delinquency certificate, the fact of such payment and the amount thereof including penalty and interest, shall be endorsed on the original and duplicate certificate so assigned. Thereafter the treasurer shall immediately make the proper entries showing such assignment in the local improvement district delinquency register, and in the installment docket; provided, that past due interest coupons and past due bonds of the local improvement district for which such certificate was issued shall be received by the treasurer, at par and accrued interest in payment of such certificates. Such bonds and coupons shall be forthwith cancelled by the treasurer.

43-2532. FORM OF ASSIGNMENT -- ASSIGNMENT BY PURCHASER. The assignment prescribed by the preceding section must be substantially in the following form, and endorsed on the certificate:

ASSIGNMENT BY TREASURER

State of Idaho

ss

.....
Irrigation District

For and in consideration of the sum of \$... paid to said district, the receipt whereof is hereby acknowledged, I do hereby assign to whose post-office address is all the right, title and interest of the said district in and to the within and foregoing delinquency certificate.

In witness whereof, I have hereunto set my hand at, Idaho, this day of, 19...

.....
Treasurer of the Irrigation District
.....

Such delinquency certificate may be assigned by the purchaser; provided, that such assignment must be attached to the original delinquency certificate and a duplicate of such assignment must be delivered to the treasurer who must attach the same to the duplicate delinquency certificate in his office.

The assignment of any delinquency certificate by the purchaser thereof or any assignee of such purchaser must be executed in duplicate and acknowledged as provided by law in the conveyance of real property and such assignment must be substantially in the following form, to wit:

"For value received, I hereby assign to whose post-office address is, all my right, title and interest in and to delinquency certificate No. ..., issued by the treasurer of Irrigation District, Idaho, on account of delinquent local improvement district assessments for the year 19.., on the property described in said certificate.

In witness whereof, I have hereunto set my hand this day of, 19...

....."
(acknowledgment)

43-2533. REDEMPTION. At any time within two (2) years from the date of any delinquency certificate, the owner of the property described therein, or anyone on his behalf, may redeem such property by paying to the treasurer the amount stated in such certificate together with interest thereon at the rate of ten percent (10%) per annum, from date thereof to the last day of the month in which such redemption is made. Thereupon the treasurer shall issue to the redemptioner a certificate of redemption which shall state the name of the redemptioner, the date of redemption, the number of the certificate so redeemed, the description of the property contained therein, and the name of the local improvement district for which said certificate was issued. In case said certificate has not been assigned, the treasurer shall note such upon the original and duplicate delinquency certificate; if assigned upon the duplicate certificate the fact that the same has been redeemed, the date of redemption and shall note the same upon the local improvement delinquency certificate register and the local improvement installment docket; provided, that no redemption of any such certificate shall be allowed unless all assessments which have become due subsequent to the one for which said delinquency certificate shall have been issued with penalties, and interest at the rate of ten percent (10%) per annum from date of said delinquency to the end of the month in which the same is redeemed, shall be paid, which fact together with the amount paid shall be stated upon the redemption certificate. The money received from the redemption of any property described in a certificate which has been assigned shall be deposited by the treasurer to the credit of the person named in the last assignment of such certificate. The treasurer shall thereupon give notice to such person at the address shown by the record of such deposit, and such person shall thereafter be paid the same by the treasurer, without additional interest, upon surrender of such certificate to the treasurer who shall mark the same "paid" and hold it as a voucher.

43-2534. DEED. If the property described in any delinquency certificate is not redeemed within two (2) years from the date thereof, the treasurer, after having given notice as hereinafter required, shall issue a deed thereto to the district, or if the same has been assigned as hereinbefore provided, then to the person holding the original delinquency certificate under assignment, upon request therefor, and upon the delivery to the treasurer of such original certificate and filing proof of having given notice as required by the treasurer before making a deed to the district. Such deed shall recite substantially the matter contained in the certificate and that no person redeemed the property within the time allowed, by law, for its redemption. It shall be signed and acknowledged by the treasurer in the manner required, by law, to entitle the same to be recorded under the laws of this state; provided, that such deed shall not be issued to an assignee until he has paid all subsequent installments and assessments of the local improvement district then delinquent or due upon the property described in the delinquency certificate, together with the penalties and interest thereon. Such deed to an assignee shall be made subject to all unpaid installments not then due and subject to all regular or special assessments of the district, not

related to the local improvement district.

43-2535. NOTICE OF EXPIRATION OF TIME OF REDEMPTION. The treasurer shall, at least one (1) month and not more than three (3) months before the expiration of the time of redemption of any property, serve or cause to be served, a written or printed, or partly written and partly printed, notice on the person or persons in the actual possession or occupancy of such land or lots, and shall also, within the same time, serve upon or mail to, the person in whose name the same stands upon the assessment records in the county assessor's office, a copy of said notice; which notice shall state when the delinquency certificate was made, in whose name the property was assessed, the description of the land or lots, the name of the local improvement district for which assessed, the amount of the assessment or installment, and when the time of redemption will expire. The treasurer shall, at the same time, send a similar notice, by mail, to each mortgagee or other holder of a recorded lien against such land, in each case where such mortgagee or lienholder has previously filed in the office of the treasurer a written request for such notice and paid the fee therefor, which request shall include the name and address of the mortgagee, the name of the reputed owner of the land, a description of the land and the date of the expiration of the mortgage or lien; no notice need be sent after the date of expiration, unless a further request therefor be duly filed. If the mortgagee or lienholder shall furnish a duplicate form of request for that purpose the treasurer shall certify thereon to the filing of the request and deliver the same to the party filing it. If there is no person in actual possession or occupancy of such land or lot and if the persons in whose name it stands, upon diligent inquiry cannot be found in the state, then the treasurer shall, within the same time, post or have posted, a copy of said notice in a conspicuous place upon said land or lots and in a substantial manner.

Whenever any notice is mailed, as herein required, the fact that the addressee does not receive it shall not in any manner invalidate or affect the proceedings herein provided.

43-2536. PROOF OF NOTICE. The treasurer shall, before issuing any deed to the district, make and file his affidavit showing a full compliance with the requirements of the preceding section as to giving notice of the expiration of the period of redemption; before issuing a deed to the holder of any delinquency certificate, the treasurer shall require that affidavits be filed showing a complete compliance with the provisions of the previous section as to giving such notice. Such proof shall be filed in the office of the treasurer and remain a permanent record in such office. Any person making a false affidavit as to any fact required herein shall be guilty of perjury.

43-2537. EFFECT OF DEED AS EVIDENCE. The matters recited in the delinquency certificate must be recited in the deed and such deed duly acknowledged or proved shall be prima facie evidence:

(1) That the local improvement district was created, the assessment made and the work and improvement done in the manner provided by law;

(2) That all notices were given, all hearings were had, orders made and resolutions passed and adopted required by law, and that all the proceedings up to the execution and delivery of such deed were had and done in the manner required by law;

(3) That the assessments were not paid, the delinquency entries were properly made and delinquency certificate properly issued, as prescribed by law, and by the proper officer;

(4) That the property was not redeemed, that the notice required to be given before deed was taken was properly given as required by law, and that the person who executed the deed was the proper officer.

43-2538. DELINQUENCY CERTIFICATE FOR SUBSEQUENT INSTALLMENTS. Whenever any delinquency certificate has been assigned, as hereinbefore provided, and the time for redemption has expired and there are outstanding, against the property covered by said certificate, any delinquent installments subsequent in time to the installment for which the property was sold, then the treasurer shall issue to the district a delinquency certificate for such past due installments in the same manner, as hereinbefore provided, and shall cancel the previous delinquency certificate and the same shall be of no further force and effect. Such delinquency certificate for subsequent installments may be assigned in the same manner, as hereinbefore provided, and have the same force and effect.

43-2539. FEES OF TREASURER. The treasurer shall receive the following fees, which, when paid, shall be credited to the general fund of the district: for issuing any delinquency certificate ten dollars (\$10.00) to be included in the amount of the certificate; for making any deed ten dollars (\$10.00), to be paid by the person to whom made; for giving notice to a mortgagee or lienholder five dollars (\$5.00), to be paid by such person; for giving notice of expiration of period of redemption five dollars (\$5.00). In all cases where the property is deeded to the district the fees shall be charged to the amount for which the deed is taken and shall be paid upon the sale of the property, or the sale of the delinquency certificate.

43-2540. SUIT TO QUIET TITLE. Whenever the necessary costs and attorney's fees have been advanced by the holders of the bonds of the district or any prospective purchaser or other person, it shall be the duty of the board of such district to cause the attorney for the district to commence suit to quiet title to the property described in said deed in the name of the district and to secure the possession of the property; provided, that the property described in any number of tax deeds so made to the district and against any number of owners of property may be included in the same suit.

43-2541. SALE OF PROPERTY DEEDED TO DISTRICT. At any time after acquiring title and possession of any property, as hereinbefore provided, the district may sell such property to any purchaser upon receiving therefor a sum not less than the amount for which the property was sold to the district and by the payment of all installments of assessments subsequent to the one (1) for which such property was sold and then due together with the penalties and interest thereon.

The purchaser shall take such property subject to any unpaid general taxes and assessments and to all local improvement district installments not then due, and the district shall thereafter collect such installments in the manner provided by this code. When such purchase is made and the money paid therefor, the district shall issue a deed to the purchaser signed by the president and attested by the secretary, which deed shall be executed and acknowledged in the manner required, by law, to entitle the same to be recorded under the laws of this state.

In selling such property and in conveying title thereto the provisions of sections 43-1508 and 43-1509, Idaho Code, shall not apply and compliance with the procedures set forth in section 43-318, Idaho Code, shall not be required, but no conveyance under this section shall be valid unless it be approved by an affirmative vote of more than one-half (1/2) of the full board.

43-2542. SALE OF PROPERTY AFTER MATURITY OF BONDS. Within thirty (30) days after the maturity of the last installment of any issue of bonds of a local improvement district, if any such bonds or interest coupons shall remain unpaid, any property remaining unsold, to which the district has taken title by reason of assessment of such local improvement district, shall be appraised and immediately after said appraisal such property shall be offered for sale by giving notice of the time and place of sale thereof by publication of such notice in a newspaper published in the district for ten (10) consecutive issues if a daily paper, or in two (2) consecutive issues if a weekly paper, or if there be no newspaper published in such district then in a newspaper having general circulation therein, the date of sale to be not less than twenty (20) days from the date of the first publication of such notice. At the time and place designated in the notice the treasurer shall offer such property for sale to the highest bidder, but no sale shall be made for less than the appraised value. If no bid be received for a sum equal to or greater than the appraised value, then the sale may be postponed for not to exceed thirty (30) days, and shall be readvertised, and at the time to which such sale was postponed shall again be offered for sale and sold to the highest bidder. Upon the sale of any property and the payment therefor, a deed shall be executed to the purchaser in the same manner, as provided for the execution of deeds in section 43-2541, Idaho Code.

43-2543. DISPOSITION OF FUNDS. All money received by the treasurer on account of the payment of assessments or installments thereof, the assignment or redemption of delinquency certificates, or for rents, issues and profits, or from the sale of any property, title to which is held by the district for the benefit of any local improvement district, less any expenses of securing possession of said property, or for the care and operation and sale of the same, shall be deposited to the credit of the interest fund and bond fund of the local improvement district, in the same proportion as the assessment or installments for which the property was taken. Any money left in a local improvement district interest or bond fund or any money derived from the rental or sale of any real property acquired by the district through the sale for delinquent assessments or installments shall,

after all warrants, bonds and coupons of said local improvement district have been paid in full, be credited to the general fund of the district.

43-2544. DELINQUENT CERTIFICATE NOT ASSIGNABLE DURING PENDENCY OF ACTION. No certificate of delinquency as hereinbefore provided, shall be assigned, or any property sold, to which the district has taken a deed, on account of any assessment, or installment thereof, during the pendency of any proceeding in court challenging the validity of such assessment.

43-2545. DUTIES OF OFFICERS. When the board shall decide that it is to the best interest of the district that the duties in this code designated to be performed by the treasurer should be done and performed by the secretary of such district, they may at their option, by resolution, duly presented and approved by such board assign such duties to the secretary of such district; provided, that the duty of receiving any funds collected by the secretary and the depositing and disbursing of such funds by order of the board shall always be and remain the duty and responsibility of the treasurer. The board shall, in said resolution, devise a proper system or plan whereby the secretary may pay to the treasurer all moneys collected by him and take receipts therefor.

43-2546. LOCAL IMPROVEMENT GUARANTEE FUND -- CREATION OF FUND. Any district may by resolution of appropriation or by levy of a tax of not to exceed one (1) mill in any one (1) year upon the lots or lands in the local improvement district, or by appropriation from such other sources of the local improvement district as may be determined by the board, create a fund for the purpose of guaranteeing, to the extent of such fund, the payment of bonds or warrants and interest thereon, hereafter issued against any local improvements therein; provided, that such sum so levied or appropriated in any year shall be more than sufficient to pay the outstanding warrants of said fund and to establish therein a balance, which combined levy and appropriation in any one (1) year shall not exceed five percent (5%) of the outstanding obligations thereby guaranteed; provided further, that the board shall not levy any tax as herein provided when the amount of moneys in the local improvement guarantee fund equals ten percent (10%) of the total outstanding obligations thereby guaranteed. The tax levies herein authorized and directed shall be additional to and, if need be, in excess of any and all statutory limitations. The fund so created shall be designated local improvement guarantee fund.

43-2547. BONDS, WARRANTS AND COUPONS, WHEN PAID OUT OF FUND -- NONPAYMENT FOR WANT OF FUNDS -- INTEREST. Whenever any district has established such local improvement guarantee fund, and any bond, warrant or coupon drawn against any local improvement fund is presented to the district for payment and there is not sufficient amount in said local improvement fund against which to draw to pay the same, unless otherwise requested by the holder, payment therefor shall be made by warrant drawn against the local improvement guarantee fund. Such warrants when presented to the treasurer for payment, if not paid, shall

be registered and draw interest at a rate as may be fixed by the board. Neither the holder nor the owner of any bond or warrant issued under the provisions of this act shall have any claim therefor, except for payment from the special assessments made for the improvement for which said bond or warrant was issued, and except as against the local improvement guarantee fund herein provided, and the district shall not be liable to any holder or owner of such bond or warrant for any loss to the guarantee fund occurring in the lawful operation thereof by the district.

43-2548. SUBROGATION OF DISTRICT TO RIGHTS OF PAYEE -- SURPLUS FUNDS -- PAYMENT INTO FUND -- PREFERENCES. Whenever there shall be paid out of the local improvement guarantee fund, any sum on account of principal or interest of a local improvement bond or warrant, the district, as trustee for the fund, shall be subrogated to all the rights of the holder of the bond or interest coupon or warrant so paid, and the policies thereof, or the assessment underlying the same, shall become part of the guarantee fund. There shall be paid into the guarantee fund any surplus remaining in any local improvement fund after the payment of all outstanding bonds or warrants, payable out of such local improvement fund. Bonds or warrants guaranteed by such fund shall have no preference except in the order of presentation for payment.

43-2549. MAINTENANCE AND OPERATION AND SOURCES OF FUND. The board shall prescribe rules and regulations for the maintenance and operation of the guarantee fund not inconsistent herewith. After the creation of such fund, all money derived from the assignment of delinquency certificates, redemptions, sale of property under foreclosure for delinquent local improvement district assessments or from the rent or sale of property, title to which has been obtained by the district pursuant to this code, shall be paid into the local improvement guarantee fund, and all delinquency certificates issued and such property acquired shall be held by the district for the benefit of such guarantee fund. Money from the guarantee fund may be used to redeem property subject to local improvement assessments from general tax delinquencies, underlying bonds or warrants guaranteed by the fund, or to purchase such property at county tax sales or otherwise, from the county for the purpose of protecting the guarantee fund. After so acquiring title to real property, the district may lease or sell and convey the same for such price and on such terms as may be determined by the board, any provision of law or resolution to the contrary notwithstanding, and all proceeds resulting therefrom shall belong to and be paid into the guarantee fund, provided however, that in the event the district purchases such property at tax sale or otherwise it shall not be sold for a lesser sum than the district paid therefor.

43-2550. REPLENISHMENT OF FUND -- WARRANTS -- ISSUANCE AGAINST FUND -- TAX LEVY. Whenever there is not a sufficient amount of cash in said local improvement guarantee fund, at any time to pay any and all warrants, together with interest thereon, drawn against said fund, the board may replenish said local improvement guarantee fund by transferring or appropriating to it, moneys from the general fund of the dis-

trict or other available sources, as may be determined by said board, subject however, to the limitations herein prescribed. Warrants drawing interest, as herein provided, may be issued against said local improvement guarantee fund to meet any financial liability against it; but at the time of making its next annual levy upon lots or lands in the local improvement district, the district shall provide for the levy of a sum sufficient with other resources of the guarantee fund to pay warrants so issued and outstanding, the tax for this purpose not to exceed one (1) mill, based on the market value fixed by the county assessor in any one (1) year.

43-2551. BONDS AND WARRANTS -- REVENUES FROM WHICH PAYABLE. The holder or owner of any local improvement bond or warrant shall have no claim thereon against the district by which the same is issued, except to the extent of the funds created and received by assessments against the property within any local improvement district and to the extent of his pro rata share of any local improvement guarantee fund, authorized and created under the provisions of this chapter.

43-2552. BONDS PAYABLE FROM FUND. Whenever a district has created a local improvement guarantee fund, under the provisions of this act, any local improvement district bonds issued thereafter shall provide that the principal sum of such bonds and the interest thereon shall be payable out of the local improvement fund created for the payment of cost and expenses of the improvement or out of any local improvement guarantee fund, duly authorized and created, and not otherwise.

43-2553. EXCESS IN FUND -- DISPOSITION. When a local improvement guarantee fund duly created in any district exceeds in amount of moneys held therein by ten percent (10%) of the total outstanding obligations thereby guaranteed, then the board may, by resolution, authorize the treasurer or appropriate official of said district to return and pay such said excess or any part thereof to the general fund of said district to return and pay from such said excess or any designated part thereof all or any part of local improvement district bonds of said district then issued and outstanding or to be issued. The passage of such resolution shall require the affirmative vote of at least two-thirds (2/3) of the full board.

43-2554. RESERVE FUND AUTHORIZED. For the purpose of securing the payment of the principal of and interest on an issue of local improvement bonds, notes, warrants or other short-term obligations, the board may create a reserve fund for each obligation in addition to or in lieu of a guarantee fund. The reserve fund shall be separate and apart from any guarantee fund and in an amount not exceeding ten percent (10%) of the principal amount of the bonds, notes or warrants issued. The cost of a reserve fund may be included in the cost and expense of any local improvement for assessment against the property in the local improvement district to pay the cost, or any part thereof. The reserve fund may be funded from the proceeds of the bonds, notes, warrants, or other short-term obligations, from special assessment payments, or from any other money legally available therefor. Reserve fund balances in excess of ten per cent (10%) of the principal amount of the bonds

outstanding shall be used to reduce the annual assessments of those participants in the respective local improvement district whose prior assessments have been paid. Whenever the reserve fund is insufficient to meet claims for payment of principal and interest against the reserve fund, the board may appropriate funds from such other legally available sources of the local improvement district as may be determined by the board.

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, 1993.

CHAPTER 408
(S.B. No. 1196)

AN ACT

RELATING TO GAMING COMPACTS BETWEEN INDIAN TRIBES AND THE STATE OF IDAHO; PROVIDING LEGISLATIVE INTENT; AND AMENDING CHAPTER 4, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-429A, IDAHO CODE, TO PROVIDE FOR NEGOTIATIONS BETWEEN THE STATE AND INDIAN TRIBES REGARDING GAMING, TO AUTHORIZE COMPACTS, TO PROVIDE PROCEDURES, TO PROVIDE WHEN COMPACTS MUST BE RATIFIED BY THE LEGISLATURE, TO PROVIDE LIMITATIONS AND TO PROVIDE FOR NO WAIVER OF DEFENSES OR IMMUNITIES; AND DECLARING AN EMERGENCY.

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

SECTION 1. LEGISLATIVE INTENT. The purpose of this act is to designate the governor to represent the state of Idaho in any negotiations required between the state and a federally recognized Indian tribe pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. section 2701 et seq., and to provide for state approval of certain gaming compacts.

SECTION 2. That Chapter 4, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-429A, Idaho Code, and to read as follows:

67-429A. STATE-TRIBAL GAMING COMPACTS. (1) The governor or his designee may represent the state of Idaho in any gaming negotiations the state is requested to participate in pursuant to 25 U.S.C. section 2701 et seq. The director of the legislative council or his designee may attend all negotiations pursuant to this section as an observer and shall brief the membership of the legislative council on the status of the negotiations.

(2) The state may enter into those gaming compacts negotiated with Indian tribes pursuant to this section provided:

(a) The compact only authorizes an Indian tribe to conduct those

forms of gaming authorized by Idaho law;

(b) The compact does not obligate the state of Idaho to appropriate state funds; and

(c) The governor serves a copy of the compact on each member of the legislative council at least twenty-one (21) calendar days before the compact is signed.

(3) Any proposed gaming compact not complying with subsection (2) of this section shall be null and void unless ratified by both houses of the legislature by adoption of a concurrent resolution.

(4) No power, privilege or other authority shall be exercised under the provisions of this section where otherwise prohibited by the constitution or laws of the state of Idaho or the United States.

(5) The provisions of this section shall not be construed as a waiver of any defenses or immunities to which the state of Idaho is entitled under either the constitution or the laws of the state of Idaho or the United States.

SECTION 3. 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, 1993.

CHAPTER 409
(S.B. No. 1220)

AN ACT

RELATING TO THE EDUCATION OF GIFTED AND TALENTED CHILDREN; AMENDING SECTION 33-2003, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD OF EDUCATION THROUGH THE STATE DEPARTMENT OF EDUCATION SHALL DETERMINE ELIGIBILITY CRITERIA AND ASSIST SCHOOL DISTRICTS IN DEVELOPING A VARIETY OF FLEXIBLE APPROACHES FOR INSTRUCTION AND TRAINING THAT MAY INCLUDE ADMINISTRATIVE ACCOMMODATIONS, CURRICULUM MODIFICATION AND SPECIAL PROGRAMS FOR GIFTED AND TALENTED CHILDREN.

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

SECTION 1. That Section 33-2003, Idaho Code, be, and the same is hereby amended to read as follows:

33-2003. RESPONSIBILITY OF SCHOOL DISTRICTS FOR EDUCATION OF GIFTED/TALENTED CHILDREN. Each public school district is responsible for and shall provide for the special instructional needs of gifted/talented children enrolled therein.

Public school districts in the state shall provide instruction and training for children between the ages of five (5) years and eighteen (18) years who are gifted/talented as defined in this chapter and by the state board of education. The state board of education shall, through its department of education, determine eligibility criteria and ~~special personnel, programs of instruction and minimum standards for classrooms and equipment to be used in administering the provisions of this chapter~~ assist school districts in developing a variety

of flexible approaches for instruction and training that may include administrative accommodations, curriculum modification and special programs.

Approved April 1, 1993.

CHAPTER 410
(S.B. No. 1274)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE DEPARTMENT OF COMMERCE FOR FISCAL YEAR 1994; AND REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES.

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

SECTION 1. It is legislative intent that the Department of Commerce maintain the Mountain Home Air Base Action Plan from the appropriation provided in Section 2.

SECTION 2. There is hereby appropriated to the Department of Commerce the following amounts from the listed funds to be expended according to designated expense classes for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General					
Fund	\$1,354,000	\$ 997,800			\$2,351,800
Tourism					
Promotion					
Fund	358,900	1,407,600	\$5,000	\$1,296,100	3,067,600
Seminars and					
Publications					
Fund		349,000			349,000
Miscellaneous					
Revenue					
Fund		19,500			19,500
Federal Grant					
Fund	365,400	120,100		8,624,900	9,110,400
TOTAL	\$2,078,300	\$2,894,000	\$5,000	\$9,921,000	\$14,898,300

SECTION 3. There is hereby reappropriated to the Department of Commerce from the unexpended and unencumbered balance of General Fund moneys appropriated in Section 2, Chapter 302, Laws of 1992, an amount not to exceed that which is necessary to maintain the Mountain Home Air Base Action Plan for the period July 1, 1993, through June 30, 1994.

Approved April 1, 1993.

CHAPTER 411
(H.B. No. 463)

AN ACT

RELATING TO THE APPROPRIATIONS FOR PUBLIC SCHOOLS FOR FISCAL YEAR 1994; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO EXPENDITURES FROM STATE SOURCES; APPROPRIATING MONEYS FROM THE BUDGET RESERVE FUND FOR DEPOSIT IN THE GENERAL FUND; APPROPRIATING GENERAL FUND MONEYS FOR DEPOSIT IN THE PUBLIC SCHOOL INCOME FUND; APPROPRIATING MONEYS FOR DEPOSIT IN THE PUBLIC EMPLOYEE RETIREMENT FUND; APPROPRIATING MONEYS FOR THE UNEMPLOYMENT INSURANCE PROGRAM; APPROPRIATING MONEYS FOR THE EMPLOYERS' PORTION OF SOCIAL SECURITY TAXES; APPROPRIATING MONEYS FROM THE PUBLIC SCHOOL INCOME FUND; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO PROGRAMS FOR GIFTED/TALENTED STUDENTS; APPROPRIATING MONEYS FOR THE SCHOOLS RESTRUCTURING, RESEARCH AND DEVELOPMENT PROGRAM; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SUPPORT FROM THE PRIVATE SECTOR; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE EXPENDITURE OF \$3,000,000; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE MENTOR PROGRAM.

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

SECTION 1. It is legislative intent that the following amount shall be expended from state sources for public schools for the period July 1, 1993, through June 30, 1994:

FROM:	
General Fund	\$528,000,000
Dedicated Funds:	
Endowment Fund Income	\$22,400,000
Department of Lands	5,000,000
Liquor Fund	1,200,000
Miscellaneous Receipts	3,523,900
Total Dedicated Funds	<u>32,123,900</u>
TOTAL	<u>\$560,123,900</u>

SECTION 2. There is hereby appropriated \$3,000,000 from the Budget Reserve Fund for public schools, to be deposited in the General Fund.

SECTION 3. There is hereby appropriated from the General Fund for public schools, the following amount to be deposited in the Public School Income Fund for the period July 1, 1993, through June 30, 1994:

FROM:	
General Fund	\$528,000,000

SECTION 4. There is hereby appropriated from the Public School Income Fund the amount necessary for deposit in the Public Employee Retirement Fund to be expended according to Section 59-1323, Idaho Code, for the period July 1, 1993, through June 30, 1994.

SECTION 5. There is hereby appropriated from the Public School Income Fund the amount necessary for the Unemployment Insurance Program to be expended according to Section 72-1349C, Idaho Code, for the period July 1, 1993, through June 30, 1994.

SECTION 6. There is hereby appropriated from the Public School Income Fund the amount necessary to be expended for the purpose of paying the employer's portion of the social security taxes for public school district employees, according to Section 59-1115, Idaho Code, for the period July 1, 1993, through June 30, 1994.

SECTION 7. There is hereby appropriated from the Public School Income Fund to be expended for the Public School Foundation Program pursuant to law and the provisions of this act, not to exceed \$559,123,900 of the moneys which may accrue to such fund for the period July 1, 1993, through June 30, 1994.

SECTION 8. It is legislative intent that \$200,000 of the moneys appropriated in Section 7 of this act be expended by the Superintendent of Public Instruction to facilitate and enhance school district programs for gifted/talented students. It is further legislative intent that no more than \$70,000 be expended for personnel costs.

SECTION 9. There is hereby appropriated from the Public School Income Fund the following amount for the Schools Restructuring, Research and Development Program, to be expended by the Superintendent of Public Instruction, upon the recommendation of the Idaho School Reform Committee, to continue school restructuring in Idaho.

FROM:

Public School Income Fund	\$1,000,000
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SECTION 10. It is legislative intent that the Idaho School Reform Committee seek and expend an additional \$500,000 in support from the private sector to continue school restructuring in Idaho.

SECTION 11. It is legislative intent that \$3,000,000 of the amount appropriated in Section 7 of this act shall be used on a one-time basis to supplement and increase the level of expenditure for textbooks, supplies, materials and equipment, and in no way will be used to supplant funds budgeted in previous years for these purposes. The funds in this Section shall be distributed as follows: 50% (\$1,500,000) outside the Education Support Program on a fall enrollment basis; and 50% (\$1,500,000) through the Education Support Program formula.

SECTION 12. It is legislative intent that the Mentor Program in the public schools shall cease.

Law without signature.

CHAPTER 412
(S.B. No. 1108)

AN ACT

RELATING TO HIGHWAYS; AMENDING SECTION 40-106, IDAHO CODE, TO PROVIDE AN ADDITIONAL DEFINITION; AMENDING SECTION 40-117, IDAHO CODE, TO PROVIDE ADDITIONAL DEFINITIONS; AMENDING SECTION 40-202, IDAHO CODE, TO INCLUDE PUBLIC RIGHTS OF WAY FOR DESIGNATION AND TO PROVIDE AUTHORITY TO COUNTIES WITH HIGHWAY JURISDICTION; AMENDING SECTION 40-203, IDAHO CODE, TO CLARIFY THE PROCEDURES FOR VACATION OR ABANDONMENT OF A HIGHWAY OR PUBLIC RIGHT OF WAY; AMENDING SECTION 40-203A, IDAHO CODE, TO CLARIFY THE PROCEDURES TO VALIDATE A HIGHWAY OR PUBLIC RIGHT OF WAY; AMENDING CHAPTER 2, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-208, IDAHO CODE, TO PROVIDE FOR JUDICIAL REVIEW; AMENDING SECTION 40-604, IDAHO CODE, TO CLARIFY THE PROCEDURES FOR HIGHWAY ABANDONMENT OR VALIDATION BY COUNTY COMMISSIONERS; AMENDING SECTION 40-1310, IDAHO CODE, TO CLARIFY THE PROCEDURES FOR HIGHWAY ABANDONMENT OR VALIDATION BY HIGHWAY DISTRICT COMMISSIONERS; AND AMENDING SECTION 50-1315, IDAHO CODE, TO CLARIFY THE PROCEDURES FOR RECLASSIFYING A PUBLIC STREET.

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

SECTION 1. That Section 40-106, Idaho Code, be, and the same is hereby amended to read as follows:

40-106. DEFINITIONS -- E.

(1) "Erect" means to construct, build, raise, assemble, place, affix, create, paint, draw or in any other way bring into being or establish, but does not include any of the foregoing activities when performed incident to the change of an advertising message or customary maintenance of a sign. With respect to certain easements held by the state restricting the erection of structures on certain lands, the state of Idaho and the department shall be deemed to have waived such restrictions with regard only to each sign erected prior to October 22, 1965.

(2) "Expenditure" means the awarding of a contract, franchise or authority to another by a district, and every manner and means whereby the highway district disburses district funds or obligates itself to disburse district funds. "Expenditure" does not include disbursement of district funds to regularly employed highway district employees, officials or agents, 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.

(3) "Expense of the public" means the expenditure of funds for roadway maintenance by any governmental agency, including funds expended by any agency of the federal government, so long as the agency allows public access over the roadway on which the funds were expended and such roadway is not located on federal or state-owned land.

SECTION 2. That Section 40-117, Idaho Code, be, and the same is hereby amended to read as follows:

40-117. DEFINITIONS -- P.

(1) "Person" includes every natural person, firm, fiduciary, copartnership, association, corporation, trustee, receiver or assignee for the benefit of creditors.

(2) "Place." (See "Maintain," section 40-114, Idaho Code)

(3) "Primary system" or "primary highway" means any portion of the highways of the state, as officially designated, or as may hereafter be so designated, by the Idaho transportation board, and approved by the secretary of transportation, pursuant to the provisions of title 23, U.S. Code, "Highways".

(4) "Public highway agency" means the state transportation department, any city, county, highway district or other political subdivision of the state with jurisdiction over public highway systems and public rights of way.

(5) "Public highways" mean all highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. (Also see "Highways," section 40-109, Idaho Code)

(6) "Public right of way" means a right of way open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right of way for vehicular traffic.

SECTION 3. That Section 40-202, Idaho Code, be, and the same is hereby amended to read as follows:

40-202. DESIGNATION OF HIGHWAYS AND PUBLIC RIGHTS OF WAY. (1) The initial selection of the county highway system and highway district system may be accomplished in the following manner:

(a) The board of county or highway district commissioners shall cause a map to be prepared showing each highway and public right of way in their jurisdiction, and the commissioners shall cause notice to be given of intention to adopt the map as the official map of that system, and shall specify the time and place at which all interested persons may be heard.

(b) After the hearing, the commissioners shall adopt the map, with any changes or revisions considered by them to be advisable in the public interest, as the official map of the respective highway system.

(2) If a county or highway district acquires an interest in real property for highway or public right of way purposes, the respective commissioners shall:

(a) Cause any order or resolution enacted, and deed or other document establishing an interest in the property for their highway system purposes to be recorded in the county records; or

(b) Cause the official map of the county or highway district system to be amended as affected by the acceptance of the highway or public right of way.

Provided, however, a county with highway jurisdiction or highway district may hold title to an interest in real property for public right

of way purposes without incurring an obligation to construct or maintain a highway within the right of way until the county or highway district determines that the necessities of public travel justify opening a highway within the right of way. The lack of an opening shall not constitute an abandonment, and mere use by the public shall not constitute an opening of the public right of way.

(3) Highways laid out, recorded and opened as described in subsection (2) of this section, by order of a board of commissioners, and all highways used for a period of five (5) years, provided they shall have been worked and kept up at the expense of the public, or located and recorded by order of a board of commissioners, are highways. If a highway created in accordance with the provisions of this subsection is not designated on the official map of the respective highway system or is not opened as described in subsection (2) of this section, there shall be no duty to maintain that highway, nor shall there be any liability for any injury or damage for failure to maintain it or any highway signs, until the highway is designated as a part of the county or highway district system by inclusion on the official map as a highway and opened to public travel as a highway.

(4) When a public right of way is created in accordance with the provisions of subsection (2) of this section, or section 40-203 or 40-203A, Idaho Code, there shall be no duty to maintain that public right of way, nor shall there be any liability for any injury or damage for failure to maintain it or any highway signs.

(5) Nothing in this section shall limit the power of any board of commissioners to subsequently include or exclude any highway or public right of way from the county or highway district system.

SECTION 4. That Section 40-203, Idaho Code, be, and the same is hereby amended to read as follows:

40-203. ABANDONMENT AND VACATION OF COUNTY AND HIGHWAY DISTRICT SYSTEM HIGHWAYS OR PUBLIC RIGHTS OF WAY. (1) A board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, shall use the following procedure to ~~withdraw public highway status from~~ abandon and vacate any highway or public right of way in the county or highway district system including those which furnish public access to state and federal public lands and waters:

(a) The commissioners may by resolution declare its intention to abandon and vacate any highway considered no longer to be in the public interest.

(b) Any resident, or property holder, within a county or highway district system including the state of Idaho, any of its subdivisions, or any agency of the federal government may petition the respective commissioners for abandonment and vacation of any highway or public right of way within the highway system. The petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings.

(c) The commissioners shall establish a hearing date or dates on the proposed abandonment and vacation.

(d) The commissioners shall prepare a report public notice stating ~~the effects of~~ their intention to hold a public hearing to consider the proposed abandonment and vacation ~~on the public~~

interest of a highway or public right of way which shall be made available to the public not later than thirty (30) days prior to any hearing and mailed to any person requesting a copy not more than three (3) working days after any such request.

(e) The At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway, the commissioners shall publish notice of the hearing in accordance with the provisions of section 40-206, Idaho Code, and shall mail notice to owners of land abutting the portion of the highway or public right of way proposed to be abandoned and vacated at their addresses as shown on the county assessor's tax rolls at least fifteen (15) days prior to the date of the hearing and shall publish notice of the hearing at least two (2) times if in a weekly newspaper or three (3) times if in a daily newspaper, the last notice to be published at least five (5) days and not more than twenty-one (21) days before the hearing.

(f) At the hearing, the commissioners shall review the report prepared under this section and shall accept testimony from persons having an interest in the proceedings accept all information relating to the proceedings. Any person, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appear and give testimony for or against abandonment.

(g) After completion of the procedures proceedings and consideration of all related information, the commissioners may retain the highway as such or may by order or resolution declare the highway status withdrawn from all or part of the portion of the highway under consideration shall decide whether the abandonment and vacation of the highway or public right of way is in the public interest. The decision whether or not to abandon and vacate the highway or public right of way shall be written and shall be supported by findings of fact and conclusions of law.

(h) If the commissioners determine that a highway or public right of way parcel to be abandoned and vacated in accordance with the provisions of this section has a fair market value of twenty-five hundred dollars (\$2,500) or more, a charge may be imposed upon the acquiring entity, not in excess of the fair market value of the parcel, as a condition of the abandonment and vacation; provided, however, no such charge shall be imposed on the landowner who originally dedicated such parcel to the public for use as a highway or public right of way.

(i) The commissioners shall cause any order or resolution to be recorded in the county records and the official map of the highway system to be amended as affected by the abandonment and vacation.

(j) From any such decision, a resident or property holder within the county or highway district system, including the state of Idaho or any of its subdivisions or any agency of the federal government, may appeal to the district court of the county in which the highway or public right of way is located pursuant to section 40-208, Idaho Code.

(2) No highway or public right of way or parts thereof it shall be abandoned and vacated so as to leave any real property adjoining the highway or public right of way without access to an established

highway connecting that real property with another highway or public right of way.

(3) In the event of abandonment and vacation, rights-of-way or easements may be reserved for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.

~~(4) A highway established by prescription not worked or used for a period of five (5) years ceases to be a highway for any purpose whatever, unless the highway is designated as a part of a county or highway district system by inclusion on the official map. In the case of highways furnishing public access to state or federal public lands or waters, no person may encroach upon them and restrict public use without first petitioning for the abandonment of the highway to the appropriate commissioners of the county or highway district in which the highway is located abandoned and vacated under the provisions of this section may be reclassified as a public right of way.~~

(5) Until abandonment is authorized by the commissioners having jurisdiction, public use of the highway or public right of way may not be restricted or impeded by encroachment or installation of any obstruction restricting public use, or by the installation of signs or notices that might tend to restrict or prohibit public use. Any person violating the provisions of this subsection shall be guilty of a misdemeanor.

(6) This section does not apply to the abandonment or vacation of any highway, public street or public right of way which was accepted as part of a platted subdivision pursuant to chapter 13, title 50, Idaho Code.

SECTION 5. That Section 40-203A, Idaho Code, be, and the same is hereby amended to read as follows:

40-203A. VALIDATION OF COUNTY OR HIGHWAY DISTRICT SYSTEM HIGHWAY OR PUBLIC RIGHT OF WAY. (1) Any resident or property holder within a county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may petition the board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, may to initiate public proceedings to validate a highway or public right of way, including those which furnish public access to state and federal public lands and waters, provided that the petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings, or the commissioners may initiate validation proceedings on their own resolution, if any of the following conditions exist:

(a) If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a highway or public right of way;

(b) If the location of the highway or public right of way cannot be accurately determined due to numerous alterations of the highway or public right of way, a defective survey of the highway, public right of way or adjacent property, or loss or destruction of the original survey of the highways or public rights of way; or

(c) If the highway or public right of way as traveled and used

does not conform to the location of a highway or public right of way described on the official map or in the public records.

(2) If proceedings for validation of a highway or public right of way are initiated, the commissioners shall follow the procedure set forth in section 40-203, Idaho Code, and shall:

- (a) Cause the highway or public right of way to be surveyed;
- (b) Cause a report to be prepared, including the survey and any other information required by the board;
- (c) Establish a hearing date on the proceedings for validation;
- (d) Cause notice of the proceedings to be provided in the same manner as for abandonment and vacation proceedings; and
- (e) At the hearing, the commissioners shall consider all information relating to the proceedings and shall accept testimony from persons having an interest in the proposed validation.

(3) Upon completion of the proceedings, the commissioners shall determine whether validation of the highway or public right of way is in the public interest and shall enter an order ~~discontinuing or completing the validation procedures~~ validating the highway or public right of way as public or declaring it not to be public.

(4) From any such decision, any resident or property holder within a county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appeal to the district court of the county in which the highway or public right of way is located pursuant to section 40-208, Idaho Code.

(5) When a board of commissioners confirms validates a highway or public right of way, it shall cause the survey to be recorded in the county records and shall amend the official map of the county or highway district system.

(6) The commissioners shall proceed to determine and provide just compensation for the removal of any structure encroaching on that, prior to creation of the highway or public right of way, encroached upon a highway or public right of way that is the subject of a validation proceeding, or if such is not practical, the commissioners may acquire property to alter the highway or public right of way being validated.

(7) This section does not apply to the validation of any highway, public street or public right of way which is accepted as part of a platted subdivision pursuant to chapter 13, title 50, Idaho Code.

SECTION 6. That Chapter 2, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-208, Idaho Code, and to read as follows:

40-208. JUDICIAL REVIEW. (1) Any resident or property holder within the county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, who is aggrieved by a final decision of a board of county or highway district commissioners in an abandonment and vacation or validation proceeding is entitled to judicial review under the provisions of this section.

(2) Proceedings for review are instituted by filing a petition in

the district court of the county in which the commissioners have jurisdiction over the highway or public right of way within twenty-eight (28) days after the filing of the final decision of the commissioners or, if a rehearing is requested, within twenty-eight (28) days after the decision thereon.

(3) The filing of the petition does not itself stay enforcement of the commissioners' decision. The reviewing court may order a stay upon appropriate terms.

(4) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the commissioners shall transmit to the reviewing court the original, or a certified copy, of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be ordered by the court to pay for additional costs. The court may require subsequent corrections to the record and may also require or permit additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional information, and it is shown to the satisfaction of the court that the additional information is material and that there were good reasons for failure to present it in the proceeding before the commissioners, the court may order that the additional information shall be presented to the commissioners upon conditions determined by the court. The commissioners may modify their findings and decisions by reason of the additional information and shall file that information and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the commissioners, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court shall not substitute its judgment for that of the commissioners as to the weight of the information on questions of fact. The court may affirm the decision of the commissioners or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the commissioners' findings, inferences, conclusions or decisions are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the commissioners;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial information on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

SECTION 7. That Section 40-604, Idaho Code, be, and the same is hereby amended to read as follows:

40-604. DUTIES AND POWERS OF COMMISSIONERS. Commissioners shall:
(1) Exercise general supervision over all highways in the county

highway system, including their location, design, construction, reconstruction, repair and maintenance, and develop general policies regarding highway matters.

(2) Cause to be surveyed, viewed, laid out, recorded, opened and worked, any highways or public rights of way as are necessary for public convenience under the provisions of sections 40-202 and 40-203A, Idaho Code.

(3) Cause to be recorded as all highways those that have become such-by-use-or-abandonment and public rights of way within their highway system.

(4) Have authority to abandon and vacate any highway and remove it from the county highway system when that action is determined to be in the public interest or public right of way within their highway system under the provisions of section 40-203, Idaho Code.

(5) Designate county highways, or parts of them, as controlled-access highways and regulate, restrict or prohibit access to those highways so as best to serve the traffic for which the facility is intended.

(6) Have authority to make agreements with any incorporated city, other county, a highway district, the state, or the United States, its agencies, departments, bureaus, boards, or any government owned corporation for the construction, reconstruction, or maintenance of the county's highway system by those entities or for the construction, reconstruction, or maintenance of the highway systems of those entities by the county's highway organization. The county shall compensate or be compensated for the fair cost of the work except as otherwise specifically provided in this title.

(7) Let out by contract the improvement of highways, the construction and repair of bridges or other adjuncts to highways, when the amount of work to be done by contract exceeds five hundred dollars (\$500). At least twenty-five percent (25%) of the fund collected in any highway division must be expended within the division in which the fund was collected.

(8) Contract, purchase, or otherwise acquire the right-of-way over private property for the use of county highways and for this purpose may institute proceedings under the code of civil procedure.

(9) Levy an ad valorem tax to be paid into the county highway fund and cause the tax collected each year to be paid into that fund and kept by the treasurer as a separate fund. When all of the territory of a county is included in one or more highway districts the commissioners shall not make any levy for general highway purposes.

(10) Audit and draw warrants on the county highway fund required for payment for rights-of-way improvement.

(11) Rename any highway within the county, excepting those situated within the territorial limits of incorporated cities, when the renaming will eradicate confusion.

(12) Cause guide posts properly inscribed to be erected and maintained on designated highways.

(13) Exercise other powers as may be prescribed by law.

SECTION 8. That Section 40-1310, Idaho Code, be, and the same is hereby amended to read as follows:

40-1310. POWERS AND DUTIES OF HIGHWAY DISTRICT COMMISSIONERS. (1) The commissioners of a highway district have, except as provided in section 40-1323, Idaho Code, exclusive general supervision and jurisdiction over all highways within their district, with full power to construct, maintain, repair and improve all highways within the highway district, whether directly or by their own agents and employees or by contract. Except as otherwise provided in this chapter in respect to the highways within the district, a highway district shall have all of the powers and duties that would by law be vested in the commissioners of the county and in the district directors of highways if the highway district had not been organized. Where any highway within the limits of the highway district has been designated as a state highway, then the board shall have exclusive supervision, jurisdiction and control over the designation, location, maintenance, repair and reconstruction of it. The highway district shall have power to manage and conduct the business and affairs of the district; establish and post speed and other regulatory signs; make and execute all necessary contracts; have an office and employ and appoint agents, attorneys, officers and employees as may be required, and prescribe their duties and fix their compensation. Highway district commissioners and their agents and employees have the right to enter upon any lands to make a survey, and may locate the necessary works on the line of any highways on any land which may be deemed best for the location.

(2) The highway district shall also have the right to acquire either by purchase, or other legal means, all lands and other property necessary for the construction, use, maintenance, repair and improvement of highways. The highway district may change the width or location, or straighten lines of any highway in the district, and if in the constructing, laying out, widening, changing, or straightening of any highways, it shall become necessary to take private property, the district director of highways, with the consent and on order of the highway district commissioners, shall cause a survey of the proposed highway to be made, together with an accurate description of the lands required. He shall endeavor to agree with each owner of property, resident of the county in which the district is situated, for the purchase of a right-of-way over the lands included within the description. If the director is able to agree with the owner of the lands, the highway district commissioners may purchase the land and pay for it out of the funds of the highway district, and the lands purchased shall then be conveyed to the highway district for the use and purpose of highways.

(3) Whenever the director of highways shall be unable to agree with any person for the purchase of land, or that person shall be unknown or a nonresident of the county in which the highway district is situated, or a minor, or an insane or incompetent person, the director shall have the right, subject to the order of the highway district commissioners, to begin action in the name of the highway district in the district court of the county in which the district is situated, to condemn the land necessary for the right-of-way for the highway, under the provisions of chapter 7, title 7, Idaho Code. An order of the highway district commissioners entered upon its minutes that the land sought to be condemned is necessary for a public highway and public use shall be prima facie evidence of the fact.

(4) The highway district has the power to contract for and pay out any special rewards and bounties as may appear expedient or useful in securing proper highway construction and maintenance, and to accept, on behalf of the district, aid or contributions in the construction or maintenance of any highway; to construct or repair, with the consent of the corporate authorities of any city within the district, any highway within a city, upon the division of the cost as may be agreed upon; or to join with the state or any body politic or political subdivision, or with any person in the construction or repair of any highway and to contract for an equitable division of the cost; and all counties, cities, highway districts and other bodies politic and political subdivisions are authorized to contract with any highway district acting through its highway district commissioners in exercise of the powers granted.

(5) The highway district has the power to receive highway petitions and lay out, alter, create and abandon and vacate public highways and rights of way within their respective districts; ~~subject to appeal to the district court of the judicial district in which the highway district is situated; in the same manner in which appeals are taken from the county commissioners to the district court under the provisions of sections 40-202, 40-203 and 40-203A, Idaho Code.~~

~~(6) Where highways furnish public access to federal or state public lands or waters, before they may be abandoned the highway district must first be in receipt of a petition for abandonment, and no abandonment shall be made without conducting a public hearing. At the hearing any person may appear and show cause for or against abandonment. If it appears at the hearing that the highway does serve a public use, the highway may not be abandoned without first providing other suitable public access to the public lands or waters at the expense of the party petitioning for abandonment of the highway.~~

(7) The highway district is empowered to take conveyance or other assurances, in the name of the highway district, for all property acquired by it under the provisions of this chapter for the purposes of this title. The highway district may institute and maintain any and all actions and proceedings, suits at law and in equity, necessary or proper in order to carry out the provisions of this chapter, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities provided by this chapter. In all courts, actions, suits or proceedings, the highway district may sue, appear and defend, in person or by attorneys, and in the name of the highway district.

(8) The highway district is empowered to hold, use, acquire, manage, occupy and possess property. The highway district may create highway divisions, which must be carefully and distinctly defined and described. Highway divisions may be altered, changed, created or modified by the highway district commissioners, as the need requires.

SECTION 9. That Section 50-1315, Idaho Code, be, and the same is hereby amended to read as follows:

50-1315. EXISTING PLATS VALIDATED. None of the provisions of sections 50-1301 through 50-1325, Idaho Code, shall be construed to require replatting in any case where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore

filed for record and not subsequently vacated are hereby declared valid, notwithstanding irregularities and omissions in manner of form of acknowledgment or certificate. Provided, however:

(1) When plats have been accepted and recorded for a period of five (5) years and said plats include public streets that were never laid out and constructed to the standards of the appropriate public highway agency, said public street ~~shall~~ may be classified as public right of way; and

(2) Public rights of way for vehicular traffic included in plats which would not conform to current highway standards of the appropriate public highway agency regarding alignments and access locations which, if developed, would result in an unsafe traffic condition, shall be modified or reconfigured in order to meet current standards before access permits to the public right of way are issued.

Approved April 5, 1993.

CHAPTER 413
(H.B. No. 252)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR OTHER INTOXICATING SUBSTANCES; AMENDING SECTION 18-8002, IDAHO CODE, TO INCLUDE STATUTORY REFERENCES; AMENDING CHAPTER 80, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-8002A, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR SUSPENSION OF A PERSON'S DRIVER'S LICENSE IF EVIDENTIARY TESTING REFLECTS THAT THE PERSON WAS DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR OTHER INTOXICATING SUBSTANCES IN VIOLATION OF SECTION 18-8004, IDAHO CODE, TO PROVIDE FOR INFORMATION TO BE GIVEN TO A PERSON UPON A REQUEST FOR EVIDENTIARY TESTING, TO PROVIDE FOR SEIZURE OF THE PERSON'S DRIVER'S LICENSE, ISSUANCE OF A TEMPORARY PERMIT AND SERVICE OF THE NOTICE OF SUSPENSION BY A PEACE OFFICER UPON SUBMISSION TO AND FAILURE OF EVIDENTIARY TESTING, TO PROVIDE FOR A SWORN STATEMENT BY THE PEACE OFFICER, TO PROVIDE FOR ADDITIONAL TESTS, TO PROVIDE FOR AN ADMINISTRATIVE HEARING WITH RESPECT TO THE SUSPENSION, TO PROVIDE HEARING PROCEDURES AND ISSUES TO BE DETERMINED AT THE HEARING, TO PROVIDE FOR JUDICIAL REVIEW OF THE ADMINISTRATIVE DETERMINATION, TO PROVIDE FOR RESTRICTED DRIVING PRIVILEGES, AND TO PROVIDE FOR ADOPTION OF RULES BY THE DEPARTMENT TO IMPLEMENT THE SECTION; AMENDING SECTION 49-328, IDAHO CODE, TO CORRECT TERMINOLOGY, TO ESTABLISH AN ADDITIONAL FEE OF ONE HUNDRED FIFTEEN DOLLARS TO BE DEPOSITED IN THE STATE HIGHWAY ACCOUNT FOR REINSTATEMENT OF A DRIVER'S LICENSE AFTER SUSPENSION UNDER SECTION 18-8002A, IDAHO CODE, OR ANY SUSPENSION ARISING OUT OF ANY ALCOHOL OR DRUG RELATED OFFENSE AND TO DIRECT THE DEPARTMENT TO REEVALUATE THE AMOUNT OF THE FEE BY FEBRUARY, 1995; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or in actual physical control of a motor vehicle in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete, evidentiary testing:

(a) His driver's license will be seized by the peace officer and a temporary permit will be issued; provided, however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations, and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;

(b) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to, or complete evidentiary testing;

(c) If he does not request a hearing or does not prevail at the hearing, his driver's license will be suspended absolutely for one hundred eighty (180) days if this is his first refusal and one (1) year if this is his second refusal within five (5) years; and

(d) After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.

(4) If the motorist refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) above:

(a) His driver's license or permit shall be seized by the peace officer and forwarded to the court and a temporary permit shall be issued by the peace officer which allows him to operate a motor vehicle until the date of his hearing, if a hearing is requested, but in no event for more than thirty (30) days; provided, however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;

(b) A written request may be made within seven (7) calendar days for a hearing before the court; if requested, the hearing must be held within thirty (30) days of the seizure unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. The court, in granting such an extension, may, for good cause shown, extend the defendant's temporary driving privileges for one (1) additional thirty (30) day period. The hearing shall be limited to the question of why the defendant did not submit to, or complete, evidentiary testing, and the burden of proof shall be upon the defendant; the court shall suspend all his driving privileges immediately for one hundred eighty (180) days for a first refusal and one (1) year for a second refusal within five (5) years unless it finds that the peace officer did not have legal cause to stop and request him to take the test or that the request violated his civil rights;

(c) If a hearing is not requested by written notice to the court concerned within seven (7) calendar days, upon receipt of a sworn statement by the peace officer of the circumstances of the refusal, the court shall suspend his driving privileges for one hundred eighty (180) days for a first refusal and one (1) year for a second refusal within five (5) years, during which time he shall have absolutely no driving privileges of any kind; and

(d) After submitting to evidentiary testing at the request of the peace officer, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) Any suspension of driving privileges under this section or section 18-8002A, Idaho Code, shall be a civil penalty separate and apart from any other suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense pursuant to this chapter, and may be appealed to the district court.

(6) No hospital, hospital officer, agent, or employee, or health care professional licensed by the state of Idaho, whether or not such person has privileges to practice in the hospital in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request or order of a peace officer in the manner described in this section and section 18-8002A, Idaho Code; provided, that nothing in this section shall relieve any such person or legal entity from civil liability arising from the failure to exercise the community standard of care.

(a) This immunity extends to any person who assists any individual to withdraw a blood sample for evidentiary testing at the request or order of a peace officer, which individual is authorized to withdraw a blood sample under the provisions of section 18-8003, Idaho Code, regardless of the location where the blood sample is actually withdrawn.

(b) A peace officer is empowered to order an individual autho-

rized in section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer has probable cause to believe that the suspect has committed any of the following offenses:

- (i) Aggravated driving under the influence of alcohol, drugs or other intoxicating substance as provided in section 18-8006, Idaho Code;
 - (ii) Vehicular manslaughter as provided in subsections (3)(a), (b) and (c) of section 18-4006, Idaho Code;
 - (iii) Aggravated operating of a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances as provided in section 67-7035, Idaho Code; or
 - (iv) Any criminal homicide involving a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances.
- (c) Nothing herein shall limit the discretion of the hospital administration to designate the qualified hospital employee responsible to withdraw the blood sample.
- (d) The law enforcement agency that requests or orders withdrawal of the blood sample shall pay the reasonable costs to withdraw such blood sample, perform laboratory analysis, preserve evidentiary test results, and testify in judicial proceedings.
- (e) The withdrawal of the blood sample may be delayed or terminated if:
- (i) In the reasonable judgment of the hospital personnel withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or
 - (ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.
- (7) "Actual physical control" as used in this section and section 18-8002A, Idaho Code, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.
- (8) Any written notice required by this section shall be effective upon mailing.
- (9) For the purposes of this section and section 18-8002A, Idaho Code, "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (10) of this section, utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.
- (10) A person who submits to a breath test for alcohol concentration, as defined in subsection (4) of section 18-8004, Idaho Code, may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was driving under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report the facts upon which that belief is based.

SECTION 2. That Chapter 80, 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 18-8002A, Idaho Code, and to read as follows:

18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF TESTS. (1) Definitions. As used in this section:

(a) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.

(b) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.

(c) "Director" means the director of the Idaho transportation department.

(d) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have authority to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing and make a final ruling on the issues before him.

(e) "Hearing request" means a request for an administrative hearing on the suspension imposed by the provisions of this section.

(2) Suspension.

(a) Upon receipt of the sworn statement of a peace officer that there existed legal cause to believe a person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances and that the person submitted to a test and the test results indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, Idaho Code, the department shall suspend the person's license or permit to drive:

(i) For a period of ninety (90) days for a first failure of evidentiary testing under the provisions of this section. The first thirty (30) days of the suspension shall be absolute and the person shall have absolutely no driving privileges of any kind. Restricted driving privileges applicable during the remaining sixty (60) days of the suspension may be requested as provided in subsection (8) of this section.

(ii) For a period of one (1) year for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years. No driving privileges of any kind shall be granted during the suspension imposed pursuant to this subsection.

The person may request an administrative hearing on the suspension as provided in subsection (6) of this section. Any right to contest the suspension shall be waived if a hearing is not requested as therein provided.

(b) The suspension shall become effective thirty (30) days after service upon the person of the notice of suspension. The notice shall be in a form provided by the department and shall state:

(i) The reason and statutory grounds for the suspension;

- (ii) The effective date of the suspension;
- (iii) The suspension periods to which the person may be subject as provided in subsection (2)(a) of this section;
- (iv) The procedures for obtaining restricted driving privileges;
- (v) The rights of the person to request an administrative hearing on the suspension and that if an administrative hearing is not requested within seven (7) days of service of the notice of suspension the right to contest the suspension shall be waived;
- (vi) The procedures for obtaining an administrative hearing on the suspension;
- (vii) The right to judicial review of the hearing officer's decision on the suspension and the procedures for seeking such review.

(3) Information when testing requested. At the time evidentiary testing is requested, in addition to the information required under the provisions of section 18-8002(3), Idaho Code, the person shall be informed that if he takes the test and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, Idaho Code:

- (a) His driver's license shall be seized by the peace officer and a temporary permit which shall be valid for a period not to exceed thirty (30) days shall be issued by the peace officer; provided, however, that no peace officer shall issue a temporary permit pursuant to this subsection to a driver whose driver's license or permit has already been and is suspended, revoked, cancelled, disqualified or denied.
 - (b) Effective not later than thirty (30) days after service upon him of the notice of suspension his license shall be suspended for ninety (90) days, the first thirty (30) days of which shall be absolute, for a first failure of evidentiary testing under the provisions of this section; or for a period of one (1) year, all of which shall be absolute, for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years;
 - (c) He may request restricted driving privileges for the remaining sixty (60) days of a ninety (90) day suspension;
 - (d) He has the right to request an administrative hearing on the suspension before a hearing officer designated by the department within seven (7) days of the date of service upon him of the notice of suspension, and the right to judicial review of that decision;
 - (e) After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.
- (4) Service of suspension by peace officer. If the driver submits to evidentiary testing after the information in section 18-8002(3), Idaho Code, and subsection (3) of this section has been provided and the results of the test indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, Idaho Code:

(a) The peace officer shall take possession of the person's driver's license, shall issue a temporary permit which shall be valid for a period not to exceed thirty (30) days from the date of issuance, and, acting on behalf of the department, shall serve the person with a notice of suspension in the form and containing the information required under subsection (2) of this section.

(b) Within three (3) business days following service of a notice of suspension the peace officer shall forward to the department a copy of the completed notice of suspension form upon which the date of service upon the driver shall be clearly indicated, a copy of any completed temporary permit form along with any confiscated driver's license, and a sworn statement of the officer setting forth:

- (i) The identity of the person;
- (ii) Stating the officer's legal cause to stop the person;
- (iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, Idaho Code;
- (iv) That the person was advised of the consequences of taking and failing the evidentiary test as provided in subsection (3) of this section;
- (v) That the person was lawfully arrested;
- (vi) That the person was tested for blood alcohol concentration, drugs or other intoxicating substances as provided in this chapter, and that the results of the test indicated a blood alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, Idaho Code.

A certified copy of the results of all tests for blood alcohol concentration, drugs or other intoxicating substances as shown by analysis of blood, urine or breath administered at the direction of the officer shall accompany the officer's statement. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

(5) Additional tests. After submitting to evidentiary testing at the request of the peace officer, the person may, when practicable, at his own expense, have additional tests for alcohol concentration or for the presence of drugs or other intoxicating substances made by a person of his own choosing. The person's failure or inability to obtain additional tests shall not preclude admission of the results of evidentiary tests administered at the direction of the peace officer unless additional testing was denied by the peace officer.

(6) Administrative hearing on suspension. A person who has been served with a notice of suspension after submitting to an evidentiary test may request an administrative hearing on the suspension before a hearing officer designated by the department. The request for hearing shall be in writing and must be received by the department within seven (7) calendar days of the date of service upon the person of the notice of suspension. The date on which the hearing request was received shall be noted on the face of the request. The person may use the form provided by the department to request an administrative hear-

ing on the suspension, but use of the form is not required.

If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for one ten (10) day period. Such extension shall not operate as a stay of the suspension and any temporary permit shall expire thirty (30) days after service of the notice of suspension, notwithstanding an extension of the hearing date beyond such thirty (30) day period. Written notice of the date, time and place of the hearing shall be sent to the party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The department may conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. If the hearing is not conducted by electronic means, it shall be held at a place designated by the department.

The hearing shall be recorded. The sworn statement of the arresting officer, and the copy of the notice of suspension and any temporary permit issued by the officer shall be admissible at the hearing without further evidentiary foundation. The results of any tests for alcohol concentration or the presence of drugs or other intoxicating substances by analysis of blood, urine or breath administered at the direction of the peace officer and the records relating to calibration, certification, approval or quality control pertaining to equipment utilized to perform the tests shall be admissible as provided in section 18-8004(4), Idaho Code. The arresting officer shall not be required to appear unless directed to do so by a subpoena issued by the hearing officer.

The burden of proof shall be on the person requesting the hearing. The hearing officer shall vacate the suspension if he finds, by a preponderance of the evidence, that:

- (a) The peace officer did not have legal cause to stop the person; or
- (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, Idaho Code; or
- (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, Idaho Code; or
- (d) The tests for blood alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
- (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (3) of this section.

If the hearing officer finds that the person has not met his burden of proof, he shall sustain the suspension. The hearing officer shall make findings of fact and conclusions of law on each issue and shall enter an order vacating or sustaining the suspension. If the

suspension is vacated, the person's driver's license, unless unavailable by reason of an existing suspension, revocation, cancellation, disqualification or denial shall be returned to him. The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that no motion for reconsideration of such order shall be allowed.

The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005, Idaho Code, shall be imposed, but the periods of suspension may run concurrently, with the total period of suspension not to exceed the longer of the applicable suspension periods.

(7) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code.

(8) Restricted driving privileges. A person served with a notice of suspension for ninety (90) days pursuant to this section may apply to the department for restricted driving privileges, to become effective after the thirty (30) day absolute suspension has been completed. The request may be made at any time after service of the notice of suspension.

(9) Rules. The department may adopt rules under the provisions of chapter 52, title 67, Idaho Code, deemed necessary to implement the provisions of this section.

SECTION 3. That Section 49-328, Idaho Code, be, and the same is hereby amended to read as follows:

49-328. REINSTATEMENT OF REVOKED, DISQUALIFIED OR SUSPENDED DRIVER'S LICENSE -- FEE -- WHEN REINSTATEMENT PROHIBITED. (1) When the period of revocation, disqualification or suspension of a driver's license has expired, or the reason for the revocation, disqualification or suspension no longer exists, the department shall reinstate the driver's license or driving privileges on application of the driver. The application shall be in the form prescribed by the department and accompanied by a reinstatement fee of fifteen dollars (\$15.00) which shall be deposited in the state highway account.

(2) A driver's license which has been suspended under section 49-1505, Idaho Code, for failure to pay an infraction penalty shall not be reinstated until the licensee provides proof that the infraction penalty has been paid to the court.

(3) In addition to any other fees required in this section to be collected, the department shall collect twenty-five dollars (\$25.00) for reinstating a driver's license after conviction for driving under

the influence ~~white-suspended~~, without privileges, and after conviction or other violation of any other traffic related misdemeanor or infraction, of which fees twenty dollars (\$20.00) shall be paid over to the county treasurer of the county in which the conviction occurred for support of that county's justice fund, or the current expense fund if no county justice fund has been established and the five dollars (\$5.00) shall be deposited in the state highway account.

(4) In addition to any other fees required in this section to be collected, the department shall collect one hundred fifteen dollars (\$115) for reinstating a driver's license after a suspension imposed under the provisions of section 18-8002A, Idaho Code, or after a suspension arising out of any alcohol or drug related offense. Funds collected pursuant to this subsection shall be deposited in the state highway account. The department shall reevaluate the amount of the reinstatement fee herein imposed not later than February, 1995, to determine the sufficiency of the fee to meet the costs associated with the implementation of section 18-8002A, Idaho Code.

SECTION 4. Section 3 of this act shall be in full force and effect on and after July 1, 1993. The remaining sections of this act shall be in full force and effect on and after July 1, 1994.

Approved April 5, 1993.

CHAPTER 414
(H.B. No. 257)

AN ACT

RELATING TO CERTIFICATE OF COMPETENCY IN HUNTER EDUCATION, HUNTER EDUCATION PROGRAMS, INSTRUCTOR QUALIFICATIONS AND FEES FOR SUCH PROGRAMS; AMENDING SECTION 36-411, IDAHO CODE, TO PROVIDE THAT NO PERSON SHALL BE ISSUED AN ARCHERY PERMIT UNLESS THAT PERSON PRESENTS A CERTIFICATE OF COMPLETION IN ARCHERY EDUCATION FROM THE DEPARTMENT OR PRESENTS PROOF THAT THE PERSON HOLDS THE EQUIVALENT OF SUCH CERTIFICATE OBTAINED IN IDAHO OR FROM AN AUTHORIZED AGENCY OR ASSOCIATION IN ANOTHER STATE, OR PROOF THAT THE PERSON HAS PREVIOUSLY HELD A VALID ARCHERY PERMIT IN IDAHO OR ANOTHER STATE; AND AMENDING SECTION 36-412, IDAHO CODE, TO PROVIDE CLARIFICATION REGARDING TRAINING COURSES FOR INSTRUCTORS AND TO PROVIDE FOR FEES FOR EACH PROGRAM.

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

SECTION 1. That Section 36-411, Idaho Code, be, and the same is hereby amended to read as follows:

36-411. CERTIFICATE OF COMPLETION IN-HUNTER-EDUCATION. (a) Hunter education. No hunting license shall be issued to a person born after January 1, 1975, unless the person has previously held a valid hunting license in this or another state or unless such person presents to the department of fish and game or one of its authorized license vendors,

a certificate of completion in hunter education issued by the department under the hunter education program or proof that he holds the equivalent of such a certificate obtained either in Idaho or from an authorized agency or association of another state.

(b) Archery education. On and after January 1, 1994, no person shall be issued an archery permit unless that person presents to the department a certificate of completion in archery education issued by the department, or proof that such person holds the equivalent of such a certificate obtained either in Idaho or from an authorized agency or association in another state, or proof that such person has previously held a valid archery permit in Idaho or another state.

SECTION 2. That Section 36-412, Idaho Code, be, and the same is hereby amended to read as follows:

36-412. HUNTER EDUCATION PROGRAMS -- INSTRUCTOR QUALIFICATIONS -- FEE. (a) The fish and game commission shall prescribe and administer a hunter education program to programs in hunting and archery. Such programs shall provide instruction in the safe handling of lawful hunting weapons equipment. The programs shall also include instruction on wildlife and natural resource conservation, good conduct and respect for the rights and property of others, and survival in the outdoors. The commission may enter into agreements with public or private agencies and individuals in carrying out the provisions of this subsection.

(b) The department of fish and game shall recruit competent volunteer instructors. The department shall provide a course of instruction training for the instructors in the safe handling of legal hunting weapons equipment, conservation of wildlife and natural resources, good conduct and respect for the rights and property of others, outdoor survival, and other appropriate subjects for training instructors. Instructors shall be issued certificates and shall on a voluntary basis, give instruction in a hunter education course; programs as established by the department of fish and game, to all eligible applicants.

(c) The commission shall establish a fees for each program not to exceed two three dollars (\$23.00) for persons who are seventeen (17) years and under and not to exceed five dollars (\$5.00) for persons age eighteen (18) years and older, to be assessed each individual obtaining instruction in hunter education for reimbursement for furnished materials. All students successfully completing the course of instruction shall be issued a certificate of completion in hunter safety and good hunting conduct.

Approved April 6, 1993.

CHAPTER 415
(H.B. No. 259)

AN ACT

RELATING TO THE COMPREHENSIVE STATE WATER PLAN; APPROVING THE COMPREHENSIVE STATE WATER PLAN FOR THE UPPER BOISE RIVER BASIN AS

ADOPTED BY THE IDAHO WATER RESOURCE BOARD ON DECEMBER 3, 1992.

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 Upper Boise River Basin, adopted by resolution of the Idaho Water Resource Board on December 3, 1992, is herein approved.

SECTION 2. The following stream reaches of the Boise River and tributaries above Lucky Peak Dam are designated protected rivers as set forth in the plan adopted by the Water Resource Board:

(1) Boise River (13.2 miles) - The main Boise River from the backwaters of Arrowrock Reservoir to the confluence of the North and Middle Forks of the Boise River is designated as a state Recreational River, and is conditioned to allow alteration of the streambed for construction and maintenance of bridges and culverts. The Board shall prohibit the following activities on the aforementioned reach:

- Construction or expansion of dams or impoundments
- Construction of hydropower projects
- Construction of water diversion works
- Dredge or placer mining
- Mineral or sand and gravel extraction within the streambed

(2) Sheep Creek and tributaries (17.8 miles) - Sheep Creek, mouth to terminus of perennial water, and the following tributaries are designated as state Natural Rivers:

- South Fork Sheep Creek to terminus of perennial flow
- Devils Creek to terminus of perennial flow
- East Fork Sheep Creek to terminus of perennial flow

(3) Middle Fork Boise River (14.5 miles) - The Middle Fork Boise River from its confluence with the North Fork Boise River to the mouth of Roaring River is designated as a state Recreational River, and is conditioned to allow alteration of the streambed for construction and maintenance of bridges and culverts. The Board shall prohibit the following activities on the aforementioned reach:

- Construction or expansion of dams or impoundments
- Construction of hydropower projects
- Construction of water diversion works
- Dredge or placer mining
- Mineral or sand and gravel extraction within the streambed

(4) Roaring River (5.6 miles) - The Roaring River from its confluence with the Middle Fork Boise River to the point where Forest Service Road 255 crosses Roaring River is designated as a state Recreational River, and is conditioned to allow alteration of the streambed for construction and maintenance of bridges and culverts. The Board shall prohibit the following activities on the aforementioned reach:

- Construction or expansion of dams or impoundments
- Construction of hydropower projects
- Construction of water diversion works
- Dredge or placer mining
- Mineral or sand and gravel extraction within the streambed

(5) Roaring River and tributaries (17.0 miles) - The Roaring River and tributaries from the point where Forest Service Road 255

crosses Roaring River to its headwaters and the following forks are designated as state Natural Rivers.

- East Fork Roaring River to Little Roaring River Lake
- Middle Fork Roaring River to Twin Sisters Lake

(6) North Fork Boise River (9.1 miles) - The North Fork Boise River from its confluence with the Middle Fork Boise River to the mouth of Rabbit Creek is designated as a state Natural River.

(7) North Fork Boise River (9.1 miles) - The North Fork Boise River from the mouth of Rabbit Creek to the mouth of Crooked River is designated as a state Recreational River, and is conditioned to allow alterations of the streambed for construction and maintenance of bridges and culverts. The Board shall prohibit the following activities on the aforementioned reach:

- Construction or expansion of dams or impoundments
- Construction of hydropower projects
- Construction of water diversion works
- Dredge or placer mining
- Mineral or sand and gravel extraction within the streambed

(8) North Fork Boise River and tributaries (28.6 miles) - The North Fork Boise River from the mouth of Hunter Creek to the mouth of Johnson Creek and the following tributaries are designated as state Natural Rivers.

- McNutt Creek to terminus of perennial flow
- Taylor Creek to terminus of perennial flow
- McDonald Creek to terminus of perennial flow
- Horsefly Creek to terminus of perennial flow
- Bluejay Creek to terminus of perennial flow
- Lodgepole Creek to terminus of perennial flow
- Bow Creek to terminus of perennial flow

(9) North Fork Boise River and tributaries (8.4 miles) - The North Fork Boise River from the mouth of Johnson Creek to the boundary of the Sawtooth Wilderness Area and Big Silver Creek, mouth to headwaters, are designated as state Recreational Rivers, and are conditioned to allow alterations of the streambed for the construction and maintenance of bridges and culverts. The Board shall prohibit the following activities on the aforementioned reach:

- Construction or expansion of dams or impoundments
- Construction of hydropower projects
- Construction of water diversion works
- Dredge or placer mining
- Mineral or sand and gravel extraction within the streambed

(10) Crooked River (10.1 miles) - The Crooked River from its mouth to the mouth of Edna Creek, is designated as a state Recreational River, and is conditioned to allow alterations of the streambed for the construction and maintenance of bridges and culverts; and dredge or placer mining and recreational dredge mining. The Board shall prohibit the following activities on the aforementioned reach:

- Construction or expansion of dams or impoundments
- Construction of hydropower projects
- Construction of water diversion works
- Mineral or sand and gravel extraction within the streambed

(11) Bear River and tributaries (30.0 miles) - The Bear River

from its mouth to terminus of perennial flow and the following tributaries are designated as state Recreational Rivers, and are conditioned to allow alterations of the streambed for the construction and maintenance of bridges and culverts; and dredge or placer mining and recreational dredge mining.

- Bear Creek to terminus of perennial flow
- Rockey Creek to terminus of perennial flow
- Cub Creek to terminus of perennial flow
- South Fork Cub Creek to terminus of perennial flow
- Louise Creek to terminus of perennial flow
- Steamboat Creek to terminus of perennial flow

The Board shall prohibit the following activities on the aforementioned reaches:

- Construction or expansion of dams or impoundments
- Construction of hydropower projects
- Construction of water diversion works
- Mineral or sand and gravel extraction within the streambed

(12) Johnson Creek and tributaries (7.9 miles) - Johnson Creek from its mouth to the Sawtooth Wilderness Area boundary and the following tributaries are designated as state Natural Rivers.

- Robin Creek to terminus of perennial flow
- Grouse Creek to terminus of perennial flow

Approved April 6, 1993.

CHAPTER 416

(S.B. No. 1015, As Amended in the House)

AN ACT

RELATING TO DAY CARE CENTERS; AMENDING SECTION 39-1108, IDAHO CODE, TO REQUIRE COMPLIANCE WITH EMPLOYEE TRAINING REQUIREMENTS BY LOCAL JURISDICTIONS REGULATING DAY CARE SERVICES; AND AMENDING CHAPTER 11, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1119, IDAHO CODE, TO PROVIDE EMPLOYEE TRAINING REQUIREMENTS FOR DAY CARE CENTERS.

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

SECTION 1. That Section 39-1108, Idaho Code, be, and the same is hereby amended to read as follows:

39-1108. LOCAL OPTION. If a city or county, within its respective jurisdiction, has adopted an ordinance for regulation and/or licensing of day care services, then the provisions of this chapter shall not apply with such city or county unless the ordinance is subsequently repealed. To qualify for exemption, regulation of centers must include a criminal history check at least as stringent as the check required in section 39-1105, Idaho Code, compliance with fire safety standards at least as stringent as required in section 39-1109, Idaho Code, and compliance with health standards at least as stringent as required in section 39-1110, Idaho Code, and compliance with immunization require-

ments at least as stringent as required in section 39-1118, Idaho Code, and compliance with training requirements at least as stringent as required in section 39-1119, Idaho Code. Cities and counties are hereby granted authority and may adopt ordinances for regulation and/or licensing of day care services.

SECTION 2. That Chapter 11, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-1119, Idaho Code, and to read as follows:

39-1119. TRAINING REQUIREMENTS. The owner or operator of a day care center shall ensure that each employee receives four (4) hours of ongoing training every twelve (12) months after the employee's hire date.

Approved April 7, 1993.

SENATE JOINT RESOLUTIONS

(S.J.R. No. 105)

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO SECTION 2, ARTICLE III, OF THE CONSTITUTION OF THE STATE OF IDAHO, RELATING TO APPORTIONMENT OF THE LEGISLATURE, TO PROVIDE FOR THE FORMATION OF A COMMISSION FOR REAPPORTIONMENT WHENEVER THERE IS A REASON TO REAPPORTION THE LEGISLATURE, TO PROVIDE FOR MEMBERSHIP OF THE COMMISSION, TO PROVIDE DUTIES FOR THE COMMISSION, TO PROVIDE FOR THE JURISDICTION OVER ACTIONS INVOLVING CHALLENGES TO LEGISLATIVE APPORTIONMENT, TO PROVIDE FOR FORMATION OF CONGRESSIONAL DISTRICTS, AND TO PROVIDE CERTAIN REQUIREMENTS FOR MEMBERS OF THE COMMISSION REGARDING LEGISLATIVE SERVICES, AND PROPOSING AN AMENDMENT TO SECTION 9, ARTICLE V, OF THE CONSTITUTION OF THE STATE OF IDAHO, RELATING TO JURISDICTION OF THE SUPREME COURT, TO PROVIDE ORIGINAL JURISDICTION OF THE SUPREME COURT OVER ACTIONS INVOLVING CHALLENGES TO LEGISLATIVE APPORTIONMENT; STATING THE QUESTION TO BE SUBMITTED TO THE ELECTORATE; DIRECTING THE LEGISLATIVE COUNCIL TO PREPARE THE STATEMENTS REQUIRED BY LAW; AND DIRECTING THE SECRETARY OF STATE TO PUBLISH THE AMENDMENT AND ARGUMENTS AS REQUIRED BY LAW.

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

SECTION 1. That Section 2, Article III, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 2. MEMBERSHIP OF HOUSE AND SENATE. (1) Following the decennial census of 1990 and in each legislature thereafter, the senate shall consist of not less than thirty nor more than thirty-five members. The legislature may fix the number of members of the house of representatives at not more than two times as many representatives as there are senators. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may, from time to time, be divided by law.

(2) Whenever there is reason to reapportion the legislature or to provide for new congressional district boundaries in the state, or both, because of a new federal census or because of a decision of a court of competent jurisdiction, a commission for reapportionment shall be formed on order of the secretary of state. The commission shall be composed of six members. The leaders of the two largest political parties of each house of the legislature shall each designate one member and the state chairmen of the two largest

political parties, determined by the vote cast for governor in the last gubernatorial election, shall each designate one member. In the event any appointing authority does not select the members within fifteen calendar days following the secretary of state's order to form the commission, such members shall be appointed by the Supreme Court. No member of the commission may be an elected or appointed official in the state of Idaho at the time of designation or selection.

(3) The legislature shall enact laws providing for the implementation of the provisions of this section, including terms of commission members, the method of filling vacancies on the commission, additional qualifications for commissioners and additional standards to govern the commission. The legislature shall appropriate funds to enable the commission to carry out its duties.

(4) Within ninety days after the commission has been organized or the necessary census data are available, whichever is later, the commission shall file a proposed plan for apportioning the senate and house of representatives of the legislature with the office of the secretary of state. At the same time, and with the same effect, the commission shall prepare and file a plan for congressional districts. Any final action of the commission on a proposed plan shall be approved by a vote of two-thirds of the members of the commission. All deliberations of the commission shall be open to the public.

(5) The legislative districts created by the commission shall be in effect for all elections held after the plan is filed and until a new plan is required and filed, unless amended by court order. The Supreme Court shall have original jurisdiction over actions involving challenges to legislative apportionment.

(6) A member of the commission shall be precluded from serving in either house of the legislature for five years following such member's service on the commission.

SECTION 2. That Section 9, Article V, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 9. ORIGINAL AND APPELLATE JURISDICTION OF SUPREME COURT. The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the district courts, or the judges thereof, and any order of the public utilities commission, and any order of the industrial accident board, and any plan proposed by the commission for reapportionment created pursuant to section 2, article III; the legislature may provide conditions of appeal, scope of appeal, and procedure on appeal from orders of the public utilities commission and of the industrial accident board. On appeal from orders of the industrial accident board the court shall be limited to a review of questions of law. The Supreme Court shall also have original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs neces-

sary or proper to the complete exercise of its appellate jurisdiction.

SECTION 3. The question to be submitted to the electors of the State of Idaho at the next general election shall be as follows:

"Shall Section 2, Article III, of the Constitution of the State of Idaho be amended to require appointment, provide powers and duties, and specify limitations on members of a commission for reapportionment to apportion the Senate and House of Representatives and to provide for congressional districts whenever necessary; and shall Section 9, Article V, of the Constitution of the State of Idaho, be amended to provide that the Supreme Court shall have original jurisdiction in appeals of the legislative apportionment plan of the commission for reapportionment?"

SECTION 4. The Legislative Council is directed to prepare the statements required by Section 67-453, Idaho Code, and file the same.

SECTION 5. The Secretary of State is hereby directed to publish this proposed constitutional amendment and arguments as required by law.

Adopted by the Senate March 9, 1993

Adopted by the House March 19, 1993

SENATE JOINT MEMORIALS

(S.J.M. No. 101)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, it is widely reported and generally recognized that the American public considers the current federal budget imbalance the single most pressing issue facing the government of the United States; and

WHEREAS, economic experts warn that the federal budget deficit has ramifications throughout national and international economies and that addressing this issue is essential to future world economic success; and

WHEREAS, at this juncture in the governmental cycle, the Congress and the President are faced with a unique opportunity to adopt significant measures which address the budget deficit in a meaningful way; and

WHEREAS, despite the preponderance of public opinion, economic expertise and incontrovertible evidence, the Congress has been unable to adopt fiscal restraint or impose realistic limitations upon irresponsible and uncontrolled federal spending; and

WHEREAS, at least two reasonable, responsible and viable alternatives are known to provide the fiscal restraint and necessary limitations: the proposed amendment to the Constitution of the United States imposing a requirement for a balanced budget; and, the proposed amendment to the Constitution of the United States authorizing the President of the United States to exercise the line item veto power.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that we urge the Congress of the United States to immediately prepare, adopt and submit to the several states the necessary amendment to the Constitution of the United States, requiring the adoption of a balanced budget in each fiscal year and authorizing the President of the United States to exercise the line item veto.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of

Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the Senate February 4, 1993

Adopted by the House March 19, 1993

(S.J.M. No. 102)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES, AND TO THE LEGISLATURES OF THE SEVERAL STATES OF THESE UNITED STATES; STATING FINDINGS OF THE LEGISLATURE AND PETITIONING THE CONGRESS OF THE UNITED STATES TO SUBMIT AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PERMITTING PROTECTION OF THE FLAG OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, although the right to free expression is part of the foundation of the United States Constitution, very carefully drawn limits on expression in specific instances have long been recognized as legitimate means of maintaining public safety and decency, as well as orderliness and productive value of public debate; and

WHEREAS, certain actions, although arguably related to one person's free expression, nevertheless raise issues concerning public decency, public peace, and the rights of expression and sacred values of others; and

WHEREAS, the American Flag to this day is a most honorable and worthy banner of a nation which is thankful for its strengths and committed to curing its faults, and a nation which remains the destination of millions of immigrants attracted by the universal power of the American ideal; and

WHEREAS, the law as interpreted by the United States Supreme Court no longer accords to the Stars and Stripes that reverence, respect and dignity befitting the banner of that most noble experiment of a nation-state; and

WHEREAS, it is only fitting that people everywhere should lend their voices to a forceful call for restoration to the Stars and Stripes of a proper station under law and decency.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Congress of the United States submit for ratification by the states, an amendment to the United States Constitution, specifying that Congress and the states shall have the power to prohibit the physical desecration of the flag of the United States.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and

she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, to the congressional delegation representing the State of Idaho in the Congress of the United States, and to the Legislatures of the several states of these United States.

Adopted by the Senate February 18, 1993

Adopted by the House March 15, 1993

(S.J.M. No. 103)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the Nation is becoming increasingly dependent on foreign imports of petroleum; and

WHEREAS, much of the world's supply of petroleum is from countries with relatively unstable political situations; and

WHEREAS, petroleum is a finite and nonrenewable resource; and

WHEREAS, Biodiesel, made from alcohol and vegetable oil, provides an alternative to petroleum diesel with similar combustion and physical properties; and

WHEREAS, Biodiesel is cleaner burning than petroleum diesel and is neutral as to its contribution to atmospheric carbon gases; and

WHEREAS, Biodiesel is quickly biodegradable in the environment; and

WHEREAS, Biodiesel is made from farm produced, renewable resources; and

WHEREAS, Biodiesel provides a new market for agricultural commodities; and

WHEREAS, Biodiesel provides opportunities for production of value-added products and jobs in rural communities; and

WHEREAS, Biodiesel is rapidly becoming important as an alternate fuel world-wide.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that recognizing the significant contribution that Biodiesel can make to the competitiveness of the agricultural industry, the vitality of rural communities and the health and protection of the environment; and endorsing and promoting the concept of alternative nonfood uses of agricultural commodities for the benefit of not only the agricultural industry, but also the public at large; recommend that the Congress of the United States do all things necessary to ensure the rapid development and commercialization of Biodiesel.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the Senate March 4, 1993

Adopted by the House March 15, 1993

(S.J.M. No. 104)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the health of our western national forests is very poor and is projected to steadily decline under current forest practices; and

WHEREAS, in Idaho, the Boise National Forest has lost approximately 400,000 trees since 1988. The Payette National Forest has lost nearly all their spruce trees from the spruce budworm and the Targhee National Forest has lost most of the lodgepole pine from bark beetle; and

WHEREAS, the loss of more trees than we are growing would limit the Forest Service's ability to provide the raw materials to the wood products industry. Additionally, the dead and dying timber provides fuel for wildfires; and

WHEREAS, Representative Larry LaRocco has introduced the National Forest Health Act which would authorize the Secretaries of Agriculture and the Interior to declare a forest health emergency on federal lands where unacceptable forest health conditions exist. Forest managers would then implement an expedited forest health improvement program during the emergency, including salvage of dead timber, watershed restoration and reforestation activities. The bill encourages long-term management strategies focused on creating diverse and healthy forest ecosystems.

WHEREAS, the Boise National Forest has taken the lead in solving the forest health crisis. Its program, Forest Health Strategy, consists of three parts: first, to salvage dead and dying trees from commercial timber lands to recover their economic value; second, to thin living trees over large acreages of commercial forests, which will reduce the number of trees competing for water; and third, develop a long term strategy with several partners to improve forest health and restore and improve the resilience of the forest ecosystems.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the

House of Representatives concurring therein, that we support Representative Larry LaRocco's National Forest Health Act.

BE IT FURTHER RESOLVED that the Fifty-second Idaho Legislature use every means possible to support the Boise National Forest's Health Strategy Program and implement this strategy in other forest programs.

BE IT FURTHER RESOLVED that the Fifty-second Idaho Legislature supports improving the health of state forest lands, including appropriating money to the State Department of Lands, if needed.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the Senate March 5, 1993

Adopted by the House March 19, 1993

(S.J.M. No. 106)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the Delaney Clause, a federal law adopted in 1958, says that substances known to cause cancer in animals are not allowed in processed foods, regardless of how minute the risk; and

WHEREAS, at the time the Delaney Clause was enacted (1958) pesticide residues were detectable at parts per million; and

WHEREAS, technological advances allow us now to detect residues as low as parts per trillion and potentially lower; and

WHEREAS, scientists believe that these tiny residue levels do not pose any significant health risk; and

WHEREAS, the Ninth Circuit Court overturned the Environmental Protection Agency's interpretation of the Delaney Clause in that the Delaney Clause bars tolerances for carcinogenic pesticides regardless of the degree of risk; and

WHEREAS, scientific evidence is the real measure of risk and not just derived from 35 year old knowledge.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that we do hereby respectfully request that the Congress of the United States seek immediate and appropriate action to modify the Delaney Clause to more accurately reflect the science of the times as it relates to legally applied chemicals and that chemicals that are illegal chemicals be held to the latest available technology in order to protect the public

health and safety.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the Senate March 17, 1993

Adopted by the House March 24, 1993

(S.J.M. No. 107)

A JOINT MEMORIAL

TO THE HONORABLE PRESIDENT OF THE UNITED STATES, BILL CLINTON, THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, THE SECRETARY OF THE DEPARTMENT OF ENERGY, HAZEL O'LEARY, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the Argonne National Laboratory performs vital research and development in Eastern Idaho and Illinois to provide safe, clean and virtually unlimited energy sources; and

WHEREAS, the results of such research have resulted in a development -- the Integral Fast Reactor (IFR); and

WHEREAS, the IFR can provide a source of virtually unlimited electrical energy and at the same time utilize for fuel the waste from today's nuclear fuel processes including spent LWR and DOE fuel; and

WHEREAS, the IFR can destroy the plutonium from weapons -- a "beating the swords into plowshares" capability; and

WHEREAS, the IFR research has proven by actual demonstration the safety advantages of IFR technology; and

WHEREAS, the IFR high-level waste resulting from these operations is less in volume and decays in a few hundred years to less radioactivity than the original uranium; and

WHEREAS, recycling of LWR reactor spent fuel and weapons materials would provide advantages relating to proliferation and waste handling and storage.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that we petition President Clinton, Congress and the Department of Energy to use all due diligence to insure that the total IFR does progress for the next several years to provide the scientific data required for correct decisions in 1996 called for by the National Energy Policy Act; and

BE IT FURTHER RESOLVED that we urge the Department of Energy to carefully investigate the ability of IFR fuel cycle technology to minimize and change the character of today's nuclear waste and repository

requirements, and to enhance the competitive position of the United States with respect to energy technology; and

BE IT FURTHER RESOLVED that full requested funding be awarded for the IFR to enable this new and important technology to be pursued with vigor to enable this nation to conserve fuels which may otherwise be unnecessarily expended, such as gas, coal, and oil, if the IFR technology is not completed.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, Bill Clinton, the President of the Senate and the Speaker of the House of Representatives of Congress, the Secretary of the Department of Energy, Hazel O'Leary, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the Senate March 24, 1993

Adopted by the House March 26, 1993

HOUSE JOINT MEMORIALS

(H.J.M. No. 1)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the tenth amendment to the constitution of the United States specifically reserves certain rights to the states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.";

and

WHEREAS, the federal government continues to infringe upon the right of states to make decisions which properly belong to the states by imposing mandates seemingly with little or no regard for the constitutional provision; and

WHEREAS, the mandates imposed by the federal government on the states are becoming increasingly numerous and onerous; and

WHEREAS, federal mandates often are not equally applicable to the various regions of the country and thereby create an unnecessary burden to the states for which the mandates are inappropriate; and

WHEREAS, federal mandates accompanied by federal funding, matching funds or no funding force states to initiate and fund programs which the state would not otherwise have instituted and inevitably lead to the state's funding of such programs in their entirety; and

WHEREAS, the imposition of federal mandates is an erosion of the principle of states' rights, the effect of which is to limit decision-making at the state level and to force mandatory spending which consumes a greater portion of the state's budget and seriously limits that portion which is discretionary.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we do hereby respectfully submit that the state of Idaho will dutifully consider federal suggestions for state implementation but affirm that this state claims its constitutional right to determine for itself the appropriateness, the fiscal impact and the necessity of implementing federal suggestions.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the House January 20, 1993

Adopted by the Senate January 27, 1993

(H.J.M. No. 2)

A JOINT MEMORIAL

TO THE HONORABLE PRESIDENT OF THE UNITED STATES, BILL CLINTON, THE HONORABLE SECRETARY OF THE UNITED STATES DEPARTMENT OF INTERIOR, BRUCE BABBITT, TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the people of the state of Idaho are diligent, hard working citizens who exemplify the characteristics which typify the spirit of America; and

WHEREAS, Idahoans, like people throughout America, have experienced the challenges posed by economic slow down, and are anxious now to return to the work of building America; and

WHEREAS, within the operation of the Endangered Species Act, various species in Idaho have been studied, listed or protected; and

WHEREAS, the protection afforded by the Endangered Species Act is important to maintaining the quality of life which we treasure in Idaho; and

WHEREAS, recent conflicts involved in protection of various species have raised important issues regarding the necessity of considering and protecting social and economic welfare along with environmental welfare; and

WHEREAS, it is in the interests of Idahoans and citizens of the nation that we resolve these conflicts to the advantage of all concerned.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we do hereby urge the administration to propose and the Congress to enact appropriate revisions to the Endangered Species Act which give the necessary consideration to social and economic issues faced by the people who live and work in Idaho. Every alternative must be examined for ways to assure that the economic impact of listings under the Endangered Species Act be given full consideration along with the need and justification for

protection.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, the Honorable Bill Clinton, the Secretary of the United States Department of Interior, Bruce Babbitt, the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the House February 17, 1993

Adopted by the Senate March 24, 1993

(H.J.M. No. 3)

A JOINT MEMORIAL

TO THE HONORABLE PRESIDENT OF THE UNITED STATES, BILL CLINTON, THE HONORABLE SECRETARY OF THE UNITED STATES DEPARTMENT OF INTERIOR, BRUCE BABBITT, TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the people of the State of Idaho are diligent, hardworking citizens who exemplify the characteristics which typify the spirit of America; and

WHEREAS, Idahoans, like people throughout America, have experienced the challenges posed by economic slowdown, and are anxious now to return to the work of building America; and

WHEREAS, under the auspices of the Endangered Species Act, the Bruneau Hot Springs Snail (*Pyrgulopsis bruneauensis*) has been listed as endangered; and

WHEREAS, the Endangered Species Act requires the determination for listing a species be based upon the best scientific data available; and

WHEREAS, scientific data showing additional colonies of the Bruneau Hot Springs Snail (*Pyrgulopsis bruneauensis*) was not considered in the listing of this species as endangered, thus placing this listing in a questionable position.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we urge the United States Fish and Wildlife Service to withdraw the endangered listing under the auspices of the Endangered Species Act for the Bruneau Hot Springs Snail (*Pyrgulopsis bruneauensis*).

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a

copy of this Memorial to the President of the United States, the Honorable Bill Clinton, the Secretary of the United States Department of Interior, Bruce Babbitt, the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the House February 18, 1993

Adopted by the Senate March 24, 1993

(H.J.M. No. 4)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, on February 4, 1992, the National Parks and Conservation Association and the Hells Canyon Conservation Council jointly called for a special congressionally-authorized study to evaluate prospects for the proposed Hells Canyon National Park/Chief Joseph National Preserve; and

WHEREAS, the proposal asked Congress to do a study to consider creating a 1.52 million acre complex of two national parks, a new recreation area and a national preserve; and

WHEREAS, Forest Service officials, who currently manage the area, and agricultural officials have the opinion that if the proposed land became a national park/reserve, it would be detrimental to the biodiversity of the area due to the far greater amount of people impacting the land; and

WHEREAS, the National Parks Service lacks money to adequately oversee existing parks, let alone be able to fund a new park to the system; and

WHEREAS, multiple use of the area such as ranching, logging, mining, and power boating has worked well, we want to continue these activities which would be prohibited in a park; and

WHEREAS, there are large areas of trees existing now that are disease infested and prohibiting these areas from management would create a greater hazard for wildfires; and

WHEREAS, increased tourism will not make up for the loss of natural resource jobs.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, go on record as being against any proposal for a national park in the Hells Canyon area.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a

copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the House March 2, 1993

Adopted by the Senate March 23, 1993

(H.J.M. No. 5)

A JOINT MEMORIAL

TO THE PRESIDENT OF THE UNITED STATES, TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the business of insurance is currently regulated almost entirely by the states; and

WHEREAS, under existing state and federal law the Director of the Idaho Department of Insurance has the responsibility of regulating the activities of insurance companies conducting business in Idaho, as well as the activities of agents and brokers; and

WHEREAS, those regulatory responsibilities include fraud prevention, fiscal examinations, licensing, investigation of complaints and enforcement against violators; and

WHEREAS, this system of state regulation of the insurance industry has proven to be an effective protection for the public, especially when compared to federal efforts at the regulation of financial institutions, such as the savings and loan industry; and

WHEREAS, the Federal McCarran-Ferguson Act delegates responsibility for insurance regulation to the states, so long as they provide consumer protection from price fixing and other unfair business practices which Idaho law currently provides; and

WHEREAS, H.R. 9, which is being considered by the Congress of the United States, would be unnecessary, duplicative and possibly conflicting as it relates to insurers doing business in Idaho; and

WHEREAS, H.R. 9 would prohibit certain practices which insurers now use to control insurance costs; and

WHEREAS, H.R. 9 would result in federal bureaucracies usurping much of the authority of the Director of the Idaho Department of Insurance and the Legislature of the State of Idaho.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we urge the President and the Congress of the United States to reject H.R. 9 and any similar legislation which would infringe on the authority of Idaho and each other state to be the principal regulator of insurers.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the House March 10, 1993

Adopted by the Senate March 22, 1993

(H.J.M. No. 6)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, western United States territories, before and after joining the Union of States, presented unique transportation and settlement challenges with little or no governmental oversight; and

WHEREAS, the 1800's saw this western settlement occur with sometimes unorganized surges of immigrants who had no governmental authority to guide them in the establishment of roads, schools, village boundaries, township lines and related infrastructure; and

WHEREAS, economic opportunities attracted thousands of settlers who traversed the lands in search of gold and other minerals, furs and homesteads and who caused to be constructed roads, paths and trails for the common use; and

WHEREAS, Congress in 1866 amended the mining law in order to recognize legal rights-of-way for those roads, paths and trails by adding Section 2477, commonly referred to as Revised Statute 2477; and

WHEREAS, many of the surface trails for horses, dog teams and man became permanent transportation links between settlements; and

WHEREAS, the phases of exploration, settlement and transportation did occur concurrently, in intervening years, and in current times in Idaho and other western states where the Revised Statute 2477 grants are still applicable; and

WHEREAS, there is a growing threat to surface access to private "inholding" properties in some conservation units, certain national parks and wildlife designations, and in other federal land withdrawals; and

WHEREAS, there are increased efforts to pressure Congress to extinguish the Revised Statute 2477 authorization and grants.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we urge Congress to recognize its legal and historic commitment, under Revised Statute

2477, to rights-of-way access to unreserved, or formerly unreserved, public lands.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the House March 10, 1993

Adopted by the Senate March 19, 1993

SENATE CONCURRENT RESOLUTIONS

(S.C.R. No. 101)

A CONCURRENT RESOLUTION

RECOGNIZING, COMMENDING AND MEMORIALIZING THE CONTRIBUTIONS OF JOSEPH ALBERT ALBERTSON TO THE STATE OF IDAHO.

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

WHEREAS, the people of the State of Idaho have been profoundly saddened by the death of Joe Albertson, a citizen of this state who was, indeed, a first among equals; and

WHEREAS, Joe Albertson was not a man to seek public accolades or honors, but was as unique, as genuine, and as strong as that quintessential citizen of Idaho who we might each visualize; and

WHEREAS, Joe Albertson began a grocery chain with a store at 16th and State Street in Boise, Idaho, which in the next fifty-three years developed as a premier supermarket chain in the nation, with six hundred and fifty-one stores, and a business in which he was always known as a leader and innovator; and

WHEREAS, while not a man to seek publicity for his generous gifts, Joe Albertson's generosity is renowned among Idahoans who were often the recipients of his largess; and

WHEREAS, the Albertson College of Idaho, where Joe Albertson attended college, met and married his wife of sixty-three years, and remained a benefactor throughout his life, contributing to the institution which in turn contributed to the youth of Idaho through educational excellence, as well as Boise State University and many other educational contributions, were typical of Joe Albertson's commitment to the advancement of education; and

WHEREAS, Kathryn Albertson Park, a place of quiet refuge in the heart of a thriving community, was a gift from Joe Albertson to the City of Boise which will endure through time as a tribute to his wife, as well as a memorial to the character of Joe Albertson; and

WHEREAS, a hallmark of his life and his business philosophy was well stated in his own words: "Give the people items they want to buy at a price they can afford to pay, in a pleasant environment, and shower them with lots of tender loving care." He will be long remembered for his emphasis upon the tender loving care he extended to all whose lives he touched.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that we recognize with sincere gratitude the contributions of Joseph Albert Albertson, better known as Idaho's own Joe Albertson. At this time when he has departed

from our company, we would add our words to those who will commend his work, his life, and his example to us all. We extend our sympathy to his family on behalf of the people of Idaho who share, in small measure, the family's sense of loss. Mere words cannot capture the character of Joe Albertson, nor express our admiration of his accomplishments or sorrow at his death.

Adopted by the Senate January 22, 1993

Adopted by the House January 25, 1993

(S.C.R. No. 104)

**A CONCURRENT RESOLUTION
AMENDING RULES AND REGULATIONS OF THE TRANSPORTATION DEPARTMENT
REGARDING MOTOR CARRIERS.**

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

WHEREAS, the Legislature is vested with authority to modify, reject or amend executive agency rules and regulations under the provisions of Section 67-5218, Idaho Code, and those provisions require that the Legislature make a finding that executive agency rules are not consistent with legislative intent; and

WHEREAS, it is legislative intent that certain rules of the Transportation Department regarding motor carriers are violative of legislative intent and are not consistent with statutory authority granted to the Department.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that rules and regulations of the Idaho Transportation Department contained in IDAPA 39.B.22.18., be amended to read as follows:

18. MAINTENANCE OF RECORDS. Section 49-436(2), Idaho Code, provides that every carrier whose use fees are computed under Section 49-434, Idaho Code, shall maintain records and purchase documents to substantiate and justify use of such schedule. The following rules and regulations are formulated as a guideline of what records are required and acceptable as adequate records by the Department. (11/20/91)
- a. An acceptable source document for verification of mileage is some type of Individual Vehicle Mileage Record (IVMR). IVMRs should contain the following basic information: (11/20/91)
 - i. Date of trip (starting and ending) (11/20/91)
 - ii. Trip origin and destination (11/20/91)
 - iii. Route of travel including pick up and delivery locations (11/20/91)
 - iv. Total trip miles (11/20/91)
 - v. Mileage by state (All Idaho miles are taxable) (11/20/91)

- vi. Unit number (11/20/91)
- vii. Vehicle fleet number, if any (11/20/91)
- viii. Registrant's name (11/20/91)
- ix. Trailer number (11/20/91)
- x. Gross-weight-carried (~~11/20/91~~)
- ~~xi. Driver's name (11/20/91)~~
- b. Computer printouts are merely recaps and are not acceptable at face value. Computer printouts must be supported by IVMRs as verification of mileage traveled. (11/20/91)
- c. Information recorded on IVMRs must be accurate and legible. Mileage figures entered on IVMRs can be obtained from various sources such as odometer and/or hubometer readings, as long as the method used is consistent. Recordings of actual mileage must include all movement of the vehicle including loaded, empty and bobtail miles. (11/20/91)
- d. Individual trips should be accumulated into monthly and quarterly summaries. These summaries should be used as the basis for the miles submitted on the quarterly reports. (11/20/91)
- e. Records of fuel purchased which show date, place of purchase and quantity of fuel purchased must be maintained. (11/20/91)
- ~~f. Scale tickets, freight bills, or bills of lading or other documents which show gross weight and product being hauled must be maintained. (11/20/91)~~

BE IT FURTHER RESOLVED that the Transportation Board and the Transportation Department is hereby directed and instructed to make appropriate changes to renumber its rules to take into account the changes made by this resolution.

Adopted by the Senate March 8, 1993

Adopted by the House March 19, 1993

(S.C.R. No. 105)

A CONCURRENT RESOLUTION

APPROVING AN APPLICATION TO APPROPRIATE WATER FOR MINIMUM STREAMFLOW.

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

WHEREAS, the Idaho Water Resource Board may apply for a permit to appropriate unappropriated waters of a stream to establish a minimum streamflow; and

WHEREAS, under the provisions of Section 42-1503, Idaho Code, an approved application shall not become finally effective until acted upon by the Legislature, except that if the Legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved; and

WHEREAS, the Director of the Department of Water Resources

approved Application for Permit No. 36-8600 on November 25, 1992, by adopting a Proposed Memorandum Decision and Order authorizing the appropriation of a minimum streamflow in Crystal Springs of 59.0 cfs from January 1 through December 31. The minimum streamflow is contained within Governments Lots 12 and 13, Section 12, T9S, R15E, B.M., Gooding County.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that the same is hereby approved subject to the conditions and limitations contained in the Proposed Memorandum Decision and Order, dated November 25, 1991, and adopted by the Director of the Department of Water Resources on November 25, 1992.

Adopted by the Senate February 18, 1993

Adopted by the House March 11, 1993

(S.C.R. No. 108)

A CONCURRENT RESOLUTION
STATING LEGISLATIVE FINDINGS AND AMENDING A CERTAIN RULE OF THE
DEPARTMENT OF HEALTH AND WELFARE.

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

WHEREAS, the Legislature is vested with authority to modify, reject or amend executive agency rules under the provisions of Section 67-5218, Idaho Code; and

WHEREAS, it is the finding of the Legislature that a certain rule of the State Department of Health and Welfare relating to social investigations prior to placement for adoption of a child in the home of prospective adoptive parents is violative of the intent of the Legislature when statutes were enacted authorizing the State Department of Health and Welfare to promulgate rules pertaining to social investigations prior to placement of children for adoption; and

WHEREAS, it is the finding of the Legislature that IDAPA 16.06.01225,02.a. as adopted by the State Department of Health and Welfare should be amended.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 16.06.01225,02.a., rules of the State Department of Health and Welfare, be amended as follows:

02. Social Investigation Pre-Placement.

- a. Section 16-1506(3), Idaho Code, requires that prior to the placement for adoption of any child in the home of prospective adoptive parents, that a social investigation of the prospective adoptive family and all of its members be completed with a positive recommendation.

Such investigation shall comply with the requirements of Sections 06.01226 and 06.01228. Investigations shall be conducted only by ~~licensed-social-work~~ staff employed by or under contract with adoption agencies licensed in the state of Idaho or employed by the Department. All such studies shall be reviewed and signed by ~~licensed--social workers~~ staff of adoption agencies licensed in the state of Idaho or by ~~licensed-social-work~~ staff of the Department. ~~(12-15-92)~~ (_____)

BE IT FURTHER RESOLVED that the changes to the rules of the State Department of Health and Welfare provided by this Resolution shall be in full force and effect immediately upon the final adoption of this Resolution.

Adopted by the Senate February 18, 1993

Adopted by the House March 15, 1993

(S.C.R. No. 110)

A CONCURRENT RESOLUTION

COMMEMORATING THE FIFTIETH ANNIVERSARY OF THE WARSAW GHETTO UPRISING.

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

WHEREAS, it is with admiration for their courage and with sadness in our hearts at the eventual tragic outcome, that we commemorate the fiftieth anniversary of the Warsaw Ghetto Uprising. The lesson Americans learned in 1776, that oppressed people must protect themselves if their government will not, or if it is the actual oppressor, did not thwart one of the greatest crimes of this century; and

WHEREAS, after years of being beaten, herded like animals and watching relatives and neighbors disappear, the Jews in the Warsaw Ghetto and other Nazi-occupied places realized that submission was not a way to stem the evil of the Holocaust. Their only alternative was resistance - armed resistance - yet, they had no arms. Polish people outside the Warsaw Ghetto were able to find ten pistols to give them, and with these a Nazi patrol was ambushed on January 18, 1943; and

WHEREAS, for months, the Ghetto resistance held out, becoming better organized and armed as time went on. The shock of encountering armed resistance resulted in an interruption in the Nazi extermination program. In order to conquer the Ghetto, the Nazis had to burn, blast and level it at a hideous cost in blood, material and time; and

WHEREAS, resistance to oppression, even against great odds, is fueled by intense emotion. Fear, love and outrage can carry people beyond normal limits to accomplish great deeds and overcome seemingly insurmountable obstacles. The Warsaw Ghetto uprising is just such a case in point.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that we hereby commemo-

rate the fiftieth anniversary of the Warsaw Ghetto Uprising; and

BE IT FURTHER RESOLVED, that the Secretary of the Senate be, and she is hereby authorized to transmit a copy of this resolution to appropriate Jewish and Polish organizations observing this anniversary.

Adopted by the Senate March 5, 1993

Adopted by the House March 15, 1993

(S.C.R. No. 112)

A CONCURRENT RESOLUTION

AMENDING A RULE OF THE IDAHO TRANSPORTATION DEPARTMENT RELATING TO WEIGHT LIMITS AND RETRACTABLE OR VARIABLE LOAD SUSPENSION AXLES.

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

WHEREAS, the Legislature is vested with authority to modify, reject or amend executive agency rules under the provisions of Section 67-5218, Idaho Code; and

WHEREAS, it is the finding of the Legislature that the rules of the Idaho Transportation Department, IDAPA 39, Chapter C-HIGHWAYS, Rule No. 8, "WEIGHT LIMITS" should be amended as provided herein.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 39.C.08, rules of the Idaho Transportation Department, be, and the same are hereby amended to read as follows:

4. WEIGHT LIMITS

- a. No allowance will be made, in computation of total gross vehicle or axle group weight, for any retractable or variable load suspension axle used on vehicles operating upon highways of this State not having a manufacturer's rating of 9,000 pounds or more and equipped with tires having a manufacturer's rating adequate to carry the load thereon. Allowances for computation of total gross vehicle or axle group weight will be made only if the pressure-regulating device--which-controls-the-load-transfer-to controls to actuate such retractable or variable load suspension axle is are located so as not to be accessible from the driver's compartment. The up/down switch to fully-raise-or-fully-deploy-those axles activate the hydraulic tag axle on a concrete transit truck may be located in the driver's compartment.
- (09/18/92)()

Adopted by the Senate March 17, 1993

Adopted by the House March 24, 1993

(S.C.R. No. 114)

A CONCURRENT RESOLUTION

AUTHORIZING AND DIRECTING THE LEGISLATIVE COUNCIL TO APPOINT A COMMITTEE TO UNDERTAKE AND COMPLETE A STUDY OF CHILD CUSTODY AND VISITATION.

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

WHEREAS, there are an ever-increasing number of single-parent families in Idaho; and

WHEREAS, the refusal of a custodial parent to honor the visitation rights of the noncustodial parent granted by the divorce decree, and violation by the noncustodial parent of the terms of visitation imposed by the divorce decree have become common occurrences; and

WHEREAS, although current law views the support obligation and rights of visitation as separate and independent from one another, the custodial parent's refusal of visitation is often used by the noncustodial parent as a reason not to pay child support, and conversely, the nonpayment of child support is often used by the custodial parent as a reason to refuse visitation by the noncustodial parent, all of which operates to the economic, emotional and psychological detriment of the children; and

WHEREAS, this vicious circle affects all the citizens of Idaho when the custodial parent does not receive child support and is forced to rely on the state for financial assistance, as well as assistance in the collection of delinquent child support, thus creating an ever-increasing burden on state resources.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Legislative Council is authorized to appoint a committee to undertake and complete a study of the adequacy and sufficiency of the laws, practices and procedures pertaining to child custody and visitation.

BE IT FURTHER RESOLVED that the Committee shall submit its findings and recommendations to the Second Regular Session of the Fifty-second Idaho Legislature.

Adopted by the Senate March 18, 1993

Adopted by the House March 26, 1993

(S.C.R. No. 117)

A CONCURRENT RESOLUTION

PROVIDING FINDINGS OF THE LEGISLATURE AND AUTHORIZING THE USE OF THE STATE INSURANCE FUND FOR THE PURPOSE OF FINANCING A HEADQUARTERS FACILITY OF THE DEPARTMENT OF PARKS AND RECREATION TO BE EVENTUALLY PURCHASED BY THE STATE OF IDAHO.

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

WHEREAS, Subsection (2) of Section 72-912, Idaho Code, requires that no surplus or reserve funds of the State Insurance Fund may be invested in any real estate to be leased or owned by the State of Idaho or any instrumentality thereof, or invested in an investment that would directly provide for real estate to be leased or owned by the State of Idaho or an agency or instrumentality thereof unless the Legislature specifically grants approval to such lease or purchase by adoption of a concurrent resolution by both houses.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that the headquarters facility project for the Department of Parks and Recreation proposed by the Idaho Foundation for Parks and Lands is herein approved for investment by the State Insurance Fund.

Adopted by the Senate March 23, 1993

Adopted by the House March 26, 1993

HOUSE CONCURRENT RESOLUTIONS

(H.C.R. No. 1)

A CONCURRENT RESOLUTION

PROVIDING FOR A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE FIRST REGULAR SESSION OF THE FIFTY-SECOND IDAHO LEGISLATURE FOR THE PURPOSE OF HEARING A MESSAGE FROM THE GOVERNOR.

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

WHEREAS, the Governor has informed the House of Representatives and the Senate that he desires to deliver a message to a Joint Session of the House of Representatives and the Senate of the First Regular Session of the Fifty-second Idaho Legislature in the Chamber of the House of Representatives at 1 p.m. on Monday, January 11, 1993.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the House of Representatives and the Senate meet in Joint Session on Monday, January 11, 1993, at 1 p.m. for the purpose of hearing the message from the Governor.

Adopted by the House January 11, 1993

Adopted by the Senate January 11, 1993

(H.C.R. No. 2)

A CONCURRENT RESOLUTION

PROVIDING FOR A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE FIRST REGULAR SESSION OF THE FIFTY-SECOND IDAHO LEGISLATURE FOR THE PURPOSE OF HEARING A MESSAGE FROM THE GOVERNOR.

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

WHEREAS, the Governor has informed the House of Representatives and the Senate that he desires to deliver a message to a Joint Session of the House of Representatives and the Senate of the First Regular Session of the Fifty-second Idaho Legislature in the Chamber of the House of Representatives at 11 a.m. on Wednesday, January 13, 1993.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the House of Representatives and the Senate meet in Joint Session on Wednesday, January 13,

1993, at 11 a.m. for the purpose of hearing the message from the Governor.

Adopted by the House January 13, 1993

Adopted by the Senate January 13, 1993

(H.C.R. No. 3)

A CONCURRENT RESOLUTION

DECLARING 1993 TO BE THE IDAHO YEAR OF WORKPLACE PRODUCTIVITY THROUGH LITERACY AND THE WEEK OF MARCH 28 THROUGH APRIL 3, 1993 TO BE IDAHO LITERACY WEEK.

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

WHEREAS, expansion of adult basic education capacity in Idaho is critical in order to ensure that every adult is literate and possesses the skills necessary for success in society and employment in today's increasingly sophisticated workplace; and

WHEREAS, intergenerational literacy is critical in order to raise the literacy level of Idaho parents so that children's literacy level and success in school is improved and the intergenerational cycle of illiteracy broken; and

WHEREAS, training and retraining of adults is critical in order to prepare adult learners for programs necessary to maintain competitive skills and employment in today's increasingly sophisticated workplace; and

WHEREAS, literacy for non-English speaking adults is critical in order to ensure that non-English speaking adults learn English for their own mainstream success in society, work, and language development at home for their children to be successful; and

WHEREAS, community education and awareness is critical in order to educate key decision makers and community leaders about the broad cross section of individuals in Idaho who need and can benefit from literacy services and the cost-effectiveness of investing in services that help adults and their children be successful; and

WHEREAS, training and resource support is critical in order to provide high quality training, information, resource materials and technology to staff and volunteers in Idaho's literacy programs.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the year of 1993 be declared "The Year of Workplace Productivity Through Literacy" and the week of March 28 through April 3, 1993, be declared "Idaho Literacy Week."

Adopted by the House January 22, 1993

Adopted by the Senate January 29, 1993

(H.C.R. No. 5)

A CONCURRENT RESOLUTION

PROVIDING FOR OFFSET PRINTING OF HOUSE AND SENATE BILLS, RESOLUTIONS, MEMORIALS AND AMENDMENTS, AND FIXING THE PRICE FOR PRINTING THE SAME.

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

WHEREAS, the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee have, according to law, made provisions for the offset printing of the House and Senate bills, resolutions, memorials and amendments;

NOW, THEREFORE, in accordance with a written contract duly made and entered into by the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee;

BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the contract for the offset printing of the House and Senate bills, resolutions, memorials and amendments, in accordance with the provisions of law and in accordance with the written contract between the Joint Committee as party of the first part, and BEST IMPRESSION PRINTING, Boise, Idaho, as party of the second part, be, and the same is hereby ratified and concurred in, and is incorporated herein, and made a part of this resolution in words and figures following, to-wit:

PRINTING AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of January, 1993, by and between the HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE and the SENATE JUDICIARY AND RULES COMMITTEE of the First Regular Session of the Fifty-second Idaho Legislature, hereinafter referred to as the Joint Committee, and BEST IMPRESSION PRINTING, hereinafter referred to as Best Impression.

WITNESSETH;

That pursuant to written bids submitted to and considered by the Joint Committee, a contract for legislative printing is hereby awarded to Best Impression per your letter response of December 7, 1992, for the First and Second Regular Sessions and any Extraordinary Sessions of the Fifty-second Idaho Legislature upon the following additional terms and conditions:

1. That Best Impression will utilize an offset process from "Camera Ready" copies, as these terms are used and recognized in the trade, to print House and Senate Bills, Resolutions, and Memorials.

2. That Best Impression concurrently with the execution of this contract, deliver to the Joint Committee good and sufficient surety bond or other collateral, if and when requested, in the manner and form, and with a surety acceptable to the Joint Committee, in the sum of five thousand dollars (\$5,000), guaranteeing the satisfactory and faithful performance by Best Impression of all the terms and conditions of this contract.

3. That Best Impression will maintain at all times a high standard of workmanship to the end that all printing will be neat, clean,

legible and with adequate contrast between print and paper to be easily read.

4. That Best Impression will insure that all bills, resolutions and memorials will have neat and proper underlining, strikeouts and deletions and that the paper used will be properly punched and sized.

5. That for the purposes of this contract, all printing will be received from and delivered to the presiding officer of each house or his designee.

6. That Best Impression will deliver all standard lot printed material conforming to the above requirements by 9 a.m. the next morning after receipt of copy, unless prior arrangements have been made.

7. Upon failure to deliver such bills in the manner and within the time herein specified, this contract may be deemed terminated forthwith at the option of the Joint Committee and recourse had against Best Impressions' bond.

8. That a standard lot of printed material will be six hundred and fifty (650) copies or less of individual bills, resolutions or memorials at a cost of fourteen dollars and fifty cents (\$14.50) per printed page. Additional copies may be obtained by the Joint Committee at the rate of three dollars and twenty-five cents (\$3.25) per printed page in units of one hundred (100).

9. That Best Impression will pick up "Camera Ready" copy at least twice daily of each day that the Legislature is in session.

10. That Best Impression will make available to and sell to the general public any bill, resolution or memorial in lots of one hundred (100) copies at a cost of three dollars and twenty-five cents (\$3.25) per printed page, provided the order for such is received prior to the time the bill is printed.

11. That the Joint Committee reserves to itself the sole and exclusive decision as to the proper fulfillment of the terms and conditions of this agreement by Best Impression, and that the Joint Committee may terminate this agreement upon twenty-four (24) hours notice to Best Impressions', with no liability accruing to the Joint Committee or the State except for printing already completed and delivered. The Joint Committee reserves the right to review and revise this contract prior to the Second Regular Session of the Fifty-second Idaho Legislature.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands as of the day and year first above written.

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

By /s/ Celia R. Gould
CELIA R. GOULD, Chairman

By /s/ Michael Simpson
MICHAEL SIMPSON, Speaker of the House

SENATE JUDICIARY AND RULES COMMITTEE

By /s/ Denton Darrington
DENTON DARRINGTON, Chairman

By /s/ Jerry T. Twiggs
 JERRY T. TWIGGS, President Pro Tempore

BEST IMPRESSION PRINTING

By /s/ Richard W. Flintzer
 RICHARD W. FLINTZER, Owner

Adopted by the House January 25, 1993
 Adopted by the Senate February 2, 1993

(H.C.R. No. 7)

A CONCURRENT RESOLUTION
 STATING FINDINGS OF THE LEGISLATURE AND EXPRESSING SUPPORT OF THE VOL-
 UNTEERS IN OVERSEAS COOPERATIVE ASSISTANCE OF WASHINGTON, D.C.

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

WHEREAS, Volunteers in Overseas Cooperative Assistance (VOCA) is an organization based in Washington, D.C.; and

WHEREAS, said organization for over twenty years last past has provided technical assistance to requesting developing nations worldwide by assisting farmers and cooperatives overseas; and

WHEREAS, the technical assistance being so provided has been furnished by American volunteer farmers, cooperative specialists and other experts in related fields, many of whom are from the state of Idaho; and

WHEREAS, VOCA and its volunteers are an important resource to the world's struggle against hunger and poverty, and in promoting democratic principles in developing nations.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we do strongly support, encourage and appreciate activities and programs of the Volunteers in Overseas Cooperative Assistance, and extend recognition to the volunteers participating in these programs from Idaho and nationwide.

Adopted by the House January 26, 1993
 Adopted by the Senate February 4, 1993

(H.C.R. No. 8)

A CONCURRENT RESOLUTION
 PROVIDING FOR PRINTING THE HOUSE AND SENATE LEGISLATIVE JOURNALS AND
 FIXING THE PRICE FOR PRINTING THE SAME.

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

WHEREAS, Section 67-509, Idaho Code, has made provisions for the printing of the House and Senate Legislative Journals;

NOW, THEREFORE, in accordance with a written contract duly made and entered into by the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee;

BE IT RESOLVED, by the members of the First Regular Session of the Fifty-second Idaho Legislature, that the contract for the printing of the House and Senate Legislative Journals in accordance with the provisions of law and in accordance with the written contract between the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee, as party of the first part, and Northwest Printing, Inc., of Boise, Idaho, as party of the second part, be, and the same is hereby ratified and confirmed, and is incorporated herein and made a part of this resolution, in words and figures following, to-wit:

PRINTING AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of January, 1993, by and between the HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE and the SENATE JUDICIARY AND RULES COMMITTEE of the First Regular Session of the Fifty-second Idaho Legislature, hereinafter mentioned as party of the first part, and NORTHWEST PRINTING, INC., Boise, Idaho, hereinafter mentioned as party of the second part;

WITNESSETH; That pursuant to a resolution of said party of the first part and written quotation submitted by party of the second part, a contract for legislative printing is hereby awarded to the said Northwest Printing, as follows:

HOUSE AND SENATE DAILY JOURNAL FIRST REGULAR SESSION

350 copies of House Journal

350 copies of Senate Journal

700 total copies \$16.50 per page
100 additional copies \$ 1.00 per page

PERMANENT JOURNAL

FIRST REGULAR SESSION

250 copies of House Permanent Journal, including 5 hard-bound gold lettered volumes

250 copies of Senate Permanent Journal, including 5 hard-bound gold lettered volumes

510 total copies \$15.00 per page
Additional hard-bound
gold lettered volumes \$28.38 per volume

HOUSE AND SENATE DAILY JOURNAL SECOND REGULAR SESSION

350 copies of House Journal

350 copies of Senate Journal

700 total copies \$16.50 per page
100 additional copies \$ 1.00 per page

PERMANENT JOURNAL
SECOND REGULAR SESSION

250 copies of House Permanent Journal, including 5 hard-bound
gold lettered volumes
250 copies of Senate Permanent Journal, including 5 hard-bound
gold lettered volumes
510 total copies \$15.00 per page
Additional hard-bound
gold lettered volumes \$28.38 per volume

IT IS AGREED by the parties hereto that all of said printing shall be done in the form and manner and upon such suitable material as was included in the bid specifications and is now required by the statutes of the State of Idaho; where not otherwise herein provided, such statutes shall be controlling, and particularly as to the printing of Legislative Journals, the same shall be printed in conformity with Section 67-509, Idaho Code, which section is hereby referred to and by reference made a part of this contract as though set forth herein at length; that the number of copies to be supplied under this contract may from time to time be determined by the party of the first part; and that all other terms of the specifications for the Journals of the party of the first part shall be complied with as though set forth herein at length.

IT IS AGREED that in the printing of the Journal the same shall be delivered daily on the desk of the Chief Clerk of the House, and on the desk of the Secretary of the Senate not later than the hour of 9 a.m. on each day; provided, that the party of the second part shall not be responsible in this respect, in cases of unreasonable delay in furnishing copy for such printing to the party of the second part.

IT IS FURTHER AGREED, that the permanent printed Journal shall be delivered to the Chief Clerk of the House not later than thirty (30) working days from date of receipt of final House copy, and to the Secretary of the Senate not later than thirty (30) working days from date of receipt of final Senate copy, and that for each day's failure to so deliver, there shall be deducted from the contract price for printing said Journal the sum of Fifty Dollars (\$50) per day for each day's delay.

The party of the second part further covenants and agrees to deliver to the party of the first part good and sufficient surety bond or other collateral, if and when requested, in the manner and form, and with a surety acceptable to party of the first part, in the sum of Five Thousand Dollars (\$5,000), guaranteeing the satisfactory and faithful performance by the party of the second part of all the conditions and covenants of this contract.

IN WITNESS WHEREOF, the party of the second part has caused these presents to be executed by its proper official and the party of the first part, by Concurrent Resolution, has caused these presents to be executed by its proper officials.

Party of the First Part

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

By/s/ Celia R. Gould
CELIA R. GOULD, Chairman

By/s/ Michael Simpson
MICHAEL SIMPSON, Speaker of the House

SENATE JUDICIARY AND RULES COMMITTEE

By/s/ Denton Darrington
Denton Darrington, Chairman

By/s/ Jerry T. Twiggs
JERRY T. TWIGGS, President Pro Tempore

Party of the Second Part

NORTHWEST PRINTING, INC.

By/s/ Joe Post
JOE POST, Sales Representative

Adopted by the House February 1, 1993
Adopted by the Senate February 9, 1993

(H.C.R. No. 11)

A CONCURRENT RESOLUTION

RECOGNIZING THE CONTRIBUTIONS OF HAROLD REID IN HIS SERVICE IN THE IDAHO LEGISLATURE AND IN THE INTERESTS OF THE PEOPLE OF IDAHO.

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

WHEREAS, members of the Idaho Legislature were saddened by the death of a long time, well respected, and greatly admired colleague, Harold Reid; and

WHEREAS, Harold Reid established a record of legislative longevity, having served for sixteen terms, totaling thirty-two years; and

WHEREAS, more than longevity, Harold Reid established a reputation for his dedication and expertise, particularly acknowledged as proficient in the tax laws of the state of Idaho, and recognized for his personal commitment to maintaining fairness and equality in the tax law of the state on behalf of the citizens; and

WHEREAS, Harold Reid will be remembered for his undauntable spirit, which was typified by his recovery from a serious accident and immediate return to the Legislature to resume his routine as the first member to arrive at the Capitol Building each morning; and

WHEREAS, it is appropriate that the Legislature recognize the con-

tributions of Harold Reid, who was unique in his service, selfless in his dedication, and generous with his expertise.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we recognize the unique contributions and quality of service of Harold Reid to the Legislature of the state of Idaho and the people of the state of Idaho. While all who serve in the Legislature serve with dedication, we acknowledge that Harold Reid set a standard of service which we will long remember and seek to emulate.

Adopted by the House February 4, 1993
Adopted by the Senate February 12, 1993

(H.C.R. No. 14)

A CONCURRENT RESOLUTION
RECOGNIZING AND COMMENDING THE CONTRIBUTIONS OF ROBERT E. BAKES TO THE
STATE OF IDAHO.

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

WHEREAS, the judicial system in Idaho has been greatly enriched through the twenty-one years of dedication and contributions of Supreme Court Chief Justice Robert E. Bakes; and

WHEREAS, Justice Bakes' interest in judicial education and administration has extended beyond state borders to leadership at the highest level of the Appellate Judges' Conference of the American Bar Association; and

WHEREAS, Justice Bakes' receipt of the Kramer Award, presented to a member of the Idaho judiciary who best exemplifies excellence in judicial administration and who makes a significant contribution to the improvement of justice in the Idaho state courts, reflects his work toward building an administrative structure made possible by court reform legislation of the 1960's; and

WHEREAS, Justice Bakes has been a key advocate in the restructure and application of a judicial rules process unifying all the courts of Idaho; and

WHEREAS, Justice Bakes' interest in legal education extends to high school and college students and teachers as director of the Idaho Law Foundation; and

WHEREAS, the essence of Justice Bakes' service for the court is reflected in the statement: "There's no telling how much good you can do if you don't care who gets the credit."; and

WHEREAS, he is recognized among peers as a formidable banjo player, a smooth-swinging clean-up hitter for the judicial softball team, and a true gentleman; his example sets a standard of the highest integrity.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we recognize with sin-

cere gratitude and admiration the contributions of Chief Justice Bakes. As a retiring jurist, his dignity, stature and dedication provide a model for all working within the broad field of law.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized to forward a copy of this resolution to Justice Bakes.

Adopted by the House February 16, 1993

Adopted by the Senate February 26, 1993

(H.C.R. No. 15)

A CONCURRENT RESOLUTION

PROVIDING FOR PRINTING THE SESSION LAWS, FIXING THE PRICE FOR PRINTING THE SAME, AND THE PRICE WHICH THE PUBLIC SHALL BE CHARGED FOR COPIES OF THE SESSION LAWS.

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

WHEREAS, Section 67-904, Idaho Code, has made provisions for the printing of the Session Laws;

NOW, THEREFORE, in accordance with a written contract duly made and entered into by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee of the Legislature of the State of Idaho hereinafter referred to as the Joint Committee;

BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the contract for the printing of the Session Laws of the First and Second Regular Sessions, Fifty-second Idaho Legislature, and the Session Laws of any Extraordinary Session, Fifty-second Idaho Legislature, in accordance with the provisions of law and in accordance with the written contract between the Speaker of the House of Representatives and the President Pro Tempore of the Senate and the Joint Committee as party of the first part, and CAXTON PRINTERS, LTD., of Caldwell, Idaho, as party of the second part, be, and the same is hereby ratified, confirmed and concurred in, and is incorporated herein and made a part of this resolution, in words and figures following, to-wit:

PRINTING CONTRACT

THIS AGREEMENT, made and entered into this 9th day of February, 1993, by and between the Speaker of the House of Representatives, Michael Simpson, and the President Pro Tempore of the Senate, Jerry T. Twiggs, the Joint Committee of the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee of the Legislature of the State of Idaho, hereinafter mentioned as party of the first part, and THE CAXTON PRINTERS, LTD., of Caldwell, Idaho, hereinafter mentioned as party of the second part;

WITNESSETH:

That pursuant to a resolution of said party of the first part and written bid submitted to the said party of the first part by the party of the second part, contract for legislative printing is hereby awarded to said CAXTON PRINTERS, LTD., as follows:

SESSION LAWS

For printing and binding 1200 copies of the Session Laws of the First Regular Session of the Fifty-second Idaho Legislature and for printing and binding 1200 copies of the Session Laws of the Second Regular Session of the Fifty-second Idaho Legislature and the Session Laws of any Extraordinary Session of the Fifty-second Idaho Legislature: \$25.75 per page, f.o.b. Boise, Idaho, if produced by offset lithography with camera-ready copy being furnished party of the second part, plus \$5.90 per volume for binding. For pages requiring reduction shots, an additional \$7.00 per page charge. Each volume to be Smythe sewed, rounded and backed with suitable headbands and Roxite Library Buckram over a 15 point Red Label Davey Board. The party of the second part shall provide an additional quantity to be made available to the general public at \$35.00 per single volume, and \$42.00 per set of two volumes, if a second volume is required. The Session Laws of any Extraordinary Session adjourned prior to June 1, 1993, shall be included in the Session Laws of the First Regular Session, or if adjourned prior to June 1, 1994, shall be included in the Session Laws of the Second Regular Session. No charge shall be made by the party of the second part for proofreading or blank pages.

IT IS AGREED between the parties hereto that all of said printing shall be done in the form and manner as submitted in written bid dated February 5, 1993, by party of the second part, and in compliance with the statutes of the State of Idaho where not otherwise provided, such statutes shall be controlling.

IT IS FURTHER AGREED that said Session Laws shall be printed, delivered to and be ready for distribution by the Secretary of State in conformity with the provisions of Section 67-904, Idaho Code, which section is hereby referred to and by such reference made a part of this contract as though set forth at length herein, and particularly as follows:

The Session Laws shall be printed and made available for distribution within 60 days after the last day on which the Governor may sign or approve bills following adjournment of the session of the legislature which enacted or passed the measures included in the Session Laws, or within 30 days after the delivery to the party of the second part of the proper title pages, certificate pages, tables of laws and statutes amended and repealed and a proper index of the contents of the Session Laws, whichever date is first in time.

Such printing and delivery of said Session Laws to the Secretary of State are to be made as provided by law; that for each day's failure to so deliver volumes of such Session Laws as herein provided, there shall be deducted from the contract price for printing said Session Laws the sum of \$50.00 per day for each day's delay; provided, however, that the party of the second part shall not be held responsible for delay occasioned by failure to furnish copy for such printing to the party of the second part and such delay shall, to the same extent, extend the time for the performance of this agreement.

IN WITNESS WHEREOF, the party of the second part has caused these presents to be executed by its proper officials, and the party of the first part, by concurrent resolution has caused these presents to be executed by its proper officials.

Party of the First Part

SPEAKER OF THE HOUSE OF REPRESENTATIVES

By /s/Michael Simpson

Michael Simpson

HOUSE JUDICIARY, RULES AND
ADMINISTRATION COMMITTEE

By /s/Celia Gould

Celia Gould, Chairman

PRESIDENT PRO TEMPORE OF THE SENATE

By /s/Jerry T. Twiggs

Jerry T. Twiggs

SENATE JUDICIARY AND RULES COMMITTEE

By /s/Denton Darrington

Denton Darrington, Chairman

Party of the Second Part

THE CAXTON PRINTERS, LTD.

By /s/Dave Gipson

Dave Gipson

Vice President

Adopted by the House February 17, 1993

Adopted by the Senate February 23, 1993

(H.C.R. No. 16)

A CONCURRENT RESOLUTION

AUTHORIZING AND DIRECTING THE LEGISLATIVE COUNCIL TO CONDUCT A REVIEW
AND STUDY OF TITLE 18 OF THE IDAHO CODE FOR RECODIFICATION.

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

WHEREAS, the members of the Legislature, as the representatives of the people of this State, have a responsibility to establish the laws of this state to be fair and current; and

WHEREAS, when Title 18 was last recodified in 1972 many provisions which are dated back to statehood were reenacted; and

WHEREAS, concern has been expressed that some of the provisions dated back to statehood in Title 18 may not be in accordance with what the courts perceive as just and in accordance with modern procedure and custom.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is authorized and directed to establish a committee to undertake and complete a study to revise the criminal code contained in Title 18.

BE IT FURTHER RESOLVED that the committee is directed to consult with prosecuting attorneys, the office of the Attorney General, public defenders and law enforcement personnel in undertaking its study.

BE IT FURTHER RESOLVED that the committee shall report its findings, recommendations and proposed legislation, if any, to the Second Regular Session of the Fifty-second Idaho Legislature.

Adopted by the House February 26, 1993

Adopted by the Senate March 17, 1993

(H.C.R. No. 19)

A CONCURRENT RESOLUTION
STATING LEGISLATIVE INTENT REGARDING WATER QUALITY EDUCATION, INFORMATION DEVELOPMENT, AND TECHNOLOGY TRANSFER.

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

WHEREAS, pursuant to Section 39-124, Idaho Code, the Idaho Legislature has indicated its desire that prevention of ground water contamination be given high priority; and

WHEREAS, the Legislature adopted a ground water quality plan that recommends voluntary programs for prevention be utilized whenever possible; and

WHEREAS, the most effective voluntary programs are based on information and education; and

WHEREAS, the Idaho Water Resources Research Institute would be effective at promoting the coordination, development and presentation of unbiased information and education programs; and

WHEREAS, implementation guidance for policy III-A of the Idaho Ground Water Quality Plan states "the university system should work with the State Department of Education and other appropriate public and private agencies to develop and deliver ground water quality programs through public and private schools"; and

WHEREAS, implementation guidance for policy III-B of the Idaho Ground Water Plan states "the universities within Idaho should maintain a lead in conducting research on ground water quality issues such as best management practices and remediation technologies"; and

WHEREAS, the Idaho Water Resources Research Institute is in the best position to coordinate with universities in Idaho as well as regionally and nationally; and

WHEREAS, the charter of the Idaho Water Resources Research Institute charges the Institute Director to work with all universities in Idaho with water related expertise as well as state and federal agencies involved with water issues.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that it is the intent of the Legislature that the Idaho Water Resources Research Institute be directed to assist state, federal and local agencies in the development, coordination and implementation of water quality information and education programs and needed water related technology development. The Idaho Water Resources Research Institute is further directed to submit a report to the Second Regular Session of the Fifty-second Idaho Legislature regarding these activities.

Adopted by the House February 26, 1993

Adopted by the Senate March 23, 1993

(H.C.R. No. 20)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND ADOPTING CERTAIN RECOMMENDATIONS, MODIFYING CERTAIN RECOMMENDATIONS, AND STATING POLICY TOWARD FUNDING RECOMMENDATIONS REGARDING PAY POLICIES FOR STATE EMPLOYEES.

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

WHEREAS, the Legislature has by law provided that the Governor and the Idaho Personnel Commission report to the Legislature their recommendations for proposed pay policies, together with estimated costs thereof; and

WHEREAS, the Legislature has received and reviewed the report of the Governor dated January 20, 1993, and the report of the Idaho Personnel Commission dated October 1, 1992; and

WHEREAS, the Legislature recognizes the need to maintain spending patterns of state government within established guidelines; and

WHEREAS, the Legislature intends that state employee total compensation shall be based on market costs of labor; and

WHEREAS, adjustments to retirement benefits provided for sections 59-1302(5B), 59-1342(1) and (2), and 59-1346(1), Idaho Code, will have fiscal impacts on units contributing to the retirement system, it is necessary that such adjustments be reviewed and approved by the Legislature before they are implemented; and

WHEREAS, the Legislature has had the opportunity to review the cost analysis prepared by the Public Employee Retirement System of Idaho (PERSI) and finds that the fiscal impacts are reasonable.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular

Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that:

1. Recommendation No. 1 of the Idaho Personnel Commission and concurred in by the Chief Executive is hereby adopted.
 2. Recommendation No. 2 of the Idaho Personnel Commission and rejected by the Chief Executive is rejected.
 3. Recommendation No. 3 of the Idaho Personnel Commission and rejected by the Chief Executive is rejected.
 4. Recommendation by the Chief Executive to provide a 2 1/2% cost-of-living adjustment for state employees is hereby modified to a 2% cost-of-living adjustment.
 5. Recommendation by the Chief Executive to implement the second phase of the four year phase-in of the Retirement System enhancements presented by PERSI on an employer/employee cost-share basis is hereby adopted.
 6. Recommendation of the Chief Executive to include funding for annualization of employers' share of health insurance premiums and phase I of the retirement enhancements is hereby adopted.
 7. The Joint Finance-Appropriations Committee is directed to appropriate an amount not to exceed \$13,529,900 from the General Account to fund these recommendations for state agencies, colleges and universities.
 8. For those agencies funded in total or in part from non-General Account money, the Joint Finance-Appropriations Committee is directed to appropriate in as nearly as possible the same manner as for General Account funded agencies.
 9. The effective date of implementation of these salary adjustments shall be June 6, 1993, with Recommendation No. 5 effective September 12, 1993, for state government and October 1, 1993, for all other PERSI members.
- BE IT FURTHER RESOLVED that appropriation measures to fund nonclassified employees be prepared in as nearly as possible the same manner as for classified employees.

Adopted by the House February 25, 1993

Adopted by the Senate March 8, 1993

(H.C.R. No. 21, As Amended)

A CONCURRENT RESOLUTION

STATING LEGISLATIVE INTENT ON PAY POLICIES FOR STATE EMPLOYEES.

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

WHEREAS, the Legislature has, by resolution, provided state employees a 2% cost-of-living adjustment; and

WHEREAS, the increase in employee cost of health insurance and retirement enhancements will, for some state employees, result in deductions exceeding the amount received by the 2% cost-of-living adjustment; and

WHEREAS, to the extent possible, it is legislative intent that no

employee receive a cut in their annual take home pay; and

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that state agencies are directed to provide all full-time employees earning at a rate of less than \$9.00 per hour effective September 12, 1993, a \$50.00 bonus effective September 12, 1993, from available agency appropriations.

Adopted by the House March 12, 1993

Adopted by the Senate March 26, 1993

(H.C.R. No. 23)

A CONCURRENT RESOLUTION

RELATING TO TELECOMM '92; ADOPTING THE REPORT "TELECOMM '92" AS A GUIDE FOR CHANGE AND IMPROVEMENT IN IDAHO'S TELECOMMUNICATIONS.

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

WHEREAS, modern telecommunications and the availability of current information technologies are vital to the economic and social well-being of Idaho citizens, and to the businesses where they work, and the communities in which they live; and

WHEREAS, all segments of our economy, such as agriculture, manufacturing, banking, freight and passenger transportation, wholesale and retail commerce, education and government are dependent upon the use of time-saving, productivity-boosting, distance-spanning information technologies to eliminate isolation and to create and maintain wealth, hope and choices in a competitive global economy; and

WHEREAS, many state institutions, both public and private, have invested in telecommunications services and programs to satisfy their immediate goals without being aware of the potential impact of such investment on telecommunications infrastructure or services, as a whole, or the better service and more efficient public investment that would be possible if telecommunications planning and use were coordinated; and

WHEREAS, the opportunity exists to make government more effective, businesses more competitive, and individuals more productive, through the development and adoption of a coordinated state telecommunications policy which can empower our people with the ability to communicate and exchange data quickly and efficiently in the global marketplace; and

WHEREAS, a team of thirty leaders from the public and private sector, together with their consultants and staff, have worked together to assess Idaho's existing telecommunications systems and use, developing a vision of what telecommunications can do for the people of Idaho, and establishing specific goals and strategies to move Idaho toward achieving that vision, and to that end, have submitted their report entitled "Telecomm '92: Connecting Idaho to the Future--A Strategic Plan for Idaho Telecommunications."

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular

Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the report entitled "Telecomm '92: Connecting Idaho to the Future," be, and the same is hereby adopted as a source of assistance and motivation for an ongoing process of change and improvement for Idaho telecommunications; and

BE IT FURTHER RESOLVED, that state agencies shall use such plan as their guide for the use and improvement of Idaho's telecommunications highway, and private providers and consumers of telecommunications services are encouraged to cooperate in following the plan's guidance; and

BE IF FURTHER RESOLVED, that appropriate committees of this Legislature shall examine ways to implement the strategies described in this plan.

Adopted by the House March 12, 1993

Adopted by the Senate March 19, 1993

(H.C.R. No. 26)

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND AUTHORIZING AND DIRECTING THE LEGISLATIVE COUNCIL TO APPOINT A COMMITTEE TO STUDY GROUND WATER RECHARGE.

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

WHEREAS, water is the lifeblood of Idaho and the need to protect its usage within the state is critical to the continued growth and prosperity of the state; and

WHEREAS, Idaho has had six years where precipitation levels have been below normal and declining ground water levels have been measured across Idaho; and

WHEREAS, the development and recharge of the Snake River aquifer has helped increase spring flows throughout the Snake River from Blackfoot to King Hill; and

WHEREAS, conservation of irrigation water on the Snake River plain also has had an effect on the ground water recharge of the aquifer; and

WHEREAS, during the past ten years a decrease in irrigation diversions of over 800,000 acre feet per year to the Snake River plain aquifer has reduced the amount of recharge; and

WHEREAS, there are approximately 2.3 million acres of irrigated land on the Snake River plain that is irrigated from the Snake River; and

WHEREAS, agriculture and the food processing industries help support up to forty percent of the gross state product and any threat to Idaho's agriculture will take away from that base; and

WHEREAS, any decline in an aquifer impacts industry, drinking water supplies, municipalities and agriculture; and

WHEREAS, in order to protect the existing beneficial uses of water, there is a need to investigate ground water recharge; and

WHEREAS, there is information that has been gathered by different federal and state agencies on aquifers in the state which could aid in recharge site selection.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is authorized and directed to appoint a committee to undertake and complete a study regarding recharge of Idaho's aquifers and that the committee make recommendations for implementation of a recharge policy for the State of Idaho.

BE IT FURTHER RESOLVED that the committee shall submit its findings, recommendations and proposed legislation, if any, to the Second Regular Session of the Fifty-second Idaho Legislature.

Adopted by the House March 10, 1993

Adopted by the Senate March 17, 1993

(H.C.R. No. 27)

A CONCURRENT RESOLUTION

AUTHORIZING AND DIRECTING THE LEGISLATIVE COUNCIL TO ESTABLISH A COMMITTEE TO UNDERTAKE AND COMPLETE A STUDY OF OPTIONAL FORMS OF LOCAL GOVERNMENT, CONSOLIDATION OF SERVICES AND CONSOLIDATION OF TAXING DISTRICTS.

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

WHEREAS, the efficient use of property tax and service fees are a concern in the operation of the political subdivisions of the state of Idaho; and

WHEREAS, the current form of local government and the duties required to be performed have changed dramatically and fundamentally since Idaho became a state; and

WHEREAS, there has been a proliferation of taxing districts in Idaho for the purposes of providing services which has resulted in duplication of services and inefficient use of available revenues; and

WHEREAS, it is imperative that the Legislature review the existing forms of local government to determine whether alternative forms of local government should be authorized, to determine whether citizens at the local level are adequately represented and whether consolidation of taxing districts and services is in the best interests of the citizens of the state of Idaho.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is directed to appoint a committee to undertake and complete a study of optional forms of county government, consolidation of services and taxing districts. The study shall look at the various forms of county government available, the ability to consolidate taxing districts and the ability to consolidate or privatize services.

BE IT FURTHER RESOLVED that the Idaho Association of Counties,

Association of Idaho Cities, school districts and highway districts will each have one representative on the committee and that there be one member to represent all other special taxing districts of the state who shall participate at their own expense.

BE IT FURTHER RESOLVED that the committee shall report its findings, recommendations and recommended legislation, if any, to the Second Regular Session of the Fifty-second Idaho Legislature.

Adopted by the House March 5, 1993

Adopted by the Senate March 26, 1993

(H.C.R. No. 28)

A CONCURRENT RESOLUTION
AUTHORIZING AND DIRECTING THE LEGISLATIVE COUNCIL TO UNDERTAKE AND
COMPLETE A STUDY OF TAXATION MATTERS.

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

WHEREAS, for many years the State's citizens enjoyed a balanced tax system which included components of ad valorem taxes, sales taxes, individual income taxes and corporate income taxes; and

WHEREAS, because of a variety of factors, including voter sponsored changes in tax policy as well as federal changes in tax policy, the tax structure in place today has become seriously out of balance; and

WHEREAS, this dangerous imbalance has caused a fiscal crisis for the State of the highest order; and

WHEREAS, it is apparent that short-term or emergency reactions to the fiscal crisis result in ill-considered, piecemeal and counter-productive tax measures; and

WHEREAS, it is the desire of this Legislature that a tax structure should encourage economic development, and not hinder it.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is hereby directed to appoint a Committee of eight members to conduct a study of the State's tax structure in all of its aspects, with the goal of the Committee's recommendations being to develop a strategy to implement a tax structure over the succeeding years that is balanced in its application and effect, meets the revenue needs of the State, and encourages and assists economic development.

BE IT FURTHER RESOLVED that the Committee shall, at its starting point, review previous interim tax studies of the Legislature.

BE IT FURTHER RESOLVED that the Legislative Council shall report its findings and recommendations to the Second Regular Session of the Fifty-second Idaho Legislature.

Adopted by the House March 16, 1993

Adopted by the Senate March 26, 1993

(H.C.R. No. 32)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND DECLARING THE WEEK OF MAY 10, 1993, AS PUBLIC LANDS WEEK IN IDAHO.

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

WHEREAS, Idaho recognizes the many contributions that federal public lands, whose magnificence and vastness comprise nearly two-thirds of our state, have made to the heritage and well-being of all Idaho's citizens; and

WHEREAS, these public lands, which are open to all of the nation's citizens, are an immensely valuable asset to not only the nation but to Idaho as well, contributing a vast spectrum of wealth to our society which benefits all citizens; and

WHEREAS, Idaho recognizes the abundance of economic, recreational and social advantages that its citizens enjoy because of the very presence of these public lands, and Idaho recognizes the many contributions the use of public lands have made to not only the state's rural communities whose livelihoods often depend upon that use, but to all of Idaho's citizens as well; and

WHEREAS, Idaho recognizes particularly the contribution public lands have made to our state's livestock, mining, timber, oil and gas, and recreation industries, contributing substantially to the state's economy by creating innumerable jobs for its working people; and

WHEREAS, Idaho acknowledges the nation's need to sustain the many uses of federally owned public lands while requiring a balance between those activities and the conservation of this invaluable natural resource.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we commemorate the many benefits citizens of Idaho derive from the use and enjoyment of the federally owned public lands in our state, and hereby declare the week of May 10, 1993, as Public Lands Week in Idaho.

Adopted by the House March 17, 1993

Adopted by the Senate March 24, 1993

(H.C.R. No. 33)

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS, CERTIFYING LEGISLATIVE OPPOSITION TO THE FEDERAL MANDATE PERTAINING TO THE REVOCATION OR SUSPENSION OF DRIVING PRIVILEGES OF CONVICTED DRUG OFFENDERS, AND REQUESTING THAT THE GOVERNOR OF THE STATE OF IDAHO JOIN IN CERTIFYING HIS OPPOSITION TO THE FEDERAL MANDATE.

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

WHEREAS, in recent years the number of federal "riders" or conditions attached to federal funds earmarked for the states has increased dramatically; and

WHEREAS, these riders threaten the states with subsequent loss of the federal funds if they do not adopt certain policies or laws; and

WHEREAS, according to the National Governors' Association, states currently face thirteen different financial penalties under which they can lose from five to one hundred percent of their highway funds for failure to comply with federal requirements; and

WHEREAS, the government of the United States has a difficult time conceiving of the proposition that each state is a sovereign general purpose government and the proposition that the government of the United States is a limited purpose government; and

WHEREAS, it is imperative that the State of Idaho assist in the education of the government of the United States with regard to the concept of sovereignty of the states; and

WHEREAS, under the provisions of Section 333 of the Department of Transportation and Related Agencies Appropriations Act of 1991, the Congress of the United States has mandated that the Secretary of Transportation is required to withhold five percent of a state's portion of the federal aid to highways funds where the state has not enacted a law which complies in every respect with the federal concept of revoking or suspending the driving privileges of convicted drug offenders; and

WHEREAS, under the provisions of Section 333 of the Department of Transportation and Related Agencies Appropriations Act of 1991, the Congress of the United States has provided that so as not to lose its federal aid to highways funds a state's legislature may adopt a resolution expressing its opposition to being coerced by the federal government into enacting a law to revoke or suspend the driving privileges of convicted drug offenders; and

WHEREAS, in order not to lose federal aid to highways funds, the governor of the state must also certify to the Secretary of Transportation that his state is opposed to being forced by the federal government into the enactment and enforcement of a law revoking or suspending the driving privileges of convicted drug offenders solely for the purpose of avoiding federal sanctions.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Idaho Legislature certifies to the Secretary of Transportation, under the provisions of Section 333 of the Department of Transportation and Related Agencies Appropriations Act of 1991, that it is opposed to the enactment and enforcement of a law relating to the revocation, suspension, issuance and reinstatement of the driving privileges of persons convicted of violations of the Idaho Uniform Controlled Substances Act simply for the purpose of complying with another federal mandate; and

BE IT FURTHER RESOLVED that the Idaho Legislature, so as not to lose federal aid to highways funds, and in order to help the government of the United States understand its limited mission, urges the Governor of the State of Idaho also to certify to the Secretary of Transportation that this state is opposed to being forced by the federal government to enact and enforce a law revoking or suspending the

driving privileges of convicted drug offenders; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Secretary of Transportation, the President of the Senate and the Speaker of the House of Representatives of Congress, the congressional delegation representing the State of Idaho in the Congress of the United States and the Governor of the State of Idaho.

Adopted by the House March 15, 1993

Adopted by the Senate March 22, 1993

(H.C.R. No. 34)

A CONCURRENT RESOLUTION
STATING LEGISLATIVE FINDINGS AND DIRECTING THE LEGISLATIVE COUNCIL TO
ESTABLISH A COMMITTEE TO REVIEW AMERICAN INDIAN ISSUES.

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

WHEREAS, federally recognized Indian tribes in the State of Idaho possess unique rights arising from treaties, statutes and case law; and

WHEREAS, due to the unique character of tribal governments, there are many complex issues that need to be addressed in a coordinated manner by legislative bodies of federal, state and tribal governments; and

WHEREAS, the United States Congress, as trustee for Indian tribes, has not acted in a decisive manner to resolve many of these issues relating to American Indians in Idaho; and

WHEREAS, the Legislature of the State of Idaho and tribal councils of the Idaho Indian tribes have been successful in resolving complex issues through cooperation, negotiation, and mutual agreement; and

WHEREAS, litigation of American Indian issues is expensive to both governments and strains tribal-state relations; and

WHEREAS, it is the goal of the Legislature of the State of Idaho to address American Indian issues through coordinated legislative action based upon improved communications and better understanding between the federal, state and tribal governments; and

WHEREAS, previous Legislative Council Committees on Indian Affairs studied American Indian issues and determined that it is beneficial for a special joint committee of the Legislature to continue to meet with tribal and federal government representatives in order to address important issues of mutual concern.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council shall appoint a committee comprised of eight members to review American Indian issues. This committee shall consist of two members from each of the two largest political parties of the House of Representatives and two members from each of the two largest political parties of the Senate, with consideration given in appointing members to

the Committee to achieve a geographical balance.

BE IT FURTHER RESOLVED that the Committee shall meet with the Indian tribes on a government to government basis and shall seek opinions of and information from state agencies, local government, citizens living on or near Indian reservations and other interested persons and entities, to assist the Committee in its deliberations as the members deem appropriate for studying American Indian issues.

BE IT FURTHER RESOLVED that the Committee shall give priority to finding ways in which the State may assist the tribes in improving American Indian education and in developing strong tribal economies.

BE IT FURTHER RESOLVED that the Committee provide notice to the tribes of legislative hearings or actions addressing Indian issues.

BE IT FURTHER RESOLVED that the Legislative Council shall report the Committee's findings, recommendations and, if appropriate, legislation to the First Regular Session of the Fifty-third Idaho Legislature and the Legislative Council shall submit a progress report of the Committee to the Second Regular Session of the Fifty-second Idaho Legislature.

Adopted by the House March 11, 1993

Adopted by the Senate March 26, 1993

(H.C.R. No. 36)

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND AMENDING RULES AND REGULATIONS OF THE STATE TAX COMMISSION REGARDING THE SALES AND USE TAX.

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

WHEREAS, the Legislature is vested with authority to modify, reject or amend executive agency rules and regulations under the provisions of Section 67-5218, Idaho Code, and those provisions require that the Legislature must make a finding that executive agency rules are not consistent with legislative intent and are not consistent with statutory authority granted to the State Tax Commission; and

WHEREAS, it is legislative intent that certain rules of the State Tax Commission relating to the sales and use tax are neither consistent with legislative intent nor the statutory authority for those rules and, therefore, they should be amended.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the following rules and regulations of the State Tax Commission: IDAPA 35.02.22,27 relating to railroad rolling stock, parts, materials and equipment and IDAPA 35.02.22,4 relating to the production exemption be, and the same are hereby amended to read as follows:

REGULATION 22,27. RAILROAD ROLLING STOCK, PARTS, MATERIALS AND EQUIPMENT.

Idaho Code sections 63-3622CC and 63-3622DD provide exemptions

from sales or use tax for rebuilt or remanufactured railroad rolling stock which was previously used in interstate commerce more than three consecutive months, and for parts, materials, and equipment primarily used to rebuild or remanufacture such railroad rolling stock.

a. Definitions. As used in this regulation, the following terms have the following meanings.

i. Railroad Rolling Stock.--Flanged-wheel locomotives, railroad cars, maintenance of way equipment and other flanged-wheel vehicles designed and manufactured specifically for use on railroad tracks and railroad systems, including component parts thereof.

ii. Remanufacture/rebuild.--To reconstruct, remake, reassemble or reprocess railroad rolling stock to materially extend the life of the equipment. This process requires extended removal of the railroad rolling stock from the transportation stream.

iii. Equipment.--All equipment, other than railroad rolling stock, which is used in the actual remanufacturing/rebuilding process.

iv. Parts.--Tangible personal property which becomes part of the remanufactured/rebuilt railroad rolling stock or which becomes part of the equipment described in iii. above.

v. Materials.--Tangible personal property which is used or consumed in the actual process of remanufacturing/rebuilding railroad rolling stock.

vi. Used in Interstate Commerce.--Railroad rolling stock is "used in interstate commerce" when it actually performs a function which is necessary to the operation of a business which transports goods or people between two or more states.

vii. Repair.--To mend or restore to good usable condition railroad rolling stock which has not been damaged to an extent requiring extended removal from the transportation stream.

viii. Maintenance.--Routine, periodic activities, such as lubrication and filter and oil changes, which are necessary to the continued use and operation of railroad rolling stock.

ix. Primary or Primarily.--Used more than 50% of the time to remanufacture/rebuild railroad rolling stock.

b. Generally, included within the exemption:

i. Equipment necessary to, and primarily used in the process of, remanufacturing/rebuilding railroad rolling stock.

ii. Tangible personal property which becomes part of the remanufactured/rebuilt railroad rolling stock or which become part of the equipment identified in b.i., above.

iii. Tangible personal property which is consumed or primarily used in the remanufacturing/rebuilding process.

iv. Fuel used in testing remanufactured/rebuilt engines which are railroad rolling stock, and fuel used in equipment which is necessary to, and primarily used in, the remanufacturing/rebuilding process.

c. Generally, excluded from this exemption:

i. Motor vehicles and trailers which are licensed or required to be licensed even though they may have flanged-wheel attachments which enable travel on railroad tracks.

ii. Tangible personal property which is used in such a way that it becomes a fixture to, or an improvement to, real property.

iii. Tangible personal property (equipment, parts, materials) used or consumed in an activity which is primarily repair or maintenance of railroad rolling stock.

iv. Fuel used in activities other than those stated in b.iv. of this regulation and which is not exempt under other provisions of the Sales Tax Act.

v. Tangible personal property used in related activities which are not primarily remanufacturing/rebuilding activities, including:

(a) Office equipment and supplies.

(b) Safety equipment and supplies.

(c) Equipment, other than railroad rolling stock, which is primarily used to construct, improve, alter or repair real property.

(d) Chemicals, solvents, and other cleaning agents used primarily for maintenance of the remanufacturing/rebuilding processing area.

REGULATION 22.4. Production Exemption.--

a. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include:

i. A manufacturing, processing, mining, or fabrication operation devoted to producing tangible personal property for resale.

ii. The business of custom farming or operating a farm or ranch for profit.

b. The production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property ~~that it will sell and~~ which is intended for ultimate sale at retail.

i. For the purposes of this regulation, a "separately operated" segment of a business is a segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment.

ii. The production exemption does not include the performance of contracts to improve real property, such as road or building construction, or to service-related businesses not devoted to the production of tangible personal property for ultimate sale at retail.

~~iii. A business under contract to operate a production facility owned by another qualifies for the production exemption if:~~

~~(a) It is the sole operator of the facility performing all phases of the production process; and~~

~~(b) It has the authority to act as agent in arranging the sale of the property produced;~~

~~If the contract operator is not the sole operator of the facility or does not have the authority to act as agent in arranging the sale of the property produced, the production exemption does not apply.~~

c. As applied to manufacturing, processing, mining, or fabrication operations, the following items of tangible personal property are exempt, except as limited by other sections of this regulation:

- i. Raw materials that become an ingredient or component part of the product which is produced.
- ii. Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process.
- iii. Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced.
- iv. Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment.
- v. Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities.
- vi. Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries.
- vii. Safety equipment and supplies required by a state or federal agency when used directly in a production area.
- viii. Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment.
- ix. Equipment used primarily to fabricate production equipment.

d. The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last.

e. The Production Exemption Does Not Include.--

- i. Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in section c. of this regulation.
- ii. Repair parts for any equipment which does not qualify for the production exemption.
- iii. A hand tool with a unit price of \$100 or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be. A hand tool is an instrument used or worked by hand.
- iv. Office equipment and supplies.
- v. Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area.
- vi. Equipment and supplies used in selling and distribution activities.
- vii. Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing.

viii. Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc.

ix. Transportation equipment and supplies.

x. Aircraft of any type and supplies.

xi. Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment.

xii. Research equipment and supplies, including but not limited to, all expenses for which the taxpayer claims the federal credit for incremental research expenses under section 41 of the Internal Revenue Code.

xiii. Other incidental items not directly used in production.

xiv. Fuel used in equipment while performing activities that do not qualify for the production exemption.

xv. Recreation-related vehicles regardless of use. Recreation-related vehicles are defined as:

(a) Snowmobiles.

(b) Off-highway motorbikes and dual purpose motorcycles. A dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways.

(c) Motorcycles, motor scooters, and motorized bikes.

(d) All-terrain vehicles (ATV's), not including tractors. A tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements.

(e) Portable truck campers designed for temporary living quarters.

(f) Camping, park, travel, and fifth-wheel travel-type trailers designed to provide temporary living quarters.

(g) Motor homes.

(h) Buses and van-type vehicles converted to recreational use as temporary living quarters and providing at least four of the following facilities: 1) cooking, 2) refrigeration or icebox, 3) self-contained toilet, 4) heating or air conditioning, 5) a portable water supply system including a faucet and sink, and 6) separate 110-125 volt electrical power supply or LP gas supply.

xvi. Parts to repair recreation-related vehicles.

xvii. Equipment used primarily to construct, improve, alter or repair real property.

f. The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. (See Regulation 16, 1, for the definition of real property.)

g. If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it

becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner.

h. Transportation Activities.-- Equipment and supplies used in transportation activities do not qualify for the production exemption.

i. Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft.

ii. Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process.

iii. Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, fabricating, manufacturing, refining or fabrication begins. (See Regulation 22,4E regarding farming.)

i. To claim the production exemption the customer must complete an exemption certificate for the seller's records. (See Regulation 22,1.)

j. Special rules apply to irrigation equipment, contractors, loggers, and farmers who act as retailers. Refer to the specific regulations relating to those subjects.

Adopted by the House March 15, 1993

Adopted by the Senate March 22, 1993

(H.C.R. No. 39)

A CONCURRENT RESOLUTION

RECOGNIZING AND COMMENDING DR. LEON DOANE FOR HIS ACCOMPLISHMENTS AND HIS SERVICE TO HIS COMMUNITY, TO NORTHWEST NAZARENE COLLEGE AND TO THE IDAHO FAMILY FORUM.

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

WHEREAS, Dr. Leon Doane has been involved in many civic and professional organizations in Boise and throughout the state of Idaho; and

WHEREAS, Dr. Doane graduated from Northwest Nazarene College in 1956, received an honorary doctorate from the college in 1980 and served on the Board of Regents of Northwest Nazarene College for nineteen years; and

WHEREAS, Dr. Doane left a thirty-four year career with West One Bank to assume the role of President of Northwest Nazarene College in 1992, a position to which he was unanimously elected and which distinguishes him as the first layman and first alumnus of the college to be

elected president of the college; and

WHEREAS, Dr. Doane was the first President of Idaho Family Forum, an organization which works in association with the internationally known Focus on the Family; and

WHEREAS, Dr. Doane's strength of character, golden reputation, calm optimism and gentle but persistent focus on accountability has given hope and courage to all who have known him and has given credibility to the organizations with which he has been affiliated.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we are honored to recognize and commend Dr. Leon Doane for his life-long service of dedicated commitment to his family and his community.

Adopted by the House March 24, 1993

Adopted by the Senate March 26, 1993

(H.C.R. No. 40)

A CONCURRENT RESOLUTION

AUTHORIZING AND DIRECTING THE LEGISLATIVE COUNCIL TO APPOINT A COMMITTEE TO UNDERTAKE AND COMPLETE A STUDY OF UNINSURED MOTORISTS.

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

WHEREAS, the statutory requirement for mandatory motor vehicle liability insurance contained in Chapter 12, Title 49, Idaho Code, was first enacted in 1988 and this requirement for motor vehicle liability insurance has resulted in compliance far short of the Legislature's goal; and

WHEREAS, compliance is critical to ensuring that motor vehicle owners accept the financial responsibility which coincides with the privilege of owning and operating a motor vehicle in the State of Idaho; and

WHEREAS, failure to address the issue of uninsured motorists will further increase the numbers of motorists failing to comply and thus, compound the dilemma whereby no financial responsibility is accepted by those contributing to an accident; and

WHEREAS, other states have initiated mechanisms to deal with the failure of residents to obtain motor vehicle liability insurance which may serve as models from which the Legislature of the State of Idaho can benefit.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is authorized and directed to appoint a Committee to undertake and complete a study of uninsured motorists with emphasis on assessment of alternative mechanisms for ensuring compliance with motor vehicle liability insurance requirements. In conducting the study, the Committee shall consult with representatives of the Idaho Transportation Department, representatives of law enforcement entities, representatives of

counties, representatives of the insurance industry, representatives of the Department of Insurance, representatives of the Idaho State Bar, representatives of the district and magistrate court judges, and other interested parties.

BE IT FURTHER RESOLVED that the Committee shall report its findings, recommendations and proposed legislation, if any, to the Second Regular Session of the Fifty-second Idaho Legislature.

Adopted by the House March 27, 1993

Adopted by the Senate March 27, 1993

CERTIFICATE OF SECRETARY OF STATE

UNITED STATES OF AMERICA)
) ss.
 STATE OF IDAHO)

I, PETE T. CENARRUSA, Secretary of the State of Idaho, do hereby certify that the foregoing printed pages contain true, full, and correct and literal copies of all the general laws and resolutions passed by the Fifty-second Legislature of the State of Idaho, First Regular Session thereof, which convened January 11, 1993, and which adjourned March 27, 1993, as they appear in the enrolled acts and resolutions on file in this office, all of which are published by authority of the Laws of the State of Idaho.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Idaho. Done at Boise City, the Capital of Idaho, this 22th day of April, 1993.

Pete T. Cenarrusa 21
 Secretary of State

When errors appear in the enrolled bills received from the Legislature at the office of the Secretary of State, this office has no authority to correct them.

**EXECUTIVE
ORDERS**

EXECUTIVE ORDER NO. 92-4RETAINING THE FUNCTIONS OF THE ENERGY RESOURCES BUREAU WITHIN
THE DEPARTMENT OF WATER RESOURCES, RENAMING SAID BUREAU, AND
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-2

WHEREAS, energy and the availability of long-range supplies are critical to the well-being of our state; and

WHEREAS, energy is as vital a natural resource as our water and land and is inextricably linked to our vital water resources; and

WHEREAS, it is further the responsibility of state government to employ measures to reduce wasteful, uneconomical, and unnecessary uses of energy which will diminish Idaho's precious natural resources; and

WHEREAS, we must plan realistically, conserve our current energy resources, and develop new energy sources to assure a strong, healthy, and growing economy; and

WHEREAS, Executive Order No. 81-12 transferred the functions of the Idaho Office of Energy to the Idaho Department of Water Resources and subsequent Executive Orders have retained that function in the Department, the most current being Executive Order No. 88-2; and

WHEREAS, the consolidation of governmental activities relating to water resources and energy has provided for more efficient state services;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me by Article IV, Section 5, of the Idaho Constitution and Section 42-1706, Idaho Code; and Section 67-802, Idaho Code; do hereby renew Executive Order No. 88-2 and retain the energy planning, policy, and coordination functions of the Energy Resources Bureau within the Idaho Department of Water Resources (hereinafter referred to as the Department). The Energy Resources Bureau shall hereafter be known as the Energy Resources Division.

SECTION 1. TRANSFER AND RETENTION OF FUNCTIONS.

The Director of the Department of Water Resources, being authorized by Section 42-1706, Idaho Code, to perform professional duties at the request of the Governor, and as otherwise provided by law, is vested with the following energy planning, policy, and coordination functions:

- (a) Provide advice to the Governor, the Legislature, and other public officials relating to the state's energy requirements, supply, resources, management, and production.
- (b) Prepare and, as necessary, implement contingency plans for the conservation and allocation of energy supplies not regulated by the state during periods of shortages and supply interruptions.
- (c) Promote energy conservation through research, public information, and other activities.
- (d) Promote the increased utilization of renewable energy resources through research, technical assistance, and public information.
- (e) Assist local governments, school districts, and public institutions in obtaining funds and carrying out programs of improved energy management.
- (f) Assist citizens in developing energy-efficient technologies.

- (g) Provide public information and data on energy supplies, demands, resources, technologies, and conservation.
- (h) Pursue and accept federal delegation of responsibility and authority for matters that affect the energy supply and consumption of the citizens of Idaho other than those matters related to the public utilities subject to the jurisdiction of the Idaho Public Utilities Commission.
- (i) Make contracts and enter into agreements and do all other things necessary to carry out the provisions of this Executive Order and in the performance of other duties as may be directed by the Governor.
- (j) Serve as the lead state agency to solicit, receive, and disburse any funds which promote the conservation of energy and the development of energy resources from all available sources.
- (k) Coordinate with other state agencies to assist in the development of plans to reduce energy consumption by the agencies.
- (1) Require reports of energy plans and energy consumption from state agencies other than the Idaho Public Utilities Commission.

SECTION 2. SAVINGS PROVISIONS.

(1) All orders, regulations, contracts, and licenses which have been issued in the performance of functions which are retained under this Executive Order, and which are in effect at the time this Executive Order takes effect, shall continue in effect according to their terms until modified or terminated.

(2) Whenever the Idaho Office of Energy or the Director thereof is referred to in any law, rule, regulation, order, contract, document, judicial or administrative proceeding, or otherwise, the same shall be considered to mean the Department or the Director of the Department of Water Resources.

(3) The duties, responsibilities, and authority of this Executive Order shall not alter any existing responsibilities, jurisdiction, or planning functions of state agencies established by state or federal law. Nothing in this Executive Order shall be construed to provide or imply any regulatory authority by the Energy Division of the Department of Water Resources over public utilities that are subject to the jurisdiction of the Idaho Public Utilities Commission.

This Executive Order repeals and replaces Executive Order No. 88-2. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the eighteenth day of May, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO/s/ Pete T. Cenarrusa
SECRETARY OF STATEEXECUTIVE ORDER NO. 92-5RENAMING THE IDAHO IMAGE ANALYSIS FACILITY AS THE IDAHO GEOGRAPHIC
INFORMATION CENTER AND CONTINUING ITS FUNCTIONS AT THE
DEPARTMENT OF WATER RESOURCES;
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-3

WHEREAS, as the result of past activity by the Department of Water Resources, the image analysis capability to effectively utilize remote sensing and geographically-referenced data has been established in Idaho; and

WHEREAS, it is in the interest of the State of Idaho that this capability be shared and further developed in cooperation with federal resource management agencies, local government, and private organizations for conducting needed resource inventory and mapping; and

WHEREAS, it is essential that a lead state agency be designated to ensure the proper coordination, maintenance, and support of the image analysis and geographic information system capability and to provide for its effective use by various users;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me by Section 5, Article 4, of the Idaho Constitution and Section 67-802 of the Idaho Code, do hereby rename the Idaho Image Analysis Facility of the Department of Water Resources to be the Idaho Geographic Information Center and direct the Idaho Department of Water Resources to continue to serve as the state agency responsible for the office. The Department will:

1. Provide necessary coordination and technical support;
2. Promote the operational applications of digital image analysis and geographic information systems;
3. Provide systems management support to ensure the proper operation and availability of digital geographically-referenced data for applications by various users;
4. Provide technical assistance, in the form of consultation and training, to allow and encourage application of digital mapping techniques and equipment by employees of other agencies and organizations;
5. Cooperate with, receive, and expend funds from other sources for the continued development and utilization of image analysis geographic information techniques; and
6. Maintain an assessment of the geographic information system and image processing capabilities needed within Idaho by existing and potential users, to cooperate with Idaho universities and other research institutions for the development and implementation of improved capabilities resulting from research activities.

This Executive Order repeals and replaces Executive Order No.

88-3. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the eighteenth day of May, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-6

CONTINUING PROVISIONS FOR STATE COOPERATION WITH THE
FEDERAL INSURANCE ADMINISTRATION UNDER THE NATIONAL FLOOD
INSURANCE ACT OF 1968, AS AMENDED,
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-4

WHEREAS, uneconomic uses of the state's floodplains are occurring and potential flood losses are increasing despite substantial efforts to control floods; and

WHEREAS, national, state, and local studies of areas and property subject to flooding indicate a further increase in flood damage potential and flood losses, despite continuing investment in flood protection structures; and

WHEREAS, the State of Idaho has continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

WHEREAS, the availability of flood insurance under the National Flood Insurance Program, as provided by the National Flood Insurance Act of 1968, as amended, is dependent upon state coordination of federal, state, and local aspects of floodplain, mudslide (i.e., mudflow) area, and flood-related erosion area management activities in the state; and

WHEREAS, the Department of Water Resources is the state agency responsible for assisting with local regulations necessary for flood insurance provided by the National Flood Insurance Act of 1968 and regulations set forth in 44 CFR Section 60.25; and

WHEREAS, the Federal Insurance Administration has promulgated and adopted rules and regulations governing eligibility of state and local communities to participate in the National Flood Insurance Program, which participation depends on state coordination and the designation

of a state agency to be responsible for coordinating federal, state, and local aspects of floodplain, mudslide (i.e., mudflow) area, and flood-related erosion area management activities in the State of Idaho;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me, do hereby order as follows:

SECTION 1. The Department of Water Resources is hereby designated as the agency to assist in the implementation of 44 CFR Section 60.25, Rules and Regulations of the Federal Insurance Administration and will encourage a broad and unified effort to prevent uneconomic uses and development of the state's floodplains and, in particular, to lessen the risk of flood losses in connection with state lands and installation and state-financed or supported improvement; specifically,

- (a) Under the leadership and direction of the Department of Administration, all state agencies directly responsible for the construction of buildings, structures, roads, or other facilities shall preclude the uneconomic, hazardous, or unnecessary use of floodplains in connection with such facilities. In the event of construction in the floodplain, management criteria set forth in 44 CFR Sections 60.3, 60.4, and 60.5 of the National Flood Insurance Regulations shall apply. Flood-proofing measures shall be applied to existing facilities in order to reduce flood damage potential.
- (b) All state agencies responsible for the administration of grant or loan programs involving the construction of buildings, structures, roads, or other facilities shall evaluate flood hazards in connection with such facilities and, in order to minimize the exposure of facilities to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief, shall preclude the uneconomic, hazardous, or unnecessary use of floodplains in such connection.
- (c) All state agencies responsible for the disposal of lands or properties shall evaluate flood hazards in connection with lands or properties proposed for disposal to other public instrumentalities or private interests and, in order to minimize future state expenditures for flood protection and flood disaster relief, shall notify those instrumentalities and private interests that such hazards exist.
- (d) All state agencies responsible for programs which affect land use planning, including state permit programs, shall take flood hazards into account when evaluating plans and shall encourage land use appropriate to the degree of hazard involved.
- (e) In evaluating flood hazard potential, all state agencies shall coordinate their work with the Department of Water Resources to assure that the most up-to-date data and/or methods of analysis are utilized.

SECTION 2. As may be permitted by law, the head of each state agency shall issue appropriate rules and regulations to govern the carrying out of the provisions of Section 1 of this order by his agency to be coordinated with the Department of Administration.

SECTION 3. This Executive Order repeals and replaces Executive Order No. 88-4. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the eighteenth day of May, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-7

ESTABLISHMENT OF THE TASK FORCE ON ALTERNATIVE DISPUTE RESOLUTION (ADR)

WHEREAS, alternative dispute resolution has been used effectively for many years and its use is increasing in all areas of government and the private sector; and

WHEREAS, alternative dispute resolution often allows the use of more creative, efficient, and cost effective means to achieve sensible results; and

WHEREAS, alternative dispute resolution may be used advantageously in a wide variety of settings and programs; and

WHEREAS, the use of alternative dispute resolution and an increase in the understanding of its use will enhance the operation of government to better serve the public;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, have determined that alternative dispute resolution is a viable alternative to resolving controversy within judicial, administrative, and other adversary proceedings; and, therefore, I hereby direct that an Alternative Dispute Resolution Task Force be created. The Task Force will provide a structure to coordinate and foster the development and use of alternative dispute resolution in Idaho and on a regional, cross-border, or intergovernmental basis.

Further, the Task Force shall compile its findings and recommendations relating to alternative dispute resolution in Idaho in reports to the Governor as he may request.

The Alternative Dispute Resolution Task Force shall consist of individuals or their designees as may be appointed by the Governor. The members of the Task Force shall select a person from among its members to serve as chairman. All members shall serve at the pleasure of the Governor and without compensation.

The Alternative Dispute Resolution Task Force may seek support

from any other individuals or groups as it deems appropriate. Executive state agencies shall provide support to the Task Force as may be requested.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the eighteenth day of May, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

/s/ Cecil D. Andrus

GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa

SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-8

CONTINUATION OF KEEP IDAHO GREEN EXECUTIVE COMMITTEE
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-7

WHEREAS, the Governor's KEEP IDAHO GREEN Executive Committee was established in the Executive Office of the Governor in 1946 at the request of the Idaho Jaycees; and

WHEREAS, there continues to be a vital need to protect Idaho's vast renewable natural resources from wildfire; and

WHEREAS, it is in the best interest of all Idaho citizens to protect our state's scenic splendor and economic base from man-caused wildfire; and

WHEREAS, concerned volunteers have worked over the years to combine the resources of state, federal, and private interests to keep wildfire prevention in the minds of all who experience Idaho's out-of-doors;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me, do hereby order the continuation of the Governor's KEEP IDAHO GREEN Committee.

The Governor shall appoint the members of the KEEP IDAHO GREEN Committee, who shall represent state, federal, and private interests as well as volunteer groups. Two members of the Committee shall be employees of the Idaho Department of Lands. The Governor shall delegate one of the Department of Lands' employees as the chairman of the Committee. The Director of the Idaho Department of Lands shall recommend to the Governor which employees of his Department should serve as the Chairman of the Committee and as a Committee member.

The Committee shall direct and approve an annual wildfire prevention campaign to be carried out by the KEEP IDAHO GREEN Chairman and

employees of the Idaho Department of Lands.

The Committee shall meet at least once a year with additional meetings at the discretion of the Chairman.

This Executive Order repeals and replaces Executive Order No. 88-7. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the eighteenth day of May, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-9

EMPLOYEE POSITIONS IN STATE GOVERNMENT

WHEREAS, considerable concern existed this past legislative session regarding the number of positions in state government which have been vacant for an extended period of time; and

WHEREAS, the legislature passed a bill, HB 781, which I signed into law, the intent of which was to amend Idaho Code 67-3519 to require the elimination of positions which have not been filled for twelve months or longer; and

WHEREAS, the Attorney General's Office has indicated that the language in the bill is applicable only to newly created positions and is not retroactive in effect; and

WHEREAS, the intent of Idaho Code 67-3519 is "...to establish a list of employee positions for which funds are available for the allotment of appropriated funds to each appointing authority..."; and

WHEREAS, leaving vacant positions on the Employee Information System for extended periods of time often has the effect of reflecting agencies' personnel costs in excess of their appropriation;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, hereby direct the Division of Financial Management to work with the State Auditor's Office which operates the State Employee Information System to implement this policy, effective July 1, 1992, of eliminating all permanent positions which have not been filled for twelve months. Any position which is funded from either appropriated or non-appropriated funds and has been vacant for twelve months or longer beginning on July 1, 1992, shall be eliminated.

FURTHER, this policy shall apply to all non-elected executive

branch agencies of the state government. It shall apply to both newly-created and existing permanent positions. Agency authority to establish positions under the provisions of Idaho Code 67-3519 shall continue to exist.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the eighteenth day of May, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-10

CHANGING THE NAME OF THE IDAHO COMMISSION FOR CHILDREN AND YOUTH TO THE IDAHO JUVENILE JUSTICE COMMISSION, AND THE OFFICE FOR CHILDREN AND YOUTH TO THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-11

WHEREAS, prevention, early rehabilitation and diversion programs can have a major impact on reducing the number of youth coming into conflict with the law; and

WHEREAS, the State of Idaho must continue to offer youth who come into conflict with the law opportunities to reevaluate their conduct and its impact on their future; and

WHEREAS, Idaho needs and deserves a comprehensive, cohesive juvenile justice system; and

WHEREAS, a goal of Idaho's juvenile justice system is protection of citizens from crime, while placing the juvenile offender in the least restrictive environment; and

WHEREAS, Idaho has been a participant of the Juvenile Justice and Delinquency Prevention Act (PL 93-415) since 1975; thereby agreeing to comply with its mandates; and

WHEREAS, the continuation and enhancement of youth service programs requires community involvement and a focus reflecting the experience and values of Idaho; and

WHEREAS, the continuation and enhancement of youth service programs is in the best interest of all Idahoans;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me by law, do hereby establish the Idaho Juvenile Justice Commission and the Office of Juvenile Justice

and Delinquency Prevention within the Office of the Governor.

The Commission's responsibilities will be:

1. To be informed about juvenile justice and delinquency prevention programs throughout the state and advise the Governor regarding their operation;
2. To advise the Governor on problems, policies, and programs relating to youth who are now or may in the future come into conflict with the law;
3. To provide an advocacy function in promoting legislation and regulations pertaining to Juvenile Justice and Delinquency Prevention services and laws;
4. To mediate among agencies and organizations as a third party in areas of disagreement regarding Juvenile Justice and Delinquency Prevention issues;

To encourage interagency cooperation and coordination on the state and local levels and help to eliminate duplication of services where appropriate;

6. To provide guidance in the development and implementation of improved policies for youth in the state, e.g. judicial, rehabilitation, recreation, and delinquency prevention;
7. To carry out all responsibilities required by the Juvenile Justice and Delinquency Prevention Act (PL 93-415), as amended, including distribution, monitoring, and evaluation of federal grant funds made available to the State of Idaho under this Act, and including the preparation and administration of the state plan submitted under Section 223 of PL 93-415, as amended;
8. To oversee and evaluate such Juvenile Justice Delinquency Prevention activities and events as may be deemed necessary by the Governor;
9. To review and comment on all applications for Juvenile Justice and Delinquency Prevention Act Special Emphasis or Discretionary Funds prior to their submittal for consideration to OJJDP;
10. To represent the Governor at national and state Juvenile Justice and Delinquency Prevention functions regarding children and youth; and
11. To present to the Governor on September 30 of each year a report on the Commission's achievements and impact on youth service programs and policies.

The Commission will be composed of not less than 15 or more than 33 members appointed by the Governor according to the following guidelines.

The membership shall include:

1. Locally-elected officials;
2. One-fifth who are under age 24 when appointed, and at least three of whom are or have been under jurisdiction of the juvenile justice system; and
3. A majority of members who are not full-time employees of the federal, state, or local government.

The Commission membership may be drawn from representatives of:

- * local law enforcement, probation, and corrections agencies
- * juvenile or family court judges

- * delinquency prevention or treatment agencies--public, private, and community based
- * groups serving neglected or dependent children
- * organizations concerned with the quality of juvenile justice, education, and social services
- * business groups and businesses employing youth
- * youth involved in any youth programs
- * persons with special experience in the area of learning disabilities
- * organizations representing the law enforcement, social work, education, and other related professions
- * early childhood development groups

Commission members will serve a term of three years at the pleasure of the Governor. The Governor will appoint a chairman and vice-chairman who shall serve in such capacities for one year. The Commission may, upon receiving approval from the Governor, establish an executive committee and subcommittees.

The Office for Juvenile Justice and Delinquency Prevention will be headed by an administrator appointed by the Governor. The position of the administrator will be exempt from the provisions of Chapter 53, Title 67, Idaho Code, and the administrator will be responsible for hiring and supervising the support staff who shall be classified as "limited service employees."

The Office for Juvenile Justice and Delinquency Prevention shall assist the Idaho Juvenile Justice Commission in carrying out its responsibilities. The Office shall report to the Governor or such persons as he might designate any and all information he might request.

The Office for Juvenile Justice and Delinquency Prevention and the Idaho Juvenile Justice Commission will collaborate with and work in conjunction with other areas of emphasis within the Idaho Office for Children to insure that children and youth have the right to an environment that promotes positive mental health and protects them from physical and sexual abuse or neglect.

This Executive Order repeals and replaces Executive Order No. 88-11. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the eighteenth day of May, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-11ESTABLISHING THE EMERGENCY DROUGHT RESPONSE HOT LINE

WHEREAS, an increasing number of Idaho farmers and ranchers are faced with crop failure and with severe shortages of feed and water for their livestock herds in this sixth year of continuous drought, resulting in problems that have created an emergency situation; and

WHEREAS, there is no statewide structure or communication network that exists to coordinate volunteer and government agency activities to assist the beleaguered farmers and ranchers of Idaho; and

WHEREAS, it is necessary that an agency of the state of Idaho be designated and authorized to establish a referral system and hotline to assist those farmers and ranchers who are facing emergency drought conditions;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me by Section 5, Article 4 of the Idaho Constitution and Section 67-802 of the Idaho Code, do hereby direct the Idaho Department of Agriculture to establish and administer an "Emergency Drought Response Hotline," and further, I do hereby direct all state agencies to cooperate fully with and provide assistance to the Department of Agriculture in carrying out its responsibilities under this order.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the fifteenth day of June, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-12

SETTING FORTH STATE AGENCY ROLES IN CONDUCTING SALARY SURVEYS TO ESTABLISH SALARY ADJUSTMENT RECOMMENDATIONS FOR STATE EMPLOYEES

WHEREAS, the State of Idaho is among the largest employers in the state; and

WHEREAS, the State of Idaho, as an employer, must compete in the same labor markets as other large employers for its work force; and

WHEREAS, it is public policy, as expressed in Idaho Code, Section 67-5309B, that salary surveys for state employee compensation purposes be conducted within relevant labor markets; and

WHEREAS, it is further public policy, as expressed in Idaho Code, Section 67-5309(b), that the Idaho Personnel Commission shall consult with each department to develop and adopt a comprehensive compensation plan;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me under the constitution and laws of this state, do hereby order the following:

1. The Idaho Personnel Commission shall, in cooperation with, and with the mutual consent of, the operating departments and agencies, formulate a salary survey strategy consisting of: (a) a set of benchmark classifications that most nearly represents those jobs common to both private and public employers; and (b) those employers that most nearly reflect the relevant labor markets in which the state competes.
2. The review and analysis of the survey responses shall be conducted in an open forum accessible to department heads, personnel representatives, and state employee organization representatives.
3. The results of the survey, along with other statutorily-mandated data, shall be displayed on all charts and graphs used in connection with salary administration recommendations.

AND I FURTHER DIRECT the following:

1. The Idaho Personnel Commission shall utilize Idaho Department of Employment wage surveys as one means to collect information, as follows: (a) the Idaho Personnel Commission shall provide the Idaho Department of Employment with benchmark classifications and employers to be surveyed; (b) the Idaho Personnel Commission shall utilize the Idaho Department of Employment's statistical and computer support in refining the analysis of survey data; and (c) the Idaho Department of Employment shall provide, at a minimum, a matched sample year to year of specified benchmarks and a specific group of employers.
2. All attributable costs to the Idaho Department of Employment for the Idaho Personnel Commission's portion of the annual wage and salary survey will be billed by the Idaho Department of Employment to the Idaho Personnel Commission.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the fifteenth day of June, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-13

CONTINUATION OF THE PROHIBITION OF USE OF STATE FUNDS
FOR MEMBERSHIP IN PROFESSIONAL ASSOCIATIONS BY STATE EMPLOYEES,
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-12

WHEREAS, there is need for a uniform state policy regarding the payment of professional dues, fees, and memberships for state employees, I find it is prudent to continue the policy for all state employees in the Executive Department that was promulgated by Executive Order No. 81-11.

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, do hereby declare the following policy to be continued:

No state money shall be used to pay for any kind of professional, occupational, or trade license, certificate, permit, or occupational registration for any state employee or officer; nor shall any state monies be used to pay for any kind of dues to any professional, occupational, or trade association in which membership is restricted to persons who are licensed, certified, or registered under Idaho law. This policy does not preclude the state or state departments from paying dues to organizations relating to their responsibilities in state government.

This Executive Order repeals and replaces Executive Order No. 88-12. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the fifteenth day of June, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-14

CONTINUATION OF THE IDAHO COUNCIL FOR PURCHASES FROM SEVERELY
DISABLED PEOPLE,
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-13

WHEREAS, it is in the public interest to promote employment opportunities for severely disabled people; and

WHEREAS, the rehabilitation facilities of Idaho strive to provide employment opportunities for severely disabled people; and

WHEREAS, the Idaho Code provides for the purchase by the agencies of the State of Idaho of goods and services that are produced by severely disabled people employed by rehabilitation facilities;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order the continuation of the Idaho Council for Purchases from Severely Disabled People.

The Council's responsibilities will continue to be:

1. To promote the purchase by state agencies of goods and services produced by severely disabled people in rehabilitation facilities under the auspices of Section 67-2319, Idaho Code;
2. To conduct monitoring and study of the implementation of the purchasing program authorized by said Section 67-2319;
3. To designate a central non-profit organization to coordinate the participation of rehabilitation facilities in the Idaho purchasing program and develop procedures for such participation;
4. To advise the Division of Purchasing on the development and operation of a program to purchase products and services from severely disabled people in rehabilitation facilities; and
5. To provide an annual report of activities, products, services, employment opportunities, and other benefits derived from this program.

The Governor shall appoint members of the Council who shall serve at his pleasure. Council members shall be selected from rehabilitation facilities, the Division of Purchasing, the private sector, a labor organization, the Division of Vocational Rehabilitation, and the Division of Community Rehabilitation. The members of the Council shall elect one of their number Chairman.

The Council shall be administratively supported by the Division of Vocational Rehabilitation.

This Executive Order repeals and replaces Executive Order No. 88-13. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the fifteenth day of June, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the State-

hood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-15

CONTINUATION OF THE GOVERNOR'S MOTOR CARRIER ADVISORY COMMITTEE,
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-15

WHEREAS, the people, commerce, and industry of Idaho are dependent to a great extent upon the motor carrier industry for the delivery of raw materials, manufactured goods, agricultural products, and other necessities of life; and

WHEREAS, this industry, which employs thousands of Idahoans in almost every community in the state, requires user participation in the development of the complex rules and regulations under which it operates; and

WHEREAS, it is important to apply the rules, regulations, and laws of the state fairly and equitably to all segments of the industry without discrimination and partiality;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order the continuation of the Motor Carrier Advisory Committee.

The purpose of the Committee shall be to meet bi-monthly to review appropriate changes to the safety, size and weight, and operational rules and regulations of state agencies as they apply to the common, contract, and private motor carriers and to advise the Governor of the Committee's findings and recommendations on all aspects of motor carrier operations.

The Committee shall consist of 16 members. Twelve of the members shall represent the various elements of the trucking industry, including: long haul, heavy haul, short haul, wood products, logging, contracting, agriculture, truck and trailer manufacturing, tankers, concrete and aggregates, private carriers, transcontinental interstate common carriers, and others deemed appropriate by the Committee. Ex-officio members of the Committee shall include the Directors, or their designees, of the Departments of Law Enforcement, Revenue and Taxation, and Transportation, and the Chairman (or her designee) of the Public Utilities Commission. The agencies of the ex-officio members of the Committee shall provide support to the Committee, with the Idaho Transportation Department being the lead agency responsible for administrative support. Committee members shall elect their chairman from among their number.

Appointment of the 12 public members of the Committee representing the motor carrier industry shall be made by the governor from candidates recommended by the Committee. Appointments shall be for staggered three-year terms expiring on the July 1 three years after

appointment.

The Committee shall present all formal recommendations to the participating agencies and the Governor and shall present to the Governor each December a report of the activities of the Committee during the preceding year.

This Executive Order repeals and replaces Executive Order No. 88-15. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the twenty-fourth day of June, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-16

CONTINUATION OF THE GOVERNOR'S COMMITTEE ON
EMPLOYMENT OF PEOPLE WITH DISABILITIES,
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-17

WHEREAS, it is in the public interest to promote employment opportunities for all citizens; and

WHEREAS, the skills and abilities of individuals with disabilities are a valuable human resource; and

WHEREAS, individuals with disabilities have a strong desire to obtain employment; and

WHEREAS, it has been shown that individuals with disabilities, when given an opportunity, are valuable, productive, dedicated, and skilled employees; and

WHEREAS, individuals with disabilities experience significant difficulties in obtaining employment;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order that the Governor's Committee on Employment of People with Disabilities be continued.

The Committee's responsibilities will be:

1. To promote increased employment opportunities for individuals with disabilities through education and training;
2. To provide technical assistance regarding the Americans with Disabilities Act of 1990;
3. To organize local community "Employment of People with Dis-

abilities" committees and support their efforts to encourage employment of the disabled;

4. To formally recognize outstanding contributions which increase employment opportunities; and
5. To coordinate special programs to eliminate barriers that preclude equal consideration for employment.

The Committee shall consist of up to 35 members. The Governor shall appoint members of the Committee who shall serve at his pleasure for rotating terms of three years. Committee members shall be selected from representatives of labor, business, disabled individuals or groups that represent the disabled, veterans' organizations, and state and local agencies that provide services for people with disabilities. Ex-officio members of the Committee shall include the Directors, or their designees, of the Departments of Education, Employment, Health and Welfare, Labor and Industrial Services, and the Chairmen, or their designees, of the Commission for the Blind, the Industrial Commission, and the Office on Aging. Members of the Committee shall elect a Chairman from among their number.

The Civil Rights/Affirmative Action Officer from the Idaho Department of Employment shall serve as Executive Director of the Committee.

This Executive Order repeals and replaces Executive Order No. 88-17. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the twenty-sixth day of June, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred sixteenth, and of the Statehood of Idaho the one hundred second.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-17

ENERGY CONSERVATION CONSIDERATIONS IN STATE BUILDINGS AND LEASES,
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-19

WHEREAS, the efficient use of energy is of prime importance to the economic and energy well-being of the State of Idaho; and

WHEREAS, the State of Idaho uses, in its owned and leased buildings, a considerable portion of the state's energy supply; and

WHEREAS, the state government's ability to control energy use in leased facilities has been minimal, particularly after signing a lease; and

WHEREAS, it is imperative that the state government of Idaho set an example of energy efficiency for owners and operators of public and private buildings;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, do hereby continue the order that all state building designs and lease agreements shall include energy conservation considerations including:

1. Chapter 53 of the Uniform Building Code, 1991 Edition;
2. use of alternative energy sources such as solar, geothermal, and cogeneration;
3. compliance with the intent of the Environmental Protection Agency's Green Lights State Partner program;
4. energy management systems and controls to include effective means to monitor and maintain systems at optimal operations; and
5. "state-of-the-art" systems and equipment to conserve energy economically.

FURTHER, I order that all lease agreements be reviewed in draft form for compliance with these objectives. All parties are to be notified in any such negotiations that failure to comply with these objectives may be sufficient grounds for voiding the lease agreement. I further order that the signing of such agreements include a statement of accountability to the intent of this order so that compliance will be a part of the lease-drafting procedure rather than a source of conflict after a contract has been signed. I further direct the attention of all persons and agencies in all branches of state and local government to the spirit of this order. Consideration of long-term energy costs, including seasonal and peaking demands upon the suppliers of energy, shall be a major consideration in construction of all state buildings and execution of lease agreements.

This Executive Order repeals and replaces Executive Order No. 88-19. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the twenty-fourth day of July, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-18REDUCTION OF GENERAL FUND ALLOTMENTS

WHEREAS, Article 7, Section 11, of the Idaho Constitution provides that state government expenditures shall not exceed state government revenue; and

WHEREAS, I have determined that expenditures from the General Fund authorized by the Legislature for the current fiscal year will exceed anticipated state revenue for the fiscal year; and

WHEREAS, I have determined that the reduction of allotments provided herein for the elective officers in the Executive Department will not prohibit the discharge of the constitutional duties of such elective offices;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me pursuant to Section 67-3512A, Idaho Code, do hereby order:

1. That the General Fund appropriations on file in the Office of the State Auditor be reduced in the amounts indicated for each of the following agencies:

Governor's Office	\$ 16,900
Division of Financial Management	17,500
Endowment Fund Investment Board	4,000
Office on Aging	37,800
Human Rights Commission	5,400
Blind Commission	16,800
Military Division	32,300
Department of Commerce	36,200
Department of Administration	39,300
Department of Revenue and Taxation	222,200
Department of Labor	6,700
Department of Agriculture	40,100
Department of Correction	374,700
Department of Law Enforcement	154,300
State Board of Education	14,900
Department of Education	46,400
Deaf and Blind School	72,900
Vocational Education	244,000
Colleges and Universities	1,390,000
Agr. Research/Extn.	249,400
Health Education Programs	68,900
Special Programs	48,100
Public Television	16,500
State Library	28,600
Historical Society	17,300
Vocational Rehabilitation	41,400
Department of Health and Welfare	2,458,500
Public Health Districts	43,100
Department of Parks and Recreation	68,400
Department of Lands	129,600
Department of Water Resources	88,000
Lieutenant Governor	1,300
Attorney General	50,000

State Treasurer	3,400
State Auditor	35,300
Secretary of State	29,100
Arts Commission	10,400
Public Utilities Commission	<u>3,100</u>
TOTAL	\$6,162,800

2. Agencies should submit appropriation reductions and statements that explain the impact of making permanent these reductions to the Division of Financial Management by September 1, 1992.
3. Officers of the Legislative and Judicial branches of government are requested to reduce General Fund Expenditures for FY 1993 to the extent possible without impairing the discharge of their constitutional duties.

This order shall take effect immediately upon its execution and shall continue in effect until the Legislature or the Board of Examiners takes further action.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the twenty-seventh day of July, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-19

CONTINUING THE FEDERAL DEFENSE TASK FORCE OF IDAHO
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-21

WHEREAS, the military and defense installations in Idaho have become critical to the security of our nation and to the economic health of our state; and

WHEREAS, the State of Idaho, the directors of the installations, and civic leaders in the affected communities can be of assistance in the development and enhancement of these facilities; and

WHEREAS, an official task force can bring these officials and leaders together and provide prompt and needed assistance to Mountain Home Air Force Base, the Idaho National Guard, the Idaho National Engineering Laboratory (INEL), and the research and development arms of our institutions of higher education;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of

Idaho, pursuant to the authority vested in me under the Constitution and laws of the State of Idaho, do hereby order:

1. The continuation of the Federal Defense Task Force of Idaho within the Office of the Governor. The Task Force shall consist of the following persons:
The Adjutant General of the Idaho National Guard or his designee; the General Manager of the INEL or his designee; a person intimately familiar with Mountain Home Air Force Base; a member of the Idaho Legislature from a district containing one of the federal installations; and the chairman of the Committee of Fifty of the Military Affairs Committee of the Mountain Home Chamber of Commerce. In addition to these five members, the Governor shall appoint five other members representing various business, military, and educational interests of the state as the Governor deems appropriate.
2. The Task Force shall:
Serve for indeterminate terms at the pleasure of the Governor. Meet periodically at times set by the members to determine ways in which the Task Force can enhance the posture, reputation, and readiness of all military components within the State of Idaho, which include Mountain Home Air Force Base, the Idaho National Guard, the Idaho National Engineering Laboratory, and the research and development capabilities of our institutions of higher education.
Agree severally on the actions to be taken by the Task Force. Report to the Governor or to his appointed staff member at appropriate intervals on the activities of the Task Force.
3. All state agencies and institutions are hereby directed to cooperate with and assist the Task Force as it carries out its duties under this Order.

This Executive Order repeals and replaces Executive Order No. 88-21. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the twenty-sixth day of August, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-20CONTINUATION OF THE GOVERNOR'S MOTOR CARRIER ADVISORY COMMITTEE,
REPEALING AND REPLACING EXECUTIVE ORDER NO. 92-15

WHEREAS, the people, commerce, and industry of Idaho are dependent to a great extent upon the motor carrier industry for the delivery of raw materials, manufactured goods, agricultural products, and other necessities of life; and

WHEREAS, this industry, which employs thousands of Idahoans in almost every community in the state, requires user participation in the development of the complex rules and regulations under which it operates; and

WHEREAS, it is important to apply the rules, regulations, and laws of the state fairly and equitably to all segments of the industry without discrimination and partiality;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order the continuation of the Motor Carrier Advisory Committee.

The purpose of the Committee shall be to meet bi-monthly to review appropriate changes to the safety, size and weight, and operational rules and regulations of state agencies as they apply to common, contract, and private motor carriers and to advise the Governor of the Committee's findings and recommendations on all aspects of motor carrier operations.

The Committee shall consist of 12 members. The members shall represent the various elements of the trucking industry, including: long haul, heavy haul, short haul, wood products, logging, contracting, agriculture, truck and trailer manufacturing, tankers, concrete and aggregates, private carriers, transcontinental interstate common carriers, and others deemed appropriate by the Committee.

Appointment of the members of the Committee shall be made by the Governor. The Committee shall assist the Governor in this task by recommending to him the names of at least two persons for appointment to each seat that becomes open on the Committee. Appointments shall be for staggered three-year terms expiring on the July 1 three years after appointment. Committee members shall elect their chairman from among their number.

Committee members shall receive no salary for their services. The Idaho Transportation Department shall, however, reimburse Committee members for expenses incurred in attending Committee meetings held on or after September 25, 1992.

A representative of the following state agencies shall provide support to the Committee: the Idaho Transportation Department, the Department of Law Enforcement, the Public Utilities Commission, and the Tax Commission. The Idaho Transportation Department shall be the lead agency responsible for providing administrative support.

The Committee shall present all formal recommendations to the participating agencies and the Governor and shall present to the Governor each December a report of the activities of the Committee during that year.

This Executive Order repeals and replaces Executive Order No.

92-15. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the twenty-first day of August, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-21

REGARDING LICENSING/CERTIFICATION PROGRAMS
FOR ASBESTOS PROFESSIONALS
REPEALING AND REPLACING EXECUTIVE ORDER NO. 89-5

WHEREAS, the Asbestos Hazard Emergency Response Act of 1986 (AHERA, P.L. 99-519) mandates state accreditation of asbestos professionals who perform work in elementary or secondary schools; and

WHEREAS, AHERA mandates that each state adopt a contractor accreditation plan at least as stringent as the Environmental Protection Agency's (EPA) model plan;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of the State of Idaho, and by AHERA, P.L. 99-519, do hereby order: (1) the adoption of a contractor accreditation plan in compliance with the EPA's model plan; (2) the Idaho Industrial Commission to adopt such procedures, rules, and regulations for the purpose of complying with AHERA; and (3) the Idaho Department of Labor and Industrial Services to implement such procedures, rules, and regulations adopted by the Commission.

I. POLICY

Exposure to airborne asbestos fibers has been demonstrated to cause significant increases in lung cancer, mesothelioma, and other diseases. It is the intent of this Order to prevent unnecessary exposure of the public to asbestos fibers by regulating asbestos abatement practices in requiring statewide standards for training and accreditation of persons who perform asbestos projects.

II. IMPLEMENTATION OF AHERA POLICY

A. As used in this Order, unless context otherwise requires:

1. "Accreditation" means a certificate or license

- issued by the Department permitting a person to work in an asbestos occupation.
2. "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.
 3. "Asbestos-containing material" means any material or product that contains more than 1 percent asbestos.
 4. "Asbestos occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.
 5. "Asbestos project" means encapsulation, enclosure, removal, repair, operations and maintenance, renovation, or demolition project involving asbestos; except the term does not include small-scale, short-duration operations and maintenance projects as determined by the Department of Labor.
 6. "Friable asbestos-containing material" means asbestos-containing material that may be crumbled, pulverized, or reduced to powder by hand pressure when dry, and includes any asbestos-containing material that will become, or may reasonably be expected to become, friable as a result of cutting, crushing, grinding, or other activities during the asbestos project being conducted.
 7. "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity.
- B. As implemented by Executive Order 89-5, it is unlawful for any person to engage in an asbestos occupation in a public, non-profit private, elementary or secondary school without accreditation for that occupation from the Department of Labor. This Executive Order incorporates Executive Order 89-5, and amends section III.D. to make its enforcement and penalty provisions consonant with AHERA.
- C. The Commission shall promulgate regulations establishing standards and procedures that are consistent with federal law for the accreditation of asbestos occupations. The regulations shall include, but not be limited to, standards for training, course approval and review; examinations for accreditation applicants; annual refresher courses and renewal of accreditation; and revocation of accreditation.
- D. To qualify for accreditation in a particular asbestos occupation, a person shall have:
1. successfully completed an asbestos-related training course approved or administered by the Department of Labor for that occupation;
 2. passed an examination approved or administered by the Department of Labor; and

3. satisfactorily demonstrated previous training or experience for the occupation as the Department of Labor may require. Any person applying for accreditation shall submit required fees and follow procedures prescribed by the Department of Labor.
- E. The Department of Labor may accredit for an asbestos occupation a person who has completed an EPA-approved course for that occupation. To be eligible, that person also must:
1. successfully complete a training course approved or administered by the Department of Labor on Idaho law, rules, and regulations;
 2. pass an examination administered by the Department of Labor that covers the applicant's asbestos occupation and state law, rules, and regulations; and
 3. meet such other requirements as the Department of Labor may deem necessary to protect public health and safety.
- F. The Department of Labor may accredit a person for an asbestos occupation who has been accredited by another state for that occupation in conformance with federal law. To be eligible, that person also must:
1. successfully complete a training course approved or administered by the Department of Labor on Idaho law, rules, and regulations;
 2. pass an examination administered by the Department on those topics; and
 3. meet such other requirements as the Department of Labor may deem necessary to protect public health and safety.
- G. The Department of Labor shall establish a fee schedule for the implementation of this Order. The Department of Labor may collect fees for applications, issuance, and renewal of accreditation, examinations, training course approval and review, job notifications and inspections, record-keeping, and other asbestos-related activities of the Department of Labor.

III. ENFORCEMENT AND PENALTIES

- A. At least once a year, during an actual asbestos project, the Department of Labor shall conduct an on-site job inspection for each asbestos contractor. The Department of Labor may make similar job inspections for other asbestos occupations. The Department of Labor shall have the power and authority to enter at reasonable times upon any property for this purpose.
- B. An asbestos contractor shall keep a record of each asbestos project that it performs and shall make the record available to the Department of Labor upon request. Records required by this section shall be kept for at least 30 years, unless otherwise specified by the Department of Labor. The records shall include:
1. The name, address, and accreditation number of the individual who supervised the asbestos project and

each employee or agent of the contractor who worked on the project;

2. The location and a description, as required by the Department of Labor, of the project and the amount of asbestos material that was removed;
 3. The starting and completion dates of each project and a summary of the procedures that were used to comply with all federal and state standards for asbestos projects; and
 4. The name and address of each asbestos disposal site where waste containing asbestos was deposited and the disposal site receipts.
- C. The Department of Labor may reprimand, suspend, deny, or revoke the accreditation of any person who:
1. fraudulently or deceptively obtains or attempts to obtain accreditation;
 2. fails at any time to meet the qualifications for accreditation or to comply with the requirements of this Order or any regulation adopted by the Department of Labor; or
 3. fails to meet any applicable federal or state standard for asbestos projects.

D. ENFORCEMENT

Failure to comply with any provision of this Order will result in the issuance of a Safety Order pursuant to Idaho Code Section 72-720, et seq. Failure or refusal to comply with such order may result in the imposition of civil fines pursuant to AHERA and Federal Regulations promulgated thereunder or misdemeanor penalties pursuant to Idaho Code Section 72-723.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the thirty-first day of August, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-22

SUSPENDING, DUE TO LACK OF U.S. CENSUS DATA,
THE 1992 AFFIRMATIVE ACTION PLANS REQUIRED BY
THE IDAHO CODE OF FAIR EMPLOYMENT PRACTICES,
AFFECTING EXECUTIVE ORDER NO. 91-7

WHEREAS, it is the policy of the State of Idaho to promote fair employment practices in accordance with the principles of fair treatment and non-discrimination on the basis of race, color, sex, religion, national origin, age, or handicap, while giving appropriate consideration to veterans; and

WHEREAS, all agencies of the Executive Department of the State of Idaho are required to submit to the Governor each September 1 an affirmative action plan setting forth their efforts to attain the goals of the Idaho Code of Fair Employment Practices set forth in Executive Order 91-7; and

WHEREAS, Executive Department agencies need access to information from the U.S. Bureau of the Census in order to update their 1991 reports in a meaningful manner; and

WHEREAS, the U.S. Bureau of the Census has not published key information from the 1990 census, and is not likely to do so in the near future; and

WHEREAS, 1980 census data is out-of-date and no longer useful in analyzing under-utilization of minorities and other groups;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, pursuant to the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order that the affirmative action plans submitted by agencies of the Executive Department of the State of Idaho in 1991 shall constitute compliance with Executive Order 91-7 for 1992 as well. All agencies shall continue to exercise their best efforts to promote affirmative action to attain the goals of Executive Order 91-7, and begin to use 1990 census information as part of that effort as soon as that information becomes available.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the eighth day of September, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-23STATE SURFACE WATER ANTIDegradation POLICY,
REPEALS AND RESCINDS EXECUTIVE ORDER NO. 88-23

WHEREAS, water quality is of paramount importance to the environment, economy, and unique quality of life in Idaho; and

WHEREAS, the degradation, maintenance, and improvement of water quality are issues of vital public concern; and

WHEREAS, the coordination and enhancement of existing water quality monitoring activities by federal, industrial, state, and Indian tribal entities are desirable and necessary to understand the impact of land management practices and water quality trends and to render valid water quality planning, regulation, and management; and

WHEREAS, the open participation and input of the public--including, but not limited to, conservation, industry, recreational, and Indian tribal interests--in the process of water quality planning is desirable and necessary to address and resolve fairly competing water quality interests; and

WHEREAS, representatives of agriculture, conservation, forest products, mining, and Indian tribal interests in 1988 negotiated an "AGREEMENT TO IMPLEMENT AN ANTIDegradation POLICY FOR THE STATE OF IDAHO," henceforth referred to as the "Agreement," which sets out an approach and framework to achieve coordination and enhancement of water quality monitoring and full intergovernmental coordination and public participation in the process of water quality planning, regulation, and management;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, continue in force the antidegradation policy of this state, using a Water Quality Advisory Working Committee and state agencies as follows:

I. ANTIDegradation POLICY

The antidegradation policy of the State of Idaho shall be as follows:

- A. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- B. Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, wildlife, and recreation in and on the water, that quality shall be maintained and protected unless the state finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the state shall assure water quality adequate to protect existing uses fully. Further, the state shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable

best management practices (BMPs) for nonpoint source control.

- C. Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

II. IMPLEMENTATION OF THE ANTIDEGRADATION POLICY

The Agreement as negotiated by representatives of agriculture, conservation, forest products, mining, and Indian tribal interests sets out an approach and framework for a cooperative state, federal, Indian tribal, industry, and public participation process to implement the antidegradation policy. Implementation shall continue through appropriate statutes, regulations, interagency agreements, and agency policies. The Agreement shall provide guidance in carrying out the following:

A. Continuation of the Water Quality Advisory Working Committee

The Water Quality Advisory Working Committee shall review, coordinate, and facilitate the implementation of the antidegradation policy. The Working Committee shall be chaired by the Idaho Department of Health and Welfare's, Division of Environmental Quality and shall include, but not be limited to, representatives from each of the following groups: the Idaho Department of Fish and Game, the Idaho Department of Lands, the Idaho Department of Water Resources, the State Soil Conservation Commission, the U.S. Forest Service, the U.S. Bureau of Land Management, the U.S. Environmental Protection Agency (EPA), the U.S. Geological Survey (USGS), and representatives of agriculture, conservation, forest products, sportsmen, and mining interests as may be appointed by the Governor and who shall serve at his pleasure. Indian tribes shall nominate a representative for appointment by the Governor to the Working Committee. Members will be reimbursed for travel expenses and such normal compensation as received by those members who are state employees serving in the normal course and scope of their employment. The Water Quality Advisory Working Committee shall be provided necessary staffing by the Idaho Department of Health and Welfare.

1. The Working Committee shall:

- a. meet as needed to provide guidance to the various agencies charged with implementation of the antidegradation policy, consistent with the Agreement;
- b. review and approve draft Basin Area Reports and designate, by consensus, stream segments of concern; and
- c. provide guidance and assistance to the Idaho Department of Health and Welfare in the development and coordination of a statewide water

quality monitoring program.

B. Assignment of Agency Functions

1. The Idaho Department of Health and Welfare shall:
 - a. formulate and recommend, through the Director in accordance with Idaho Code Section 39-105(1), to the Board of Health and Welfare such rules and regulations as may be necessary to arrange for not less than 12 geographical Basin Area meetings triennially, with a minimum of not less than one in each geographical basin, to facilitate public discussion of nonpoint sources of water pollution, implementation of the antidegradation policy and water quality issues; and
 - b. be the lead state agency in developing a water quality monitoring program by coordinating existing state, federal, tribal, and private monitoring and creating a complete statewide water quality data library.
2. The Idaho Department of Lands shall:
 - a. be the lead state agency in implementing the antidegradation policy for surface, dredge, and placer mining; and
 - b. be the lead state agency in implementing the antidegradation policy for forestry practices.
3. The State Soil Conservation Commission shall be the lead state agency for coordinating the implementation of the antidegradation policy for agricultural practices through the soil conservation districts.
4. The Idaho Department of Fish and Game shall be the agency responsible for monitoring the effectiveness of best management practices on fish and wildlife resources.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the thirteenth day of November, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-24

IDAHO GEOGRAPHIC INFORMATION ADVISORY COMMITTEE
AND GEOGRAPHIC INFORMATION CENTER
REPEALING AND REPLACING EXECUTIVE ORDERS NO. 88-16 AND 92-5

WHEREAS, it is in the interest of the state of Idaho, federal resource management agencies, local government, and private organizations to address resource management issues; and

WHEREAS, various geographic information activities--such as remote sensing, digital cartography, global positioning systems, and geographic information systems--are basic to sound resource management; and

WHEREAS, it is important to minimize duplication and maximize utilization of state and federal funds expended on these activities; and

WHEREAS, it is important to officially, efficiently, and accurately communicate to the federal government Idaho's geographic information priorities; and

WHEREAS, the state's geographic information community has an increasing need to keep abreast of the rapidly-changing technology in mapping and related disciplines; and

WHEREAS, it is important to provide channels of communication and cooperation among agencies of the State of Idaho, federal resource management agencies, local government, and private organizations; and

WHEREAS, it is essential that the State of Idaho establish and maintain standards relating to the creation, maintenance, and analysis of geographic information; and

WHEREAS, it is necessary on occasion for the state to provide operational support to users of geographic information; and

WHEREAS, the Department of Water Resources has developed the capability within the Geographic Information Center to provide such support; and

WHEREAS, it is in the interest of the state of Idaho that this capability be shared and further developed in cooperation with federal resource management agencies, local government, and private organizations for conducting needed resource inventory and mapping;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order:

1. The continuation of the Idaho Geographic Information Advisory Committee. The membership of the Idaho Geographic Information Advisory Committee shall consist of the heads, or their designees, of state departments and agencies with responsibilities in the natural resource and planning fields that have an interest in geographic information. Agencies represented shall include the Departments of Fish and Game, Health and Welfare (Division of Environmental Quality), Lands, Parks and Recreation, Transportation, and Water Resources, as well as the Tax Commission and the Division of Financial Management. All state members of the Committee shall have the right to vote. The voting members of the Committee shall elect one of their number to serve as Chair of the Committee. The Committee may approve voting membership in the Committee by other

- state agencies that might have natural resource, planning, or geographical information responsibilities or expertise. The Idaho Geographic Information Advisory Committee shall also include non-voting members from organizations the state membership feels could benefit the functioning of the Committee, such as federal agencies operating in Idaho, Idaho industry associations, and/or state academic institutions that have responsibilities or expertise in the fields of natural resources, planning, or geographical information.
2. The responsibilities of the Idaho Geographic Information Advisory Committee shall be to:
 - (a) advise the Governor on geographical information issues, including the need for standards or enunciation of operational and planning policy for the State;
 - (b) review new geographic information, mapping, global positioning systems, and remote sensing technology applications that might be utilized to benefit the state's interest, and assess the geographic information system and image-processing capabilities needed within Idaho by existing and potential users;
 - (c) make recommendations to state and federal agencies regarding state policies and standards on geographic information systems, mapping programs, global positioning systems, and remote sensing specifications;
 - (d) assist in the preparation of requests to appropriate federal agencies as a part of the diversified national mapping program; and
 - (e) meet on at least an annual basis to review geographic information programs carried on by federal and state agencies and private industry, develop a list of priorities with regard thereto, and make recommendations for cooperation and resource sharing.
 3. The Idaho Geographic Information Advisory Committee shall appoint such standing committees as might be necessary to address current geographic information issues.
 4. The Idaho Geographic Information Advisory Committee shall submit an annual report to the Governor of the Committee's activities subsequent to the annual meeting.
 5. The Director of the Department of Water Resources, in managing the Idaho Geographical Information Center in accordance with the geographic information policy of the Idaho Geographic Information Advisory Committee, shall have the Idaho Geographical Information Center:
 - (a) provide operational, management, and technical assistance to state agencies and other users of geographic information;
 - (b) cooperate with, receive, and expend funds from other sources for the continued development and use of geographic information;
 - (c) cooperate with Idaho universities and other research institutions for the development and implementation of improved geographic information capabilities; and
 - (d) coordinate efforts among state and federal agencies and

private organizations for the establishment and development of a clearing-house for the collection, cataloging, and dissemination of remote sensing data and digital geographical information possessed by the state.

This Executive Order repeals and replaces Executive Orders No. 88-16 and 92-5. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the thirteenth day of November, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-25

GOVERNOR'S TASK FORCE FOR CHILDREN AT RISK,
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-20

WHEREAS, Idaho's children are her most valuable and most vulnerable resource; and

WHEREAS, crimes of abuse and neglect can psychologically and physically cripple and maim innocent children for life, depriving them of their right to live happy and productive lives; and

WHEREAS, abuse and neglect of children have been recognized to be multi-generational problems; and

WHEREAS, several thousand reports of child abuse and neglect are filed each year in Idaho, with these numbers increasing annually; and

WHEREAS, the system that responds to reports of child abuse and neglect requires more effective statewide coordination, continual improvement, and consistent monitoring in order to better protect children; and

WHEREAS, in order to protect all children, those who commit crimes against children need to be held more appropriately and consistently accountable for their actions; and

WHEREAS, the child victims of abuse and neglect must receive immediate and adequate protection from continued maltreatment; and

WHEREAS, all child victims of abuse and neglect deserve treatment and necessary medical attention; and

WHEREAS, it is the responsibility of all Idahoans to provide a

system of support and protection for these children and to ensure that crimes against them are dealt with appropriately; and

WHEREAS, the protection of children from abuse and neglect is in the best interests of all Idahoans;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order the continuance of the Governor's Task Force for Children at Risk.

The Task Force's responsibilities are:

1. To establish a process to be used statewide for the review of child deaths or substantial or severe injuries where the circumstances of the death or injury suggest the possibility of child abuse;
2. To investigate the current levels of quality and availability of treatment options for individuals convicted of child abuse offenses;
3. To recommend opportunities to improve and strengthen the cooperative relationship between Idaho's judicial system and providers of child abuse pre-sentencing evaluations and treatment; and
4. To investigate and recommend optimum courses of prevention, evaluation and treatment of juvenile sexual offenders.

The Task Force shall be composed of between 13 and 16 members appointed by the Governor.

The membership shall include:

- * A District Court Judge
- * A Magistrate Judge
- * A Prosecuting Attorney
- * At least one representative of the Division of Family and Children's Services of the Department of Health and Welfare
- * A law enforcement investigator specializing in child abuse cases
- * A representative of the Department of Corrections' Probation and Parole Division
- * A juvenile justice worker
- * A public defender
- * A pediatrician
- * A representative of a children's advocacy group
- * A counselor specializing in therapy for abused children
- * A parent or parent group representative
- * Individuals experienced in working with children with handicaps

The members of the Task Force shall serve at the pleasure of the Governor. Members of the Task Force shall elect their chair from among their number.

The Task Force, in carrying out its responsibilities, shall work closely with the Idaho Juvenile Justice Commission and the Office for Juvenile Justice and Delinquency Prevention with the goal of ensuring that all these groups work in concert and avoid duplication of effort as they promote the interests of Idaho's children.

The Department of Health and Welfare shall be the lead agency, providing support for the Task Force, and shall maintain office staff to carry out the activities directed by the Task Force as funding is available.

This Executive Order repeals and replaces Executive Order No.

88-20. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the first day of December, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-26

ALLOTMENT MANAGEMENT ON PUBLIC LANDS,
DEPARTMENT OF AGRICULTURE AS LEAD AGENCY,
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-24

WHEREAS, Section 8 of the Public Rangelands Improvement Act of 1978 (P.L. 95-514;92 Stat. 1803) provides, among other things, for consultation, cooperation, and coordination with any state having lands within areas to be covered by allotment management plans; and

WHEREAS, the Idaho Department of Agriculture has signed Memoranda of Understanding (MOUs) with the U.S. Forest Service, the Bureau of Land Management, and the University of Idaho to coordinate and implement the congressional intent of the aforementioned Act;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by the authority vested in me, under the Constitution and laws of the State of Idaho, do hereby designate the Idaho Department of Agriculture to serve as the lead agency to consult, cooperate, and coordinate with the parties involved in matters relating to the development, implementation, and revision of allotment management plans; to provide a process for dispute resolution; and to receive and expend such monies as are available for these purposes. Further, I hereby direct all state agencies to cooperate fully with and provide assistance to the Department of Agriculture in carrying out its responsibilities under this Order.

This Executive Order shall cease to be effective four years after its entry into force.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at



Boise, the Capital, the first day of December, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-27

GLOBAL WARMING: IDAHO RESPONSE

WHEREAS, Idahoans take great pride in Idaho's mountains, forests, rivers, and every aspect of its unique natural resources, and are committed to conserving and protecting the quality of the state's air, water, and other natural resources; and

WHEREAS, scientific research suggests that increased levels of carbon dioxide and other "greenhouse gases" in the earth's atmosphere may have contributed to an increase in average global temperatures in the past century, as a result of the "greenhouse effect;" and

WHEREAS, increased global temperatures could result in major changes to the earth's environment, including significant changes in Idaho's weather patterns, requiring corresponding changes in the daily pursuits of all Idaho's citizens, and perhaps having catastrophic effects on the agriculture, timber and tourism industries; and

WHEREAS, recognizing that all countries must cooperate to face the challenge of global warming, the United States on June 12 signed the United Nations Framework Convention on Climate Change, committing the United States to work to combat global warming; and

WHEREAS, the process of global warming can be slowed by efforts to reduce the release of carbon dioxide from energy sources into the air through combustion and by reduction of emissions of greenhouse gases other than carbon dioxide; and

WHEREAS, Idaho state government is one of the largest energy consumers in the state, and the laws and regulations of the State of Idaho can play an important role in promoting reduced combustion of carbon by industry and homeowners by promoting energy conservation on a statewide basis through implementation and improvement of the Idaho Residential Energy Standards (IRES) set forth in Title 44, chapter 23, Idaho Code; and

WHEREAS, increased energy efficiency by state entities saves scarce tax dollars, makes unnecessary large new investments in power plants, and reduces the energy bills of homeowners and businesses, while aiding the environment;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order:

1. That the Department of Labor and Industrial Services (DLIS), the Energy Division of the Department of Water Resources (DWR), and the Idaho Public Utilities Commission (PUC) work with other state, federal and local government entities, utilities, and builders to propose amendments to the Idaho Code that would ensure that the Idaho Residential Energy Standards (IRES) are raised to equivalence with Model Conservation Standards and that provision is made for inspection and enforcement.
2. That all agencies of the State of Idaho shall ensure that passenger vehicles and light trucks purchased by the State of Idaho for their use shall be of the smallest size class proper for the intended use and be rated by the U.S. Environmental Protection Agency as among the highest-mileage vehicles in their class. Vehicles purchased to accomplish special purposes, such as police, fire, and other emergency vehicles, shall not be subject to the requirements of this paragraph.
3. That the Department of Administration:
 - (a) shall, when engaged in discussions with other state agencies regarding the purchase of vehicles, inform those agencies of the requirements of paragraph two above, in order that each agency understands the requirement to request vehicles of the smallest size class and among the highest mileage in that class.
 - (b) shall continue to promote energy conservation in state-owned and state-leased buildings, including participation in the "Green Lights" state partner program of the U.S. Environmental Protection Agency, as set forth in Executive Order 92-17, which requires surveying the lighting systems of state-owned and state-leased buildings to determine whether these systems should be replaced with modern efficient lighting systems;
 - (c) shall carry out a similar survey of the need to replace inefficient heating and cooling systems in state-owned and state-leased buildings;
 - (d) shall include in its maintenance contracts for state buildings and vehicles, the requirement that chlorofluorocarbons (CFCs) be collected during servicing of refrigeration units and reused or recycled.
 - (e) shall draft proposed amendments to the Idaho Code that would broaden the authorized use of parking fees paid by state employees to promote use of other forms of transportation, including mass transit and bicycles.
 - (f) shall incorporate in its requests for bids for state supplies, market-based incentives to promote submission of bids offering recycled goods (production of which requires less energy than new goods) at prices competitive with new goods.
 - (g) shall ensure that trees are planted around state-owned or state-leased buildings to contribute to the energy efficiency of those buildings (e.g., deciduous trees to the south, coniferous to the north) and to serve to offset carbon dioxide emissions.

4. That the Division of Environmental Quality (DEQ) of the Department of Health and Welfare:
 - (a) shall review what steps would need to be taken to quantify Idaho's emissions of greenhouse gases, and work with industry to identify emission in Idaho of such noncarbon dioxide greenhouse gases as methane, CFCs 11 and 12, and nitrous oxide, and work with industry to reduce and eliminate such emissions.
 - (b) shall incorporate into its permit fee structure a system that would provide incentives for reduced emissions of greenhouse gases, including promotion of use of "offsets" and "sinks" for carbon dioxide (such as planting of trees) by those who receive permits.
5. That the Department of Lands shall ensure rapid and effective reforestation of federal, state, and private lands following timber sales and have its urban forestry personnel work with the Department of Administration to promote planting of trees around state-owned and state-leased buildings to contribute to their energy efficiency and the state's effort to offset carbon dioxide emissions.
6. That the Department of Transportation, in planning, designing and implementing its road construction projects, shall encourage alternate modes of transportation, including the use of car pools, public transit, and other techniques to minimize single user vehicle trips. The Department shall also work with local authorities to promote "bicycle friendly" streets and highways that would permit more Idaho workers to commute to their jobs on bicycles.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the seventh day of December, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 92-28

DEPARTMENT OF EMPLOYMENT AS LEAD AGENCY FOR ADMINISTRATION OF THE
JOB TRAINING PARTNERSHIP ACT, THE ECONOMIC DISLOCATION
AND WORKER ADJUSTMENT ASSISTANCE ACT, AND THE WORKER

READJUSTMENT AND RETRAINING NOTIFICATION ACT;
REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-25

WHEREAS, the Congress of the United States passed the Job Training Partnership Act of 1982 for the purpose of establishing programs to prepare youth and unskilled adults for entry into the labor force and to provide job training to those economically-disadvantaged individuals and other individuals facing serious barriers to employment who are in special need of such training in order to obtain productive employment; and

WHEREAS, Congress passed the Economic Dislocation and Worker Adjustment Assistance Act of 1988 to amend Title III of the Job Training Partnership Act for the purpose of establishing programs to retrain dislocated workers; and

WHEREAS, Congress passed the Worker Readjustment and Retraining Notification Act of 1988 for the purpose of requiring employers to give sixty days notice before a plant closing or mass layoff; and

WHEREAS, these three Acts charge the Governor with substantial responsibilities for implementing their provisions;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order the following:

1. Except for specific responsibilities that have been assigned to other state agencies, the Department of Employment shall continue to have general responsibility for statewide implementation and administration of the employment and training system under the Job Training Partnership Act of 1982, as amended by the Economic Dislocation and Worker Adjustment Assistance Act of 1988, and the Worker Readjustment and Retraining Notification Act.
2. The members of the Idaho Job Training Council, which was established in accordance with section 122(a)(3) of the Job Training Partnership Act, shall be appointed by the Governor as follows:
 - a. Thirty (30) percent of the membership of the Council shall be representatives of business and industry, including representatives of business and industry from private industry councils in the state and from agriculture.
 - b. Thirty (30) percent of the membership of the Council shall be representatives of the State Legislature and of public agencies and organizations which the Governor determines to have a direct interest in employment, training, and human resource utilization within the state.
 - c. Thirty (30) percent of the membership of the Council shall be representatives of organized labor and representatives of community-based organizations.
 - d. Ten (10) percent of the membership of the Council shall be representatives of the eligible population and of the general public.
3. The Director of the Department of Employment shall have the responsibility to provide professional, technical, administrative, and other staff to support the activities of the Council.
4. In accordance with section 311(b)(2) of the Economic Dislocation and Worker Adjustment Assistance Act, the Department of

Employment will include a dislocated worker unit with the capacity to respond rapidly to business closures and substantial layoffs.

5. In accordance with section 3(a)(2) of the Worker Readjustment and Retraining Notification Act, the Department of Employment's Dislocated Worker unit will be the state entity designated to receive written notice of plant closings or mass layoffs as directed by the Act.

This Executive Order repeals and replaces Executive Order No. 88-25. This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the seventh day of December, in the year of our Lord nineteen hundred ninety-two, and of the Independence of the United States of America the two hundred seventeenth, and of the Statehood of Idaho the one hundred third.

BY THE GOVERNOR:

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

INDEX

CONTENTS

Alphabetical index of laws according to subject matter	1633
Code Index	1677
Numerical index of laws by bill number	1725

INDEX

FIRST EXTRAORDINARY SESSION - FIFTY-FIRST LEGISLATURE

SUBJECT INDEX

	Chapter	-	Page
BINGO			
Games, regulation.....	Ch. 2	-	4
CONSTITUTIONAL AMENDMENTS			
Arguments, pro/con, Legislative Council, prepare.....	Ch. 1	-	3
Article III, Section 20, proposed.....	HJR4	-	8
DROUGHT			
Water rights, temporary change, point of diversion.....	Ch. 3	-	6
GAMBLING			
Bingo, raffles, regulation.....	Ch. 2	-	4
Casino type, prohibited.....	HJR4	-	8
Defined, prohibited.....	Ch. 2	-	4
RAFFLES			
Regulation.....	Ch. 2	-	4
RESOLUTIONS, JOINT			
Gambling, casino type prohibited.....	HJR4	-	8
WATER			
Drought, temporary change, diversion point.....	Ch. 3	-	6

INDEX

FIRST REGULAR SESSION - FIFTY-SECOND LEGISLATURE

SUBJECT INDEX

ABBREVIATIONS USED IN THIS INDEX

Approp = Appropriation	Bd = Board
Com = Commission	Comm = Committee
Dept = Department	Dist = District
F&G = Fish and Game	H&W = Health and Welfare
MV = Motor Vehicle	PUC = Public Utilities Commission
PERS = Public Employees Retirement System	
INEL = Idaho National Engineering Laboratory	

ACCOUNTANTS	Chapter - Page
Accountancy, Bd, approp.....	Ch.228 - 799
Certified public, regulations revised, expanded.....	Ch.239 - 824
ACCOUNTS	
Air Quality Permitting, created.....	Ch.275 - 926
Big Payette Lake Water Quality Council, created.....	Ch.200 - 550
Budget Reserve, moneys transferred/General Fund.....	Ch.242 - 851
Highway Distribution, funds, distribution.....	Ch.126 - 319
Highway Distribution, local governments, use.....	Ch.177 - 456
Improvement, crop/commercial land.....	Ch. 28 - 96
Insurance Insolvency Administration, created.....	Ch.118 - 295
Legislative, moneys reduced from General Acct.....	Ch.393 - 1456
Park & Recreation Improvement, gas tax.....	Ch.301 - 1116
Search & Rescue, F&G, violations, fines, % increased...	Ch.311 - 1146
State Recreational Vehicle, established.....	Ch.286 - 973
Student Tuition Recovery, proprietary schools.....	Ch. 57 - 154
Use Fee, MV, apply prior/operating/Idaho.....	Ch.399 - 1463
ACQUIRED IMMUNODEFICIENCY SYNDROME	
HIV test, sexual offenders, victims of, counseling.....	Ch. 19 - 71
ACTS	
Big Payette Lake Water Quality, created.....	Ch.200 - 550
Charitable Solicitations, added.....	Ch.246 - 857
Food Establishment, definitions, exclusions.....	Ch.114 - 291
Illegal Drug Tax, taxes, entire amount possessed.....	Ch. 9 - 26
Lease-Purchase Agreement, created.....	Ch.232 - 807
Limited Liability Company, created.....	Ch.224 - 760
Motor Vehicle Service Contract, added.....	Ch.340 - 1272
National Forest Health, support urged.....	SJM104 - 1536
Nonprofit Corporation, created.....	Ch.220 - 685
Sales Tax, technical corrections.....	Ch. 26 - 87
Sex Offender Registration, added.....	Ch.155 - 391
Small Employer Health Insurance Availability.....	Ch.176 - 435

ACTS (Continued)	Chapter - Page
Uniform Unincorporated Nonprofit Association.....	Ch.282 - 952
AD VALOREM TAXATION	
See TAX AND TAXATION, PROPERTY	
ADMINISTRATION DEPARTMENT	
Approp.....	Ch.144 - 378
Approp, additional FY93.....	Ch. 98 - 246
Personnel Com, approp.....	Ch.151 - 387
Personnel Com, approp, additional FY93.....	Ch. 35 - 110
Print Shop, State, oversight function, repealed.....	Ch.330 - 1228
Reorganization.....	Ch.221 - 747
ADMINISTRATIVE PROCEDURES ACT	
Agency rules, certain, continue July 1, 1994.....	Ch.342 - 1281
Code sections, conform, 1992 APA.....	Ch.216 - 587
Public Health Dists, rules, comply.....	Ch.296 - 1094
Rules Bulletin, publication, 1992 APA.....	Ch.245 - 853
ADMINISTRATIVE RULES	
See RULES	
ADOPTION	
Child, investigation/social, adoptive parents, H&W.....	SCR108 - 1550
Child, newborn dependent, insurance, moment of birth...Ch.305	- 1129
Records, confidential.....	Ch.315 - 1166
ADULTS	
Vulnerable, abandonment, felony penalty.....	Ch.179 - 460
AERONAUTICS	
Advisory Bd, membership.....	Ch.274 - 926
AGING, OFFICE ON	
Approp.....	Ch.191 - 488
AGRICULTURE	
Biodiesel, development/commercialization, urged.....	SJM103 - 1535
Chemigation, licensure, options, fee, increase.....	Ch. 68 - 181
Dept, approp.....	Ch.383 - 1403
Dept, approp, additional FY93.....	Ch.148 - 384
Dept, approp, Animal Damage.....	Ch.383 - 1403
Dept, approp, Animal Industry.....	Ch.383 - 1403
Dept, approp, Inspections.....	Ch.383 - 1403
Dept, approp, Marketing & Development.....	Ch.383 - 1403
Dept, approp, Plant Industry.....	Ch.383 - 1403
Dept, approp, Quality Assurance Laboratory.....	Ch.383 - 1403
Dept, bees, diseases, apiaries, tolerances allowed....Ch. 11	- 36
Dept, business lists, distribution, allowed.....	Ch.117 - 294
Dept, Commercial Feed Law, definitions, updated.....	Ch. 12 - 38
Dept, laboratory services, confidentiality.....	Ch.198 - 543
Dept, livestock, disease, inspection, clarify.....	Ch. 16 - 58
Dept, wildlife depredation, prevention, duties.....	Ch. 30 - 98
Drivers license/seasonal, farm-related industry.....	Ch.300 - 1105
Farming, tax, sales, production exemption, clarified...Ch.319	- 1175
Livestock, brucellosis, control, expanded.....	Ch. 13 - 49
Livestock, diseased, destroyed, compensation increase.Ch. 14	- 55
Livestock, tuberculosis, testing, penalties updated...Ch. 15	- 56
Pesticides, government agencies, licensing, fees.....	Ch. 54 - 142
Potato Com, subpoena power.....	Ch.211 - 572
Pure Seed Law, violations, civil penalty, fines.....	Ch.207 - 568

	Chapter	Page
AGRICULTURE (Continued)		
Research Program, approp, UofI.....	Ch.131	- 326
Seed, label requirements, measure/net weight.....	Ch. 70	- 184
Seed, plant certification, agent, clarified.....	Ch. 69	- 182
Sheep Com, approp.....	Ch.383	- 1403
Weeds, noxious, control, county/landowner/state.....	Ch.247	- 859
AIDS		
See ACQUIRED IMMUNODEFICIENCY SYNDROME		
AIR POLLUTION		
See ENVIRONMENT		
ALBERTSON		
See MEMORIALS		
ALCOHOLIC BEVERAGES		
See LIQUOR		
AMBULANCES		
Personnel, standards, definitions updated.....	Ch. 50	- 130
ANIMALS		
Brand inspection, fees, increased.....	Ch.122	- 311
Game, antlers/horns, naturally shed, possession.....	Ch. 79	- 206
Grizzly Bear Management Oversight Comm.....	Ch.403	- 1469
Grizzly bears, recovery funds, F&G, authorized, when...Ch.403	- 1469	
Livestock, brucellosis, control, coverage expanded.....	Ch. 13	- 49
Livestock, disease, inspection, clarify.....	Ch. 16	- 58
Livestock, diseased, destroyed, compensation increase.....	Ch. 14	- 55
Livestock, tuberculosis, testing, penalties updated....	Ch. 15	- 56
Wildlife depredation, prevention, Ag, Dept.....	Ch. 30	- 98
Wolf environmental impact statement, thru May 1994.....	Ch.332	- 1231
ANNEXATION		
City, adjacent territory, procedure.....	Ch. 55	- 150
Hospital Dists, procedure.....	Ch.137	- 337
Mosquito Abatement Dists, alternate method.....	Ch. 81	- 211
APPEALS		
Tax, Bd, trial de novo, clarified, Dist Court.....	Ch.290	- 1081
APPRAISERS		
Real estate, licensure, Transportation Dept employee...Ch.320	- 1178	
APPROPRIATIONS		
Accountancy, Bd.....	Ch.228	- 799
Administration, Dept.....	Ch.144	- 378
Administration, Dept, additional FY93.....	Ch. 98	- 246
Administration, Dept, Personnel Com.....	Ch.151	- 387
Administration, Dept, Personnel Com, additional FY93...Ch. 35	- 110	
Aging, Office on.....	Ch.191	- 488
Agriculture, Dept.....	Ch.383	- 1403
Agriculture, Dept, additional FY93.....	Ch.148	- 384
Agriculture, Dept, Animal Damage.....	Ch.383	- 1403
Agriculture, Dept, Animal Industry.....	Ch.383	- 1403
Agriculture, Dept, Inspections.....	Ch.383	- 1403
Agriculture, Dept, Marketing & Development.....	Ch.383	- 1403
Agriculture, Dept, Plant Industries.....	Ch.383	- 1403
Agriculture, Dept, Quality Assurance Laboratory.....	Ch.383	- 1403
Arts Com.....	Ch.406	- 1474
Arts Com, additional FY93.....	Ch. 60	- 164
Athletic Director, State.....	Ch.228	- 799

APPROPRIATIONS (Continued)	Chapter - Page
Attorney General.....	Ch.175 - 433
Auditor, Legislative.....	Ch.357 - 1317
Auditor, State.....	Ch.368 - 1331
Auditor, State, additional FY93.....	Ch.115 - 292
Blind Com.....	Ch.193 - 491
Brand Inspection.....	Ch.241 - 849
BSU.....	Ch.147 - 383
Budget Reserve Acct, moneys, transfer/General Fund.....	Ch.242 - 851
Budget Reserve Fund, moneys from Liquor Fund, when.....	Ch.394 - 1458
Catastrophic Health Care/CAT moneys, line item VETO....	Ch.370 - 1333
Centralized Uniform Commercial Code.....	Ch.406 - 1474
Certified Shorthand Reporters Bd.....	Ch.228 - 799
Commerce, Dept.....	Ch.410 - 1502
Community colleges.....	Ch.294 - 1092
Correction, Dept.....	Ch.325 - 1183
Correction, Dept, additional FY93.....	Ch. 97 - 246
Correctional institutions.....	Ch.325 - 1183
Correctional institutions, Boise/Pocatello, add'193....	Ch. 97 - 246
Deaf & Blind School.....	Ch.276 - 938
Dentistry, Bd.....	Ch.228 - 799
Displaced Homemaker Program, additional FY93.....	Ch. 62 - 165
Education, Bd, community colleges.....	Ch.294 - 1092
Education, Bd, Deaf & Blind School.....	Ch.276 - 938
Education, Bd, Displaced Homemaker Program.....	Ch.323 - 1182
Education, Bd, Historical Society.....	Ch.171 - 431
Education, Bd, Idaho Geological Survey.....	Ch.358 - 1318
Education, Bd, Museum of Natural History.....	Ch.358 - 1318
Education, Bd, office administration.....	Ch.292 - 1091
Education, Bd, public broadcasting.....	Ch.173 - 432
Education, Bd, public schools.....	Ch.411 - 1503
Education, Bd, scholarships/grants.....	Ch.358 - 1318
Education, Bd, Small Business Development Centers.....	Ch.358 - 1318
Education, Bd, State Library Bd.....	Ch.174 - 433
Education, Bd, UofI, Forest Utilization Research.....	Ch.358 - 1318
Education, Bd, Vocational Education.....	Ch.323 - 1182
Education, Bd, Vocational Rehabilitation.....	Ch.361 - 1321
Education, higher.....	Ch.147 - 383
Employment, Dept, federal funds, construction/office...Ch. 4	- 15
Endowment Fund Investment Bd.....	Ch.149 - 385
Engineering Examiners, Bd.....	Ch.228 - 799
Engineering Examiners, Bd, additional FY93.....	Ch. 37 - 111
F&G, Dept.....	Ch.192 - 488
F&G, Dept, depredation control/winter feeding.....	Ch.192 - 488
Family Practice Residencies.....	Ch.169 - 428
Finance-Approp Comm.....	Ch.357 - 1317
Finance, Dept.....	Ch.353 - 1312
Financial Management Div.....	Ch.385 - 1416
Financial Management Div, additional FY93.....	Ch. 36 - 110
General Fund, moneys transferred from Liquor Fund.....	Ch.392 - 1456
Geologists Bd.....	Ch.228 - 799
Governor, Office of.....	Ch.328 - 1226
Governor, Office of, administration.....	Ch.328 - 1226

APPROPRIATIONS (Continued)	Chapter	Page
Governor, Office of, Aging, Office on.....	Ch.191	- 488
Governor, Office of, Blind Com.....	Ch.193	- 491
Governor, Office of, Blind Com, additional FY93.....	Ch. 38	- 111
Governor, Office of, Early Childhood programs.....	Ch.328	- 1226
Governor, Office of, Emergency Fund.....	Ch.326	- 1186
Governor, Office of, Emergency Response Com.....	Ch.328	- 1226
Governor, Office of, Emergency Response Com, add'193...	Ch. 34	- 109
Governor, Office of, Endowment Fund Investment Bd.....	Ch.149	- 385
Governor, Office of, Financial Management Div.....	Ch.385	- 1416
Governor, Office of, Human Rights Com.....	Ch.172	- 432
Governor, Office of, Insurance, Fund, State.....	Ch.150	- 386
Governor, Office of, Juvenile Justice programs.....	Ch.328	- 1226
Governor, Office of, Liquor Dispensary.....	Ch.370	- 1333
Governor, Office of, Military Div.....	Ch.244	- 852
Governor, Office of, PERSI.....	Ch.293	- 1091
Governor, Office of, residence.....	Ch.328	- 1226
Governor, Office of, Social Services programs.....	Ch.328	- 1226
Governor, Office of, Women's Program, Com.....	Ch.243	- 852
H&W, Dept.....	Ch.384	- 1406
H&W, Dept, additional, FY93.....	Ch.229	- 801
H&W, Dept, Adult & ADC Assistance Payments.....	Ch.384	- 1406
H&W, Dept, Adult Services.....	Ch.384	- 1406
H&W, Dept, Alcohol/Drug Abuse Com.....	Ch.384	- 1406
H&W, Dept, Child Support Enforcement.....	Ch.384	- 1406
H&W, Dept, Community Mental Health Service.....	Ch.384	- 1406
H&W, Dept, Community Rehabilitation Div.....	Ch.384	- 1406
H&W, Dept, Deaf/Hearing Impaired Council.....	Ch.384	- 1406
H&W, Dept, Developmental Disabilities.....	Ch.384	- 1406
H&W, Dept, Developmental Disabilities Council.....	Ch.384	- 1406
H&W, Dept, Domestic Violence Council.....	Ch.384	- 1406
H&W, Dept, Eligibility Services.....	Ch.384	- 1406
H&W, Dept, Emergency Medical Services.....	Ch.384	- 1406
H&W, Dept, Environmental Div.....	Ch.384	- 1406
H&W, Dept, Family Self-Support Program.....	Ch.384	- 1406
H&W, Dept, Family/Children's Services Div.....	Ch.384	- 1406
H&W, Dept, Indirect Support Services.....	Ch.384	- 1406
H&W, Dept, INEL Oversight.....	Ch.384	- 1406
H&W, Dept, Juvenile Justice.....	Ch.384	- 1406
H&W, Dept, Laboratory Services.....	Ch.384	- 1406
H&W, Dept, Medical Assistance Payments.....	Ch.384	- 1406
H&W, Dept, Medical Assistance Payments, FY93.....	Ch.229	- 801
H&W, Dept, Physical Health Services.....	Ch.384	- 1406
H&W, Dept, State Economic Opportunity Office.....	Ch.384	- 1406
H&W, Dept, State Hospital North.....	Ch.384	- 1406
H&W, Dept, State Hospital South.....	Ch.384	- 1406
H&W, Dept, State School and Hospital.....	Ch.384	- 1406
H&W, Dept, State Youth Services Center.....	Ch.384	- 1406
H&W, Dept, Substance Abuse.....	Ch.384	- 1406
H&W, Dept, Veterans Services Program.....	Ch.384	- 1406
H&W, Dept, Welfare Div.....	Ch.384	- 1406
Health Dists, Public.....	Ch.324	- 1183
Hispanic Com.....	Ch.228	- 799

APPROPRIATIONS (Continued)	Chapter - Page
Hispanic Com, additional FY93.....	Ch. 61 - 164
Historical sites, maintenance/interpretation.....	Ch.171 - 431
Historical Society.....	Ch.171 - 431
Human Rights Com.....	Ch.172 - 432
Human Rights Com, additional FY93.....	Ch. 59 - 163
IDEP Dental Education.....	Ch.169 - 428
Industrial Com.....	Ch.277 - 939
Industrial Com, additional FY93.....	Ch. 96 - 245
Insurance, Dept.....	Ch.322 - 1181
Insurance, Dept, Health Insurance Task Force.....	Ch.369 - 1332
Insurance, Dept, implement S.B.1039, 1993.....	Ch.369 - 1332
Insurance, Fund, State.....	Ch.150 - 386
ISU.....	Ch.147 - 383
Labor & Industrial Services, Dept.....	Ch.170 - 429
Labor & Industrial Services, Dept, additional FY93.....	Ch. 39 - 112
Lands, Dept.....	Ch.359 - 1319
Lands, Dept, additional FY93.....	Ch. 74 - 197
Lands, Dept, Forest Management/Fire Protection.....	Ch.359 - 1319
Lava Hot Springs Foundation.....	Ch.354 - 1312
Law Enforcement, Dept.....	Ch.241 - 849
Law Enforcement, Dept, Alcohol Beverage Control.....	Ch.241 - 849
Law Enforcement, Dept, POST Academy.....	Ch.241 - 849
LCSC.....	Ch.147 - 383
Legislative Auditor.....	Ch.357 - 1317
Legislative Budget Office.....	Ch.357 - 1317
Legislative Council.....	Ch.357 - 1317
Library, Bd, State.....	Ch.174 - 433
Lieutenant Governor.....	Ch.363 - 1325
Liquor Dispensary.....	Ch.370 - 1333
Lottery Com.....	Ch.132 - 327
Medicine, Bd.....	Ch.228 - 799
Military Div.....	Ch.244 - 852
Mountain Home Air Base Action Plan, Commerce, Dept.....	Ch.410 - 1502
Nursing, Bd.....	Ch.228 - 799
Occupational Licenses, Bureau.....	Ch.228 - 799
Occupational Licenses, Bureau, additional FY93.....	Ch. 37 - 111
Optometry, Bd.....	Ch.228 - 799
Optometry, Bd, additional FY93.....	Ch. 37 - 111
Outfitters & Guides Bd.....	Ch.228 - 799
Parks & Recreation, Dept.....	Ch.354 - 1312
Parks & Recreation, Dept, additional, FY93.....	Ch. 58 - 162
Parks & Recreation, Dept, Oregon Trail Wagon Train.....	Ch.360 - 1320
Parks & Recreation, Dept, park development.....	Ch.386 - 1417
Parole Com.....	Ch.325 - 1183
Permanent Building Acct.....	Ch.382 - 1400
Permanent Building Acct, Asbestos Abatement.....	Ch.382 - 1400
Permanent Building Acct, Capitol Mall Fiber-Optic.....	Ch.382 - 1400
Permanent Building Acct, EPA Green Lights Program.....	Ch.382 - 1400
Permanent Building Acct, Executive Residence Comm.....	Ch.382 - 1400
Permanent Building Acct, ISU/Physical Science Bldg.....	Ch.395 - 1458
Permanent Building Acct, Liquor Dispensary Warehouse....	Ch.382 - 1400
Permanent Building Acct, NICI-Cottonwood.....	Ch.382 - 1400

APPROPRIATIONS (Continued)	Chapter - Page
Permanent Building Acct, Underground Storage Tanks.....	Ch.382 - 1400
PERSI.....	Ch.293 - 1091
Personnel Com.....	Ch.151 - 387
Pharmacy, Bd.....	Ch.228 - 799
Public broadcasting.....	Ch.173 - 432
Public School Income Fund.....	Ch.411 - 1503
Public schools.....	Ch.411 - 1503
Public schools, retirement, FICA, unemployment.....	Ch.411 - 1503
Public Works Contractors License Bd.....	Ch.228 - 799
Public Works, additional FY93.....	Ch. 98 - 246
PUC.....	Ch.225 - 791
PUC, personnel costs.....	Ch.364 - 1326
Racing Com.....	Ch.241 - 849
Real Estate Com.....	Ch.228 - 799
Revenue & Taxation, Dept.....	Ch.366 - 1328
Secretary of State.....	Ch.406 - 1474
Self-governing Agencies.....	Ch.228 - 799
Sheep Com.....	Ch.383 - 1403
Superintendent of Public Instruction.....	Ch.143 - 377
Supreme Court.....	Ch.365 - 1326
Supreme Court, Law Library.....	Ch.365 - 1326
Tax Appeals, Bd.....	Ch.366 - 1328
Tax Com.....	Ch.366 - 1328
Transportation Dept.....	Ch.145 - 380
Transportation Dept, additional, FY93, Highway Div.....	Ch.352 - 1311
Transportation Dept, Aeronautics Div.....	Ch.145 - 380
Transportation Dept, ports of entry.....	Ch.356 - 1316
Treasurer, State.....	Ch.381 - 1399
Uniform State Laws Com.....	Ch.406 - 1474
UofI.....	Ch.147 - 383
UofI, Agricultural Research Program.....	Ch.131 - 326
UofI, Bd of Regents, higher education.....	Ch.147 - 383
UofI, Health Education Programs, Bd of Regents.....	Ch.169 - 428
Veterinary Medicine, Bd.....	Ch.228 - 799
Vocational Education.....	Ch.323 - 1182
Vocational Rehabilitation.....	Ch.361 - 1321
Vocational Rehabilitation, Div, additional FY93.....	Ch. 63 - 165
WAMI Education Program.....	Ch.169 - 428
Water Resources, Dept.....	Ch.355 - 1314
Water Resources, Dept, Snake Basin Adjudications.....	Ch.355 - 1314
WICHE, University of Utah, Education, Bd.....	Ch.169 - 428
WOI Veterinary Education Program.....	Ch.169 - 428
ARCHERY	
Permit, hunter, education program, required.....	Ch.414 - 1524
ARMED FORCES	
Veterans Day, school program, to remember/honor.....	Ch.269 - 904
Veterans, disabled, service, any conflict, benefits....	Ch.233 - 811
Veterans, state employment, preference, exceptions.....	Ch. 21 - 79
ARSON	
See FIRE	
ARTS	
Com, approp.....	Ch.406 - 1474

	Chapter - Page
ARTS (Continued)	
Com, approp, additional FY93.....	Ch. 60 - 164
ASSAULT	
Domestic, battery, crime of, term defined.....	Ch.344 - 1283
ASSESSMENTS	
See TAX AND TAXATION	
ASSESSORS	
Subdivision lots, 6 or more, one owner, valuation.....	Ch.405 - 1473
ASSOCIATIONS	
Nonprofit, Uniform Act, property, real/personal.....	Ch.282 - 952
ATHLETICS	
State, Director, approp.....	Ch.228 - 799
ATTORNEY GENERAL	
Approp.....	Ch.175 - 433
Consumer Protection Act, charitable solicitations.....	Ch.246 - 857
Consumer Protection Act, unlawful acts, procedure.....	Ch.102 - 256
Telephone solicitors, registration, exempt, when.....	Ch.156 - 399
AUDITOR	
Legislative, approp.....	Ch.357 - 1317
State, approp.....	Ch.368 - 1331
State, approp, additional FY93.....	Ch.115 - 292
State, post audits, state agencies.....	Ch.388 - 1435
AUDITS	
Government/local, requirements.....	Ch.387 - 1417
Performance, Legislative Oversight Comm.....	Ch.327 - 1186
Post, State Auditor, conduct, state agencies.....	Ch.388 - 1435
Transportation Dept, MV owners, guidelines.....	Ch.138 - 341
BALLOTS	
Absentee, county clerk, mail, when.....	Ch.100 - 253
BANKS AND BANKING	
Business, Saturdays, holidays, allowed.....	Ch. 52 - 133
Criminal offenses, deleted, covered elsewhere/code.....	Ch. 85 - 214
Records, privilege from disclosure, when.....	Ch.187 - 477
State/national, regulation of, differences eliminated..	Ch. 53 - 137
Uniform Commercial Code, Negotiable Instruments.....	Ch.288 - 1019
BEER	
Distributors, suppliers, business relations.....	Ch.312 - 1148
BEES	
Diseases, apiaries, tolerances allowable.....	Ch. 11 - 36
BIDS	
Flood Control Dists, advertised, when.....	Ch.258 - 887
Government, state/local, Idaho preference.....	Ch.306 - 1135
BILLS	
Legislative, printing contract.....	HCR 5 - 1557
BINGO	
County, Lottery Com, regulate, charitable games.....	Ch.391 - 1448
BLIND	
Children, Braille, study team, assess importance of....	Ch.134 - 330
Com, approp.....	Ch.193 - 491
Com, approp, additional FY93.....	Ch. 38 - 111
Deaf & Blind School, approp.....	Ch.276 - 938
BOARD AND CARE	
See RESIDENTIAL CARE FACILITIES	

	Chapter - Page
BOARDS	
See INDIVIDUAL NAMES	
BOATS	
Laws, Snake River, reciprocal agreements.....	Ch.252 - 877
Mufflers, noise restrictions, required.....	Ch.146 - 382
Operators, alcohol/drug tests, refusal, penalty.....	Ch.250 - 873
BOISE STATE UNIVERSITY	
See COLLEGES AND UNIVERSITIES	
BONDS	
Reclamation, mining, dredge/placer, amount/per acre....	Ch.307 - 1137
Surety, posted, lien/mechanics, real property.....	Ch.378 - 1386
BRANDS	
Inspections, approp.....	Ch.241 - 849
Inspections, fees, increased.....	Ch.122 - 311
Log, registration, Scaling Practices, Bd.....	Ch. 92 - 219
BRUCELLOSIS	
Livestock, control, coverage expanded.....	Ch. 13 - 49
BUDGETS	
County, publication deadline.....	Ch. 25 - 86
Executive, annual performance plans, state agencies....	Ch.168 - 425
Federal, balanced, constitutional amendment.....	SJM101 - 1533
Governor's, Address.....	HCR 2 - 1555
Legislative, Office, approp.....	Ch.357 - 1317
Reserve Acct, moneys transferred/General Fund, when....	Ch.242 - 851
Reserve Fund, moneys from Liquor Fund, when.....	Ch.394 - 1458
Taxing Dists, increase, notify by mail.....	Ch.390 - 1445
BUSES	
School, drivers, physical exam, federal standards.....	Ch. 56 - 153
BUSINESS	
Beer, distributors, suppliers, equality/fair dealing...Ch.	312 - 1148
Lease-purchase, consumer goods transactions.....	Ch.232 - 807
Limited Liability Company Act, provided.....	Ch.224 - 760
Money lending, agreement in writing, \$50,000/more.....	Ch.397 - 1460
Peer review comm/private, records, disclosure exempt...Ch.	302 - 1118
UCC, leases, personal property, any transaction.....	Ch.287 - 977
CAMPAIGNS	
Contributions, finance reports, filing, time period....	Ch.203 - 557
Contributions, nonbusiness entity, defined.....	Ch.189 - 481
CANDIDATES	
Campaign contributions, nonbusiness entity, defined....	Ch.189 - 481
Contributions, finance reports, filing, time period....	Ch.203 - 557
County Com, residence requirements.....	Ch.159 - 409
CARE FACILITIES	
See HOSPITALS, RESIDENTIAL CARE FACILITIES, HEALTH CARE FACILITIES	
CEMETERIES	
Maintenance Dists, cemetery acquisition.....	Ch.256 - 881
CERTIFIED PUBLIC ACCOUNTANTS	
See ACCOUNTANTS	
CHARITIES	
Solicitations, deceptive, unlawful.....	Ch.246 - 857
CHILD CARE	
See DAY CARE	

	Chapter	Page
CHILDREN		
Abuse, sexual, repeat offenders, mandatory minimum.....	Ch.152	- 387
Adopted, newborn/dependent, insurance, moment/birth....	Ch.305	- 1129
Adoption, adoptive parents, social investigation.....	SCR108	- 1550
Blind, Braille, study team, assess importance of.....	Ch.134	- 330
Child custody/visitation, legislative study comm.....	SCR114	- 1553
Child support, guidelines, sunset date, extend.....	Ch.160	- 409
Child support, health insurance, mandated.....	Ch.337	- 1266
Child support, income withholding/immediate.....	Ch.335	- 1244
Day care center, pediatric rescue breathing need.....	Ch. 23	- 83
Day care center, staff, training requirements.....	Ch.416	- 1528
Gifted/talented, education, School Dist responsible....	Ch.409	- 1501
Inhalants, possession by minors, for intoxication.....	Ch.154	- 390
Parent-child relationship, termination, hearing.....	Ch. 88	- 216
School age, redefined/expanded, 1st grade, disabled....	Ch.121	- 310
Youth offender, H&W, Dept, discharge, penalties.....	Ch. 84	- 214
CHIROPRACTORS		
Adjustment, manipulation, massage therapy, defined....	Ch.157	- 401
Bd, disciplinary action, when.....	Ch.157	- 401
CIRCUIT BREAKER TAX RELIEF		
See TAX AND TAXATION, PROPERTY		
CITIES		
Annexation, adjacent territory, procedure.....	Ch. 55	- 150
Elections, 4 per year/no more than.....	Ch.379	- 1392
Highway Distribution Acct, local governments, use.....	Ch.177	- 456
Libraries, services, free for all, recodify law.....	Ch.186	- 467
CIVIL ACTIONS		
Courts, different counties, costs, payment.....	Ch. 83	- 213
Crime victims, compensation, offset, when.....	Ch.236	- 818
Receivers, appointment, real property, trust deed.....	Ch.280	- 948
Witness, threats, harassment, penalty.....	Ch. 46	- 118
CIVIL RIGHTS		
Crimes, certain, imprisonment, rights terminated.....	Ch.184	- 465
Prisoners, life sentence/less than, sue/be sued.....	Ch.120	- 308
CLEAN AIR ACT		
See ENVIRONMENT		
CODE		
See IDAHO CODE		
COLLECTION AGENCIES		
Federal Fair Debt Collection Act, subject to.....	Ch.165	- 416
COLLEGES AND UNIVERSITIES		
BSU, approp.....	Ch.147	- 383
Community, approp.....	Ch.294	- 1092
Education, Bd, approp, Family Practice Program.....	Ch.169	- 428
Education, Bd, approp, Forest Utilization Research.....	Ch.358	- 1318
Education, Bd, approp, Idaho Geological Survey.....	Ch.358	- 1318
Education, Bd, approp, IDEP Dental Education.....	Ch.169	- 428
Education, Bd, approp, Museum of Natural History.....	Ch.358	- 1318
Education, Bd, approp, scholarships/grants.....	Ch.358	- 1318
Education, Bd, approp, Small Business Development.....	Ch.358	- 1318
Education, Bd, approp, WAMI Program.....	Ch.169	- 428
Education, Bd, approp, WICHE Program.....	Ch.169	- 428
Education, Bd, approp, WOI Program.....	Ch.169	- 428

	Chapter	Page
COLLEGES AND UNIVERSITIES (Continued)		
Education, Bd, split, higher/public education.....	Ch.404	- 1470
ISU, approp.....	Ch.147	- 383
ISU, approp, Physical Science Building.....	Ch.395	- 1458
LCSC, approp.....	Ch.147	- 383
Northwest Nazarene College, Dr. Leon Doane, honored....	HCR 39	- 1582
Retirement plan, optional, PERSI, limits.....	Ch.268	- 902
Scholarships, firefighter/police officer dependents....	Ch.346	- 1288
UofI, approp.....	Ch.147	- 383
UofI, approp, Agricultural Research Program.....	Ch.131	- 326
UofI, approp, Bd of Regents, higher education.....	Ch.147	- 383
COMMERCIAL TRANSACTIONS		
Lease-purchase, consumer goods transactions.....	Ch.232	- 807
UCC, leases/personal property, any transaction.....	Ch.287	- 977
Uniform Commercial Code, Negotiable Instruments.....	Ch.288	- 1019
COMMISSIONS		
See INDIVIDUAL NAMES		
COMMITTEES		
Peer review association/private, records, disclosure...Ch.	302	- 1118
COMMUNITY GUARDIAN		
Bd, conservator, when.....	Ch. 24	- 83
COMPACTS		
Indian Gaming, cases/certain, legal issues resolved....	Ch.367	- 1330
Interstate Inmate Firefighter, enacted.....	Ch. 80	- 208
State-tribal gaming, legislature ratify, when.....	Ch.408	- 1500
COMPUTERS		
Computerized mapping system, county collect fees.....	Ch.201	- 555
CONFIDENTIALITY		
Records, public, litigation, disclosure exempt.....	Ch. 31	- 101
CONSERVATION		
Energy, measures, electric/gas corporations, rates.....	Ch.218	- 682
CONSTITUTION		
U.S., American flag, protected, amendment.....	SJM102	- 1534
CONSTITUTIONAL AMENDMENTS		
Article III, Section 2, proposed.....	SJR105	- 1530
U.S., American flag, protected.....	SJM102	- 1534
CONSTRUCTION		
Highway, responsibility, Highway Dists.....	Ch.127	- 322
CONSUMER CREDIT CODE		
Lease-purchase, consumer goods transaction, regulate...Ch.	232	- 807
CONSUMERS		
Lease-purchase, goods transactions, regulated.....	Ch.232	- 807
Protection Act, charitable solicitations, deceptive....	Ch.246	- 857
Protection Act, definitions, new, clarified.....	Ch.102	- 256
Protection Act, Attorney General, authority provided...Ch.	246	- 857
Protection Act, Attorney General, procedure.....	Ch.102	- 256
CONTRACTORS		
Public works, licensure, 12 month period.....	Ch.237	- 819
Sales tax, exemptions, clarify.....	Ch. 7	- 23
CONTRACTS		
Irrigation Dists, construction/improvement, owner.....	Ch.261	- 892
Irrigation Dists, indebtedness, payment.....	Ch.212	- 574
Irrigation Dists, lateral dists.....	Ch.259	- 890

	Chapter - Page
CONTRACTS (Continued)	
MV service, regulations.....	Ch.340 - 1272
Printing, legislative bills.....	HCR 5 - 1557
Printing, legislative journals.....	HCR 8 - 1559
Printing, Session Laws.....	HCR 15 - 1564
CONTROLLED SUBSTANCES ACT	
Drug trials, chemical analysis, evidence/prima facie...	Ch.158 - 408
COPYRIGHTS	
Idaho Code, property of the State of Idaho.....	Ch.389 - 1444
CORPORATIONS	
Irrigation/canal, operation, assessment, amount.....	Ch.108 - 276
Limited Liability Company Act, provided.....	Ch.224 - 760
Nonprofit, Act, articles/incorporation/bylaws.....	Ch.220 - 685
Securities, registration exempt, fairness hearing.....	Ch.162 - 412
Tax, income, deduction, "dividend gross up".....	Ch. 3 - 5
Tax, income, unitary groups, combined reporting.....	Ch.284 - 958
Telephone, Universal Service Fund, MTS/WATS access.....	Ch.219 - 683
CORRECTIONS	
Bd, felons, probation responsibilities.....	Ch.101 - 254
Bd, prisoners, life sentence/less than, civil rights...	Ch.120 - 308
Dept, approp.....	Ch.325 - 1183
Dept, wardens, nonclassified employees.....	Ch. 77 - 204
CORRECTIONAL INSTITUTIONS	
Approp.....	Ch.325 - 1183
Inmates, controlled substance/weapon, possession.....	Ch.166 - 423
Inmates, county jail, classification system.....	Ch.213 - 578
Inmates, county jail, debts, sheriff not pay.....	Ch.213 - 578
Inmates, Firefighter Compact/Interstate, enacted.....	Ch. 80 - 208
Inmates, life sentence/less than, civil rights.....	Ch.120 - 308
Inmates, parole/early, terminal medical condition.....	Ch.106 - 271
Inmates, probation, Correction, Bd, responsibilities...	Ch.101 - 254
Inmates, sexual contact by officer, felony.....	Ch.222 - 759
South Idaho, Boise, approp, additional FY93.....	Ch. 97 - 246
Women's, Center, Pocatello, approp, add'l FY93.....	Ch. 97 - 246
COUNSELORS	
Licensed, ethics code, update.....	Ch.205 - 563
Licensing Bd, specialty standards.....	Ch. 65 - 166
COUNTIES	
Bingo, raffles, charitable, regulate/Lottery Com.....	Ch.391 - 1448
Budgets, publication deadline.....	Ch. 25 - 86
Cemetery Maintenance Dists, acquisition.....	Ch.256 - 881
Com, candidate, residence requirements.....	Ch.159 - 409
Com, decisions, judicial review, manner provided.....	Ch.103 - 262
Computerized mapping system, fees, collection.....	Ch.201 - 555
Court actions/civil, costs, payment.....	Ch. 83 - 213
Equalization, Bd, property tax exemption, approve.....	Ch.214 - 580
Fair Bd, advisory to County Com, when.....	Ch.210 - 571
Highway Distribution Acct, funds, distribution.....	Ch.126 - 319
Highways, rights of way, validation, abandonment.....	Ch.412 - 1505
Hospital Bds, medical clinics, own/operate.....	Ch.112 - 283
Jails, inmates, classification system.....	Ch.213 - 578
Jails, inmates, debts, sheriff not pay.....	Ch.213 - 578
Land, F&G Com purchase, approval required.....	Ch.197 - 539

	Chapter	Page
COUNTIES (Continued)		
Records, classification/retention.....	Ch.140	- 371
Tax/property, excess levied, interest payment.....	Ch.266	- 898
Waste/solid, collection, fees, procedure.....	Ch. 41	- 113
COURTS		
Child abuse, sexual, repeat offenders, sentencing.....	Ch.152	- 387
Child support, guidelines, sunset date, extend.....	Ch.160	- 409
Child support, orders, health insurance, mandated.....	Ch.337	- 1266
Child support, orders, income withholding/immediate....	Ch.335	- 1244
Civil, actions, counties/different, costs, payment.....	Ch. 83	- 213
Costs, inability to pay, court-appointed attorney.....	Ch.265	- 898
Crimes/certain, imprisonment, civil rights.....	Ch.184	- 465
Defendant, probation/imprisonment criteria.....	Ch. 86	- 215
Dist/Supreme, fees increased.....	Ch.196	- 535
Dist, affidavit, summons, publication order.....	Ch. 89	- 217
Dist, trial de novo, clarified, Tax Appeals, Bd.....	Ch.290	- 1081
Drug trial, chemical analysis, evidence/prima facie....	Ch.158	- 408
Judges, Justices, salary/annual, increased.....	Ch.217	- 680
Judges, Magistrates, voluntarily leaves, sit again....	Ch. 82	- 212
Parent-child relationship, termination, hearing.....	Ch. 88	- 216
Proceedings/post-conviction, application, file.....	Ch.265	- 898
Racketeering, restitution, investigation costs.....	Ch.105	- 266
Supreme, approp.....	Ch.365	- 1326
Supreme, clerk/deputy clerk, obsolete code sections....	Ch. 90	- 218
Supreme, Justice Robert E. Bakes, honored.....	HCR14	- 1563
Trial/new, application, time period.....	Ch. 87	- 216
Witnesses, civil/criminal proceedings, threats.....	Ch. 46	- 118
CREDIT		
Agreement in writing, grant/extend \$50,000/more.....	Ch.397	- 1460
Insurance premiums/prepaid, no refund, when.....	Ch. 42	- 114
Loans, delinquency charges.....	Ch.227	- 797
CRIMINAL CODE		
Recodification, legislative study comm.....	HCR 16	- 1566
CRIMINAL OFFENSES & PROCEDURES		
Adults, vulnerable, abandonment, felony.....	Ch.179	- 460
Child abuse, sexual, repeat offenders, sentencing.....	Ch.152	- 387
Court cost, inability/pay, court-appointed attorney....	Ch.265	- 898
Court proceeding/post-conviction, application, file....	Ch.265	- 898
Crime victims, compensation program, fines/add'l.....	Ch.278	- 940
Crime victims, compensation, offset, when.....	Ch.236	- 818
Crimes/certain, imprisonment, civil rights.....	Ch.184	- 465
Defendant, probation/imprisonment criteria.....	Ch. 86	- 215
Domestic assault/battery, term defined.....	Ch.344	- 1283
Drug cases, trial, chemical analysis, evidence.....	Ch.158	- 408
Drug trafficking, firearm/weapon/use, sentence.....	Ch.264	- 896
DUI, evidentiary test, license suspension, reinstate...Ch.413	- 1515	
DUI, penalties, clarified.....	Ch.272	- 909
Firearms, concealed, school premises, unlawful.....	Ch.153	- 388
Firearms, drive-by shootings, felony.....	Ch.254	- 879
Inhalants, possession/minors, to become intoxicated....	Ch.154	- 390
Inmate, controlled substance/weapon, possession.....	Ch.166	- 423
Inmate, Firefighter Compact/Interstate, enacted.....	Ch. 80	- 208
Inmate, jail, county, classification system.....	Ch.213	- 578

CRIMINAL OFFENSES & PROCEDURES (Continued)	Chapter	Page
Inmate, life sentence/less than, civil rights.....	Ch.120	- 308
Inmate, parole, early, terminal medical condition.....	Ch.106	- 271
Inmate, probation, Correction, Bd, felons.....	Ch.101	- 254
Inmate, sexual contact by officer, felony.....	Ch.222	- 759
MV, driver, fleeing, police officer, felony.....	Ch.164	- 416
PERSI, false claims, misdemeanor penalty.....	Ch.349	- 1294
Racketeering, restitution, court ordered.....	Ch.105	- 266
Rape, male, punishment.....	Ch.263	- 895
Sex offenders, registration, required.....	Ch.155	- 391
Sex offenders, victims of, HIV test, counseling.....	Ch. 19	- 71
Trial/new, application, time period.....	Ch. 87	- 216
Witness, threats, harassment, penalty.....	Ch. 46	- 118
Youth offender, H&W, Dept, discharge, penalties.....	Ch. 84	- 214
DAY CARE		
Center, pediatric rescue breathing need.....	Ch. 23	- 83
Center, staff, training requirements.....	Ch.416	- 1528
DEAF		
Deaf & Blind School, approp.....	Ch.276	- 938
DEEDS		
Trust, receivers, appointment of, real property sale...Ch.	280	- 948
DENTISTS AND DENTISTRY		
Bd, approp.....	Ch.228	- 799
DISABLED		
Child, school age, definition expanded.....	Ch.121	- 310
Employees, hiring procedure, Personnel Com.....	Ch. 67	- 177
Veterans, service, any conflict, benefits.....	Ch.233	- 811
DISASTERS		
Services, Military Div, approp.....	Ch.244	- 852
DISEASES		
Bees, apiaries, tolerances allowable.....	Ch. 11	- 36
Epilepsy Services, approp, Vocational Rehab.....	Ch.361	- 1321
Livestock, brucellosis, control, coverage expanded....	Ch. 13	- 49
Livestock, destroyed, compensation increased.....	Ch. 14	- 55
Livestock, inspection, clarify.....	Ch. 16	- 58
Livestock, tuberculosis, testing, penalties updated....	Ch. 15	- 56
Renal, Program, approp, Vocational Rehabilitation.....	Ch.361	- 1321
DISTRICTS		
Cemetery Maintenance, cemetery acquisition.....	Ch.256	- 881
Fire Protection, funds, carryover, use.....	Ch.329	- 1228
Fire Protection, indebtedness, form/amount.....	Ch.362	- 1322
Flood Control, bids, advertised, when.....	Ch.258	- 887
Health, Public, approp.....	Ch.324	- 1183
Highway, Com, compensation, schedule revised.....	Ch.109	- 278
Highway, construction, responsibility.....	Ch.127	- 322
Highway, Distribution Acct, funds, distribution.....	Ch.126	- 319
Hospital, annexation, consolidation, procedure.....	Ch.137	- 337
Irrigation, contracts, improvements, landowner.....	Ch.261	- 892
Irrigation, contracts, indebtedness, payment.....	Ch.212	- 574
Irrigation, contracts, lateral dists.....	Ch.259	- 890
Irrigation, create Local Improvement Dists, when.....	Ch.407	- 1475
Irrigation, lands, limit grounds/exclusion, when.....	Ch.262	- 894
Irrigation, lands, reinstated, orders filed.....	Ch.209	- 570

DISTRICTS (Continued)

Chapter - Page

Judicial, 4th, 5th, 7th, judges/dist, increased.....Ch.248 - 869
 Library, election procedures, revised.....Ch.303 - 1124
 Mosquito Abatement, annexation, method/alternate.....Ch. 81 - 211
 Mosquito Abatement, H&W, Dept, duties deleted.....Ch.199 - 548
 Public Health, rules, comply APA.....Ch.296 - 1094
 Recreation, property, fee in lieu of taxes.....Ch.285 - 973
 School-Community Library, fiscal year, conformity.....Ch.316 - 1171
 Sewer, Bds, compensation increased.....Ch. 44 - 116
 Taxing, budget increase, notify by mail.....Ch.390 - 1445
 Taxing, consolidation, legislative study comm.....HCR 27 - 1572
 Water, Bd, compensation increased.....Ch. 44 - 116

DIVORCE

See DOMESTIC RELATIONS

DOCUMENTS

Public, State Print Shop, oversight function, repeal...Ch.330 - 1228

DOMESTIC RELATIONS

Child custody/visitation, legislative study comm.....SCR114 - 1553
 Child support, guidelines, sunset date, extend.....Ch.160 - 409
 Child support, orders, health insurance, mandated.....Ch.337 - 1266
 Child support, orders, income withholding/immediate...Ch.335 - 1244
 Domestic assault/battery, crime of, term defined.....Ch.344 - 1283
 Parent-child relationship, termination, hearing.....Ch. 88 - 216
 Parents, adoptive, social investigation, H&W rule.....SCR108 - 1550

DONATIONS

Charitable, solicitations, deceptive, unlawful.....Ch.246 - 857

DREDGE MINING

See MINES AND MINING

DRIVERS

DUI, evidentiary test, license suspension, reinstate...Ch.413 - 1515
 DUI, penalties, clarified.....Ch.272 - 909
 License, no social security number.....Ch.304 - 1126
 License, seasonal, farm-related industry.....Ch.300 - 1105
 License, suspend, drug offense, federal funds.....HCR 33 - 1574
 Training schools, licenses, fees, renewals.....Ch.180 - 461

DROUGHTS

Water, point of diversion, temporary change.....Ch.161 - 410

DRUGS

Controlled substances, taxes, entire amount possessed..Ch. 9 - 26
 DUI, evidentiary test, boat operators.....Ch.250 - 873
 DUI, evidentiary test, license suspension, reinstate...Ch.413 - 1515
 DUI, penalties, clarified.....Ch.272 - 909
 Offender, drivers license, suspend, federal mandate...HCR 33 - 1574
 Trafficking, firearm/weapon, use, sentence extended...Ch.264 - 896
 Trial, analytical report, forensic lab, evidence.....Ch.158 - 408

EDUCATION

Bd, approp.....Ch.147 - 383
 Bd, approp, BSU, ISU, LCSC, UofI.....Ch.147 - 383
 Bd, approp, community colleges.....Ch.294 - 1092
 Bd, approp, Deaf & Blind School.....Ch.276 - 938
 Bd, approp, Displaced Homemaker Program.....Ch.323 - 1182
 Bd, approp, Family Practice Residencies.....Ch.169 - 428
 Bd, approp, Historical Society.....Ch.171 - 431

EDUCATION (Continued)	Chapter	Page
Bd, approp, Idaho Geological Survey.....	Ch.358	- 1318
Bd, approp, IDEP Dental Education.....	Ch.169	- 428
Bd, approp, Library, Bd, State.....	Ch.174	- 433
Bd, approp, Museum of Natural History.....	Ch.358	- 1318
Bd, approp, office administration.....	Ch.292	- 1091
Bd, approp, public broadcasting.....	Ch.173	- 432
Bd, approp, public schools.....	Ch.411	- 1503
Bd, approp, scholarships/grants.....	Ch.358	- 1318
Bd, approp, Small Business Development Centers.....	Ch.358	- 1318
Bd, approp, UofI, Bd of Regents, higher education.....	Ch.147	- 383
Bd, approp, UofI, Forest Utilization Research.....	Ch.358	- 1318
Bd, approp, Vocational Education.....	Ch.323	- 1182
Bd, approp, Vocational Education, additional FY93.....	Ch. 62	- 165
Bd, approp, Vocational Rehabilitation.....	Ch.361	- 1321
Bd, approp, Vocational Rehabilitation, Div, addl/FY93..	Ch. 63	- 165
Bd, approp, WAMI Education Program.....	Ch.169	- 428
Bd, approp, WICHE, University of Utah.....	Ch.169	- 428
Bd, approp, WOI Veterinary Education Program.....	Ch.169	- 428
Bd, split, higher education, public education.....	Ch.404	- 1470
Children, blind, Braille, study team, assess value.....	Ch.134	- 330
Children, gifted/talented, School Dist responsible.....	Ch.409	- 1501
Driver training schools, license, fee, renewal.....	Ch.180	- 461
Health Professional Loan Repayment Program, criteria...	Ch.141	- 373
Higher, retirement/optional, PERSI, limits.....	Ch.268	- 902
Literacy Week, 3/28/93, Workplace Productivity Year....	HCR 7	- 1556
Open enrollment options, within home dist.....	Ch. 76	- 202
Private schools, records request, law enforcement.....	Ch.188	- 479
Private schools, records withheld, nonpayment fees.....	Ch.188	- 479
Proprietary schools, Student Tuition Recovery Acct.....	Ch. 57	- 154
Public School Income Fund, approp.....	Ch.411	- 1503
Public schools, approp.....	Ch.411	- 1503
Public schools, approp, retirement/FICA/unemployment...	Ch.411	- 1503
Scholarships, firefighter/police officer dependents....	Ch.346	- 1288
School age, definition expanded, disabled child.....	Ch.121	- 310
School age, redefined, 1st grade.....	Ch.121	- 310
School buses, drivers, physical exam, standards.....	Ch. 56	- 153
School-Community Library Dists, fiscal year, conform...	Ch.316	- 1171
Schools, proprietary, operation, requirements.....	Ch. 57	- 154
Superintendent/Public Instruction, approp.....	Ch.143	- 377
Teachers, misconduct allegation, certificate/status....	Ch.111	- 281
Teachers, PERSI, retirees, additional benefits.....	Ch.398	- 1461
Veterans Day, school program, to remember/honor.....	Ch.269	- 904
ELDERLY		
See SENIOR CITIZENS		
ELECTIONS		
Ballots, absentee, county clerk mail, when.....	Ch.100	- 253
Campaign contributions, nonbusiness entity, defined....	Ch.189	- 481
Campaign finance reports, filing, time period.....	Ch.203	- 557
City, 4 per year/no more than.....	Ch.379	- 1392
Consolidation, initiative/referendum/recall/write-in...	Ch.313	- 1157
County Com, candidate, residence requirements.....	Ch.159	- 409
Library Dists, procedures, revised.....	Ch.303	- 1124

	Chapter	Page
ELECTIONS (Continued)		
Reapportionment, Redistricting Com, proposed.....	SJR105	- 1530
School Dists, Trustees, Bd, clerk, duties/certain.....	Ch. 51	- 132
School Dists, Trustees, Bd, recall petitions, filing...	Ch. 64	- 166
ELECTRICAL		
Corporations, energy conservation, rates, charges.....	Ch.218	- 682
ELECTRONICS		
Funds transfer, taxes/state, payment, when.....	Ch. 8	- 25
EMPLOYEES AND EMPLOYMENT		
Correctional facility, sexual contact/inmate, felony...	Ch.222	- 759
Day care center, staff training requirements.....	Ch.416	- 1528
Dept, approp, federal funds, construction, offices.....	Ch. 4	- 15
Disabled, hiring procedure, Personnel Com.....	Ch. 67	- 177
Fire suppression/temporary, hour limit extended.....	Ch. 75	- 198
PERSI, approp.....	Ch.293	- 1091
PERSI, disability retirement, clarified.....	Ch.251	- 875
PERSI, false claims, misdemeanor penalty.....	Ch.349	- 1294
PERSI, firefighters/police, disability retirement.....	Ch.178	- 458
PERSI, higher education, retirement/optional.....	Ch.268	- 902
PERSI, magistrate judge, resign, sit again.....	Ch. 82	- 212
PERSI, reporting requirements, failure to comply.....	Ch.348	- 1293
PERSI, school dist retirees, additional benefits.....	Ch.398	- 1461
PERSI, technical changes.....	Ch.350	- 1295
Public, classification/compensation plans, review.....	Ch.104	- 262
State, bonus/\$50, when.....	HCR 21	- 1569
State, bonus/lump sum, limit/\$1000, exceptions.....	Ch.318	- 1173
State, Correction, Dept, wardens, nonclassified.....	Ch. 77	- 204
State, salary recommendations, adopted/modified.....	HCR 20	- 1568
State, salary schedule, 2% adjustment.....	Ch.226	- 792
State, severance pay, prohibited, when.....	Ch.336	- 1265
State, veterans preference, exceptions.....	Ch. 21	- 79
Teachers, misconduct allegation, certificate status....	Ch.111	- 281
Unemployment benefits, base period, overpayments.....	Ch.181	- 461
Unemployment benefits, eligibility, extended.....	Ch. 20	- 73
Unemployment benefits, requalification, extended.....	Ch. 10	- 30
Unemployment insurance, coverage, exemptions.....	Ch.119	- 297
Wage withholding, child support, mandatory.....	Ch.335	- 1244
Workers compensation, burial expenses, sum increase....	Ch.341	- 1277
Workers compensation, deductibles optional, offered....	Ch.223	- 759
Workers compensation, premium tax, increased.....	Ch.202	- 556
Workplace Productivity Year through Literacy.....	HCR 3	- 1556
EMPLOYMENT SECURITY LAW		
Unemployment benefits, base period, overpayments.....	Ch.181	- 461
Unemployment benefits, eligibility, extended.....	Ch. 20	- 73
Unemployment benefits, requalification, extended.....	Ch. 10	- 30
Unemployment insurance, coverage, exemptions.....	Ch.119	- 297
ENDANGERED SPECIES ACT		
See WILDLIFE		
ENDOWMENT FUND		
Investment Bd, approp.....	Ch.149	- 385
ENERGY		
Conservation, electric/gas corporations, rates.....	Ch.218	- 682
Integral Fast Reactor, Argonne National Laboratory....	SJM107	- 1538

	Chapter - Page
ENGINEERS	
Examiners, Bd, approp.....	Ch.228 - 799
Examiners, Bd, approp, additional FY93.....	Ch. 37 - 111
ENVIRONMENT	
Air quality, emission, defined.....	Ch.267 - 899
Air quality, medical waste combustor, defined.....	Ch.267 - 899
Biodiesel, development/commercialization, urged.....	SJM103 - 1535
Clean Air Act/federal, compliance.....	Ch.275 - 926
Clean Air Act, EPA/title V, operating permit.....	Ch.275 - 926
Endangered Species Act, economic impact, consider.....	HJM 2 - 1541
Forest Health Act/National, support urged.....	SJM104 - 1536
Hazardous Waste Management Act, updated.....	Ch.291 - 1082
Solid Waste Management Law, technical corrections.....	Ch.139 - 342
Wolf environmental impact statement, thru May 1994.....	Ch.332 - 1231
ESTATES	
Property/personal, value increased, affidavit.....	Ch.253 - 878
Tax, special use valuation, recapture.....	Ch. 6 - 21
ETHICS	
Code, counselors, licensed, update.....	Ch.205 - 563
EXAMINERS BOARD	
Budget Reserve Acct, moneys, transfer/General Fund.....	Ch.242 - 851
EXECUTIVE ORDERS	
92-4 thru 92-28.....	1589
FAIRS	
County, Bd, advisory to County Com, when.....	Ch.210 - 571
FEDERAL FUNDS	
See FUNDS	
FEDERAL GOVERNMENT	
See GOVERNMENT	
FEDERAL LAWS	
Clean Air Act, title V operating permit program.....	Ch.275 - 926
Delaney Clause, modify, pesticide residues in food.....	SJM106 - 1537
Endangered Species Act, Bruneau Snail, not list.....	HJM 3 - 1542
Endangered Species Act, economic impact.....	HJM 2 - 1541
Fair Debt Collection Act, collection agencies.....	Ch.165 - 416
HR9, rejection urged.....	HJM 5 - 1544
Indian Gaming Regulatory Act, resolve/legal issues.....	Ch.367 - 1330
RCRA, H&W, Dept, rules, EPA, consistency.....	Ch.291 - 1082
Revised Statute 2477, rights-of-way, federal lands.....	Ch.142 - 375
Revised Statute 2477, rights-of-way, public lands.....	HJM 6 - 1545
Vocational Rehabilitation Act, amendments 1992.....	Ch.183 - 464
FEED	
Commercial, Law, definitions, updated.....	Ch. 12 - 38
FEEES	
Brand inspection, increased.....	Ch.122 - 311
County, computerized mapping system.....	Ch.201 - 555
County, solid waste collection.....	Ch. 41 - 113
Court, Dists/Supreme, increased.....	Ch.196 - 535
F&G, license, fishing, hunting, nonresident, increase..	Ch. 27 - 93
Hazardous waste, disposal, per gate ton.....	Ch.291 - 1082
Landscape architects, exam.....	Ch.204 - 560
Motor carriers, administrative, federal law.....	Ch.182 - 463
MV, Use, Acct, apply prior/operating/Idaho.....	Ch.399 - 1463

FEES (Continued)	Chapter - Page
Secretary of State, increased.....	Ch.338 - 1268
Use, MV/commercial, records, audits, reports.....	Ch.273 - 913
FELONS	
See CRIMINAL OFFENSES AND PROCEDURES	
FINANCE	
Campaign, reports, filing, time period revised.....	Ch.203 - 557
Dept, approp.....	Ch.353 - 1312
Dept, securities, registration/exempt, fair hearing....	Ch.162 - 412
Finance-Approp Comm, approp.....	Ch.357 - 1317
FINANCIAL MANAGEMENT	
Div, approp.....	Ch.385 - 1416
Div, approp, additional FY93.....	Ch. 36 - 110
FIRE	
Arson, laws, recodify, revise.....	Ch.107 - 273
Firefighters/inmates, outside state of conviction.....	Ch. 80 - 208
Marshal, adjustments, variances granted, when.....	Ch.401 - 1467
Marshal, state, annual report, July 15.....	Ch. 43 - 115
Protection Dists, funds, carryover, use.....	Ch.329 - 1228
Protection Dists, indebtedness, form/amount.....	Ch.362 - 1322
Protection, forested land/private, assessment.....	Ch. 93 - 221
Suppression, employees/temporary, hour limit extend....	Ch. 75 - 198
Voluntary, Dept, emergency vehicles, designated.....	Ch.377 - 1385
Wild, water approp, temporary approval, not need.....	Ch.255 - 880
FIREARMS	
Concealed, school premises, criminal sanctions.....	Ch.153 - 388
Drive-by shootings, felony.....	Ch.254 - 879
Inmates, delivery/manufacture/possession of, felony....	Ch.166 - 423
Use of, drug trafficking, sentence extended.....	Ch.264 - 896
FIREMEN	
Firefighters, Interstate Inmate Compact.....	Ch. 80 - 208
Firefighters, PERSI, disability retirement.....	Ch.178 - 458
Firefighters, scholarships, dependents.....	Ch.346 - 1288
Firefighters, temporary, hour limit extended.....	Ch. 75 - 198
FISH AND GAME	
Antlers/horns, naturally shed, possession allowed.....	Ch. 79 - 206
Archery, permit, education program, required.....	Ch.414 - 1524
Com, land purchase, county approval required.....	Ch.197 - 539
Dept, approp.....	Ch.192 - 488
Dept, approp, depredation control, winter feeding.....	Ch.192 - 488
Dept, Grizzly Bear Management Oversight Comm.....	Ch.403 - 1469
Dept, lands, fees in lieu of taxes.....	Ch.317 - 1172
Hunts, depredation, license, landowner/nonresident.....	Ch.309 - 1140
Laws, violations, fines, Search & Rescue Acct.....	Ch.311 - 1146
Laws, violations, statute/limitation, misdemeanor.....	Ch.308 - 1137
License, fishing, hunting, fees, nonresident.....	Ch. 27 - 93
Snail/Bruneau Hot Springs, not list endangered.....	HJM 3 - 1542
Wildlife depredation, prevention, Agriculture, Dept....	Ch. 30 - 98
Wolf environmental impact statement, thru May 1994.....	Ch.332 - 1231
FLAGS	
American, protected, U.S. constitution, amendment.....	SJM102 - 1534
FLOODS	
Control Dists, bids, advertised, when.....	Ch.258 - 887

	Chapter	Page
FOOD		
Establishment, further defined, exclusions.....	Ch.114	- 291
Pesticide residues, Delaney Clause, modify.....	SJM106	- 1537
FORESTS AND FORESTRY		
Forest Health Act/National, support urged.....	SJM104	- 1536
Land, private, fire protection, assessment revised.....	Ch. 93	- 221
Lands, Dept, approp, additional FY93.....	Ch. 74	- 197
Log brands, registration, Scaling Practices, Bd.....	Ch. 92	- 219
Log scaling law, violation, prosecution/within 2 yrs....	Ch. 91	- 218
Products, maximum scaling assessment, increased.....	Ch.130	- 325
FUELS		
Biodiesel, development/commercialization, urged.....	SJM103	- 1535
Gas, tax, distribution, Park/Recreation Improvement....	Ch.301	- 1116
Underground storage tanks, finance upgrade of.....	Ch.310	- 1143
Underground storage tanks, upgrade program.....	Ch.163	- 413
FUNDS		
Budget Reserve, approp, moneys/Liquor Fund, when.....	Ch.394	- 1458
Catastrophic Health Care/"CAT", line item VETO.....	Ch.370	- 1333
Electronic transfer, taxes/state, payment, when.....	Ch. 8	- 25
Federal, approp, Employment, Dept, construction.....	Ch. 4	- 15
Fire Protection Dists, carryover, use.....	Ch.329	- 1228
General, moneys transferred from Liquor Fund.....	Ch.392	- 1456
General, moneys transferred/Budget Reserve Acct.....	Ch.242	- 851
Highway Distribution Acct, local governments, use.....	Ch.177	- 456
Highway, federal aid, mandate re: drug offenders.....	HCR 33	- 1574
Liquor, moneys transferred to General Fund.....	Ch.392	- 1456
Public Health Trust, approp.....	Ch.324	- 1183
Public School Income, approp.....	Ch.411	- 1503
FURBUYERS		
License, required.....	Ch.129	- 324
Record keeping, alternative forms.....	Ch. 78	- 206
GAMBLING		
Bingo, raffles, county, Lottery Com regulate.....	Ch.391	- 1448
Indian Gaming Compact, resolution of legal issues.....	Ch.367	- 1330
Indian reservation, class III, Lottery Director.....	Ch.249	- 871
State-tribal gaming compacts, negotiations.....	Ch.408	- 1500
GAS		
See FUELS		
GEOLOGISTS AND GEOLOGY		
Bd, approp.....	Ch.228	- 799
GEOHERMAL		
Wells, drilling, surface damage, payment.....	Ch.289	- 1081
GOVERNMENT		
Bids, local/state, Idaho preference.....	Ch.306	- 1135
Federal, balanced budget, line item veto power.....	SJM101	- 1533
Legislative Oversight Comm, performance audits.....	Ch.327	- 1186
Local, audits, requirements.....	Ch.387	- 1417
Local, optional forms, consolidation, study comm.....	HCR 27	- 1572
State, Administration, Dept, reorganization.....	Ch.221	- 747
State, agencies, performance plans/annual, report.....	Ch.168	- 425
State, Auditor, State, post audits.....	Ch.388	- 1435
State, dept heads, authority, remove employees.....	Ch.235	- 817
State, Print Shop, oversight function, repealed.....	Ch.330	- 1228

	Chapter - Page
GOVERNOR	
Budget Address.....	HCR 2 - 1555
Executive Orders	
92-4 thru 92-28.....	1589
Office of, approp.....	Ch.328 - 1226
Office of, approp, administration.....	Ch.328 - 1226
Office of, approp, Aging, Office on.....	Ch.191 - 488
Office of, approp, Blind Com.....	Ch.193 - 491
Office of, approp, Blind Com, additional FY93.....	Ch. 38 - 111
Office of, approp, Early Childhood programs.....	Ch.328 - 1226
Office of, approp, Emergency Fund.....	Ch.326 - 1186
Office of, approp, Emergency Response Com.....	Ch.328 - 1226
Office of, approp, Emergency Response Com, add'193.....	Ch. 34 - 109
Office of, approp, Endowment Fund Investment Bd.....	Ch.149 - 385
Office of, approp, Financial Management Div.....	Ch.385 - 1416
Office of, approp, Financial Management/Div, add'193...Ch.	36 - 110
Office of, approp, Human Rights Com.....	Ch.172 - 432
Office of, approp, Human Rights Com, additional FY93...Ch.	59 - 163
Office of, approp, Insurance Fund, State.....	Ch.150 - 386
Office of, approp, Juvenile Justice programs.....	Ch.328 - 1226
Office of, approp, Liquor Dispensary.....	Ch.370 - 1333
Office of, approp, Military Div.....	Ch.244 - 852
Office of, approp, PERSI.....	Ch.293 - 1091
Office of, approp, residence.....	Ch.328 - 1226
Office of, approp, Social Services Program.....	Ch.328 - 1226
Office of, approp, Women's Programs, Com.....	Ch.243 - 852
State of Budget Address.....	HCR 2 - 1555
State of State Address.....	HCR 1 - 1555
GUARDIANS	
Community, Bd, conservator, when.....	Ch. 24 - 83
GUNS	
See FIREARMS	
HAZARDOUS SUBSTANCES	
Waste, disposal, fee, per gate ton.....	Ch.291 - 1082
HEALTH	
Care professionals, peer assistance entity agreements..Ch.	73 - 194
Catastrophic, Care Fund/"CAT" moneys, line item VETO...Ch.	370 - 1333
Dists, Public, approp.....	Ch.324 - 1183
Insurance Task Force, approp, Insurance, Dept.....	Ch.369 - 1332
Insurance, adopted child, newborn dependent.....	Ch.305 - 1129
Insurance, cancelled, unearned premiums refund.....	Ch.339 - 1271
Insurance, children, mandated, child support orders....Ch.	337 - 1266
Insurance, small employers, program established.....	Ch.176 - 435
Medical license, who can practice without.....	Ch.271 - 907
Professional Loan Repayment Program, criteria.....	Ch.141 - 373
Public, Dists, rules, comply APA.....	Ch.296 - 1094
HEALTH AND WELFARE	
Dept, approp.....	Ch.384 - 1406
Dept, approp, additional, FY93.....	Ch.229 - 801
Dept, approp, Adult & ADC Assistance Payments.....	Ch.384 - 1406
Dept, approp, Adult Services.....	Ch.384 - 1406
Dept, approp, Alcohol and Drug Abuse Com.....	Ch.384 - 1406
Dept, approp, Child Support Enforcement.....	Ch.384 - 1406

HEALTH AND WELFARE (Continued)		Chapter	-	Page
Dept, approp, Community Rehabilitation Services.....	Ch.384	-	1406	
Dept, approp, Deaf/Hearing Impaired Council.....	Ch.384	-	1406	
Dept, approp, Developmental Disabilities.....	Ch.384	-	1406	
Dept, approp, Developmental Disabilities Council.....	Ch.384	-	1406	
Dept, approp, Domestic Violence Council.....	Ch.384	-	1406	
Dept, approp, Eligibility Services.....	Ch.384	-	1406	
Dept, approp, Emergency Medical Services.....	Ch.384	-	1406	
Dept, approp, Environmental Div.....	Ch.384	-	1406	
Dept, approp, Family Self-Support Program.....	Ch.384	-	1406	
Dept, approp, Family/Children's Services Div.....	Ch.384	-	1406	
Dept, approp, Indirect Support Services.....	Ch.384	-	1406	
Dept, approp, INEL Oversight.....	Ch.384	-	1406	
Dept, approp, Juvenile Justice.....	Ch.384	-	1406	
Dept, approp, Laboratory Services.....	Ch.384	-	1406	
Dept, approp, Medical Assistance Payments.....	Ch.384	-	1406	
Dept, approp, Medical Assistance Payments, add'l FY93...	Ch.229	-	801	
Dept, approp, Mental Health Services.....	Ch.384	-	1406	
Dept, approp, Physical Health Services.....	Ch.384	-	1406	
Dept, approp, State Economic Opportunity Office.....	Ch.384	-	1406	
Dept, approp, State Hospital North.....	Ch.384	-	1406	
Dept, approp, State Hospital South.....	Ch.384	-	1406	
Dept, approp, State School and Hospital.....	Ch.384	-	1406	
Dept, approp, Substance Abuse.....	Ch.384	-	1406	
Dept, approp, Veterans Services Program.....	Ch.384	-	1406	
Dept, approp, Welfare Div.....	Ch.384	-	1406	
Dept, approp, Youth Services Center.....	Ch.384	-	1406	
Dept, Clean Air Act, EPA, Title V, permit program.....	Ch.275	-	926	
Dept, emission, medical waste combustor, defined.....	Ch.267	-	899	
Dept, food establishment, further defined.....	Ch.114	-	291	
Dept, hazardous waste, rules, RCRA, EPA consistency....	Ch.291	-	1082	
Dept, Medicaid, ICF/MR, property reimbursement rate....	Ch.351	-	1306	
Dept, Mosquito Abatement Dist, duties deleted.....	Ch.199	-	548	
Dept, rule, adoptive parents, social investigation.....	SCR108	-	1550	
Dept, youth offender, discharge, penalties/not all.....	Ch. 84	-	214	
Health Dists, Public, approp.....	Ch.324	-	1183	
HEALTH CARE FACILITIES				
ICF/MR, Medicaid, property reimbursement rate.....	Ch.351	-	1306	
HELLS CANYON				
National Park, opposed.....	HJM 4	-	1543	
HIGHER EDUCATION				
See EDUCATION, COLLEGES AND UNIVERSITIES				
HIGHWAYS				
Distribution Acct, funds, distribution.....	Ch.126	-	319	
Distribution Acct, funds, local governments, use.....	Ch.177	-	456	
Dists, Com, compensation, schedule revised.....	Ch.109	-	278	
Dists, construction, responsibility.....	Ch.127	-	322	
Funds, federal aid, mandate re:drug offenders, oppose..	HCR 33	-	1574	
Rights of way, abandonment, validation.....	Ch.412	-	1505	
State, trucks, semitrailers/double trailers, length....	Ch.123	-	313	
HISPANICS				
Com, approp.....	Ch.228	-	799	
Com, approp, additional FY93.....	Ch. 61	-	164	

	Chapter	Page
HISTORICAL SITES		
State, approp, maintenance/interpretation.....	Ch.171	- 431
HISTORICAL SOCIETIES		
State, approp.....	Ch.171	- 431
HOMEMAKERS		
Displaced, Program, approp.....	Ch.323	- 1182
Displaced, Program, approp, additional FY93.....	Ch. 62	- 165
HOMES		
Property tax, new, 50/50 homeowner exemption.....	Ch.270	- 906
HORSE RACING		
See RACING		
HORSES		
See LIVESTOCK		
HOSPITALS		
County, Bds, medical clinics, own/operate.....	Ch.112	- 283
Dists, annexation, consolidation, procedure.....	Ch.137	- 337
Tuberculosis, patient, indigent, care, payment.....	Ch. 40	- 113
HOTELS AND MOTELS		
Hotelkeepers, guests, eviction of, when.....	Ch.125	- 316
Hotelkeepers, liquor license liability, clarify.....	Ch.125	- 316
HOUSING		
Public, Authorities, additional powers provided.....	Ch.215	- 581
HUMAN RIGHTS		
Com, approp.....	Ch.172	- 432
Com, approp, additional FY93.....	Ch. 59	- 163
Warsaw Ghetto uprising, 50th anniversary commemorated..	SCR110	- 1551
HUNTING		
See FISH AND GAME		
IDAHO CODE		
Administrative Procedures Act, requirements, conform...Ch.216	- 587	
Copyright, property of the State of Idaho.....Ch.389	- 1444	
IDAHO NATIONAL ENGINEERING LABORATORY		
Argonne National Laboratory, Integral Fast Reactor.....	SJM107	- 1538
IDAHO STATE UNIVERSITY		
See COLLEGES AND UNIVERSITIES		
INCOME TAX		
See TAX AND TAXATION, INCOME		
INDIANS		
Affairs Issues, legislative study comm.....HCR 34	- 1576	
Gambling, class III, reservation, Lottery Director.....Ch.249	- 871	
Gaming Compact, cases/certain, legal issues resolve....Ch.367	- 1330	
State-tribal gaming compacts, negotiations.....Ch.408	- 1500	
INDIGENTS		
Tuberculosis, patients, care, payment.....Ch. 40	- 113	
INDUSTRIAL COMMISSION		
Approp.....Ch.277	- 939	
Approp, additional FY93.....Ch. 96	- 245	
INITIATIVES		
County, conform, election consolidation, dates.....Ch.313	- 1157	
INSPECTORS AND INSPECTIONS		
Brand, approp.....Ch.241	- 849	
Brand, fees, increased.....Ch.122	- 311	
Livestock, disease, requirements, clarified.....Ch. 16	- 58	

INSPECTORS AND INSPECTIONS (Continued)	Chapter - Page
Manufactured homes, installation, required.....	Ch.372 - 1339
INSURANCE	
Agents/limited, licenses, exams, education.....	Ch.195 - 531
Companies, financial examination, requirements.....	Ch.194 - 492
Credit Life/Disability, Act, loans, term/15 year/more..	Ch. 48 - 125
Credit, premiums/prepaid, no refund, when.....	Ch. 42 - 114
Dept, approp.....	Ch.322 - 1181
Dept, approp, Health Insurance Task Force.....	Ch.369 - 1332
Dept, approp, implement S.B.1039, 1993.....	Ch.369 - 1332
Dept, state fire marshal, annual report, July 15.....	Ch. 43 - 115
Errors/omissions, required, real estate licensees.....	Ch.396 - 1459
Guaranty Association, capital funds/minimal.....	Ch.279 - 943
Health, cancelled, unearned premiums refund.....	Ch.339 - 1271
Health, children, mandated, child support orders.....	Ch.337 - 1266
Health, children, newborn, dependent, adopted/natural..	Ch.305 - 1129
Health, Small Employers, Program established.....	Ch.176 - 435
Insolvency Administration Acct, created.....	Ch.118 - 295
Life, reinstatements, interest rates.....	Ch.185 - 466
Mammography, exceptions.....	Ch.113 - 288
MV, automobile/commercial, cancellation, notice.....	Ch.231 - 803
MV, uninsured motorists, legislative study comm.....	HCR 40 - 1583
Regulation/state, reject H.R.9/federal.....	HJM 5 - 1544
State, Fund, approp.....	Ch.150 - 386
Surplus line law, requirements, clarified.....	Ch. 22 - 79
Unemployment, benefits, base period/overpayments.....	Ch.181 - 461
Unemployment, benefits, eligibility, extended.....	Ch. 20 - 73
Unemployment, benefits, extended, requirements.....	Ch. 10 - 30
INTERNAL REVENUE	
See TAX AND TAXATION, INCOME	
INVESTMENTS	
Tax credit, clarify, income tax purposes.....	Ch. 2 - 3
IRRIGATION	
Canal systems, assessments, fixed amount per share.....	Ch.108 - 276
Dists, contracts, improvement, landowner.....	Ch.261 - 892
Dists, contracts, indebtedness, alternative payments...	Ch.212 - 574
Dists, contracts, lateral dists.....	Ch.259 - 890
Dists, create Local Improvement Dist, when.....	Ch.407 - 1475
Dists, lands reinstated, orders filed.....	Ch.209 - 570
Dists, lands, limit grounds/exclusion, when.....	Ch.262 - 894
Power for, utilities, property tax exemptions.....	Ch.295 - 1092
JAILS	
Inmates, classification system.....	Ch.213 - 578
Inmates, controlled substance/weapon, possession.....	Ch.166 - 423
Inmates, debts, sheriff not pay.....	Ch.213 - 578
Inmates, sexual contact by officer, felony.....	Ch.222 - 759
JOURNALS	
Legislative, printing contract.....	HCR 8 - 1559
JUDGES	
Bakes, Robert E., Justice Supreme Court, honored.....	HCR14 - 1563
Judicial Dists, 4th, 5th, 7th, increased.....	Ch.248 - 869
Magistrate, voluntarily leaves, sit again.....	Ch. 82 - 212
Salaries, increased.....	Ch.217 - 680

	Chapter - Page
JUDICIAL	
Dists, 4th, 5th, 7th, judges/dist, increased.....	Ch.248 - 869
Review, County Com, Bd, actions, manner provided.....	Ch.103 - 262
JUVENILES	
Inhalants, possession by minors, for intoxication.....	Ch.154 - 390
Offender, H&W, Dept, discharge, penalties/not all.....	Ch. 84 - 214
LABOR AND INDUSTRIAL SERVICES	
Dept, approp.....	Ch.170 - 429
Dept, approp, additional FY93.....	Ch. 39 - 112
LABORATORY	
Agriculture, Dept, services, records, disclosure.....	Ch.198 - 543
LAKES	
Big Payette, Water Quality Council, created.....	Ch.200 - 550
Henry's Fork Basin, State Water Plan, adopted 12/3/92..	Ch. 66 - 167
LAND	
Dept, approp.....	Ch.359 - 1319
Dept, approp, additional FY93.....	Ch. 74 - 197
Dept, approp, Forest Management/Fire Protection.....	Ch.359 - 1319
Dept, employees/temporary, fire suppression.....	Ch. 75 - 198
F&G Com, purchase, county approval required.....	Ch.197 - 539
F&G, Dept, fees in lieu of taxes.....	Ch.317 - 1172
Federal, rights-of-way, Revised Statute 2477.....	Ch.142 - 375
Forest, private, fire protection, assessment revised..	Ch. 93 - 221
Irrigation Dists, grounds for exclusion, when.....	Ch.262 - 894
Irrigation Dists, reinstated, orders filed.....	Ch.209 - 570
Leased, crop/commercial, improvement acct.....	Ch. 28 - 96
Public Lands Week, May 10, 1993, recognized.....	HCR 32 - 1574
Public, rights-of-way, preservation, urged.....	HJM 6 - 1545
State, endowment, certain, leased, commercial use.....	Ch.331 - 1229
Surveys, corner perpetuation, indicate presence of.....	Ch.206 - 564
LANDLORDS	
Mobile home park, rent increase/agreements, damages....	Ch.380 - 1394
LANDSCAPE ARCHITECTS	
Bd, terms, exam, fees, increase.....	Ch.204 - 560
LAVA HOT SPRINGS	
Foundation, approp.....	Ch.354 - 1312
LAW ENFORCEMENT	
Alcohol Beverage Control, approp.....	Ch.241 - 849
Dept, approp.....	Ch.241 - 849
Dept, POST Academy, approp.....	Ch.241 - 849
Dept, sex offenders, registration, required.....	Ch.155 - 391
DUI, boat operators, legal cause, to request test.....	Ch.250 - 873
DUI, evidentiary test, license suspension, reinstate..	Ch.413 - 1515
DUI, penalties, clarified.....	Ch.272 - 909
Police officer, disability retirement, eligibility.....	Ch.178 - 458
Police officer, MV/driver, fleeing, felony.....	Ch.164 - 416
Police officer, scholarships, dependents.....	Ch.346 - 1288
LEASES	
Geothermal, land/state, damage, bond, payment.....	Ch.289 - 1081
Land, crop/commercial, improvement acct.....	Ch. 28 - 96
Land, state, endowment, certain, commercial use.....	Ch.331 - 1229
Personal property, any transaction, UCC.....	Ch.287 - 977
Purchase, consumer goods transactions, regulated.....	Ch.232 - 807

	Chapter - Page
LEGISLATIVE AUDITOR	
See AUDITOR	
LEGISLATIVE COUNCIL	
Approp.....	Ch.357 - 1317
Aquifers, recharge, study comm.....	HCR 26 - 1571
Child custody/visitation, study comm.....	SCR114 - 1553
Criminal Code, recodification, study comm.....	HCR 16 - 1566
Indian Affairs Issues, study comm.....	HCR 34 - 1576
Local government/optional forms, consolidation study...	HCR 27 - 1572
Reorganization, additional powers, duties.....	Ch.327 - 1186
Taxation matters, study comm.....	HCR 28 - 1573
Uninsured motorists, study comm.....	HCR 40 - 1583
LEGISLATIVE DISTRICTS	
Reapportionment Com, appointment, membership.....	SJR105 - 1530
LEGISLATURE	
Adoptive parents, social investigation, H&W rule.....	SCR108 - 1550
Albertson, Joseph, recognition.....	SCR101 - 1547
Aquifers, recharge, legislative study comm.....	HCR 26 - 1571
Argonne National Laboratory, Integral Fast Reactor....	SJM107 - 1538
Bakes, Robert E., Justice Supreme Court, honored.....	HCR14 - 1563
Bills, printing contract.....	HCR 5 - 1557
Biodiesel, development/commercialization, urged.....	SJM103 - 1535
Budget Address, Governor.....	HCR 2 - 1555
Budget Office, approp.....	Ch.357 - 1317
Child custody/visitation, study comm.....	SCR114 - 1553
Criminal Code, recodification, study comm.....	HCR 16 - 1566
Delaney Clause, modify, pesticide residues in food....	SJM106 - 1537
Doane, Dr. Leon, Northwest Nazarene College, honored...	HCR 39 - 1582
Employees/state, certain, bonus/\$50.....	HCR 21 - 1569
Employees/state, salary recommendations, modified.....	HCR 20 - 1568
Endangered Species Act, economic impact considered....	HJM 2 - 1541
Federal balanced budget, line item veto power.....	SJM101 - 1533
Federal mandate, drug offender/driving privileges.....	HCR 33 - 1574
Federal mandates, states' rights, prefer suggestions...	HJM 1 - 1540
Flag, American, protection, U.S. constitution.....	SJM102 - 1534
Forest Health Act/National, support urged.....	SJM104 - 1536
Hells Canyon, National Park, opposed.....	HJM 4 - 1543
Indian Affairs Issues, legislative study comm.....	HCR 34 - 1576
Insurance, state regulation, reject HR9/federal.....	HJM 5 - 1544
Journals, printing contract.....	HCR 8 - 1559
Legislative Oversight Comm, performance audits.....	Ch.327 - 1186
Literacy Week, 3/28/93, Workplace Productivity Year...	HCR 3 - 1556
Local government/optional forms, consolidation study...	HCR 27 - 1572
Motorists, uninsured, legislative study comm.....	HCR 40 - 1583
Parks & Recreation/Dept, headquarters facility, funds..	SCR117 - 1553
Public Lands Week, May 10, 1993, recognized.....	HCR 32 - 1574
Reapportionment Com, appointment, membership.....	SJR105 - 1530
Reid, Harold, recognized.....	HCR 11 - 1562
Rights-of-way, public lands, preservation, urged.....	HJM 6 - 1545
Session Laws, printing contract.....	HCR 15 - 1564
Snail/Bruneau Hot Springs, not list endangered.....	HJM 3 - 1542
State of Budget Address.....	HCR 2 - 1555
State of State Address.....	HCR 1 - 1555

LEGISLATURE (Continued)	Chapter	- Page
State-tribal gaming compacts, ratify, when.....	Ch.408	- 1500
Streamflow, minimum, Crystal Springs.....	SCR105	- 1549
Tax Com, sales/use tax, rules, amended.....	HCR 36	- 1577
Taxation matters, legislative study comm.....	HCR 28	- 1573
Telecomm '92 report, telecommunications, adopted.....	HCR 23	- 1570
Transportation Dept, rules, motor carriers, amended....	SCR104	- 1548
Transportation Dept, weight limits/axles, rule amend....	SCR112	- 1552
Volunteers Overseas Cooperative Assistance, support....	HCR 7	- 1559
Warsaw Ghetto uprising, 50th anniversary, commemorate..	SCR110	- 1551
Water Resources Research Institute, education program..	HCR 19	- 1567
LEVIES		
See TAX AND TAXATION, PROPERTY		
LEWIS-CLARK STATE COLLEGE		
See COLLEGES AND UNIVERSITIES		
LIABILITY		
Hotelkeepers, liquor license, evict guests, clarify....	Ch.125	- 316
Limited, Company Act, provided.....	Ch.224	- 760
LIBRARIES		
City, services, free for all, recodify law.....	Ch.186	- 467
Dist, election procedures, revised.....	Ch.303	- 1124
Law, approp.....	Ch.365	- 1326
School-Community, Dists, fiscal year, conformity.....	Ch.316	- 1171
State, Bd, approp.....	Ch.174	- 433
LICENSES		
Accountants, certified public, regulations revised.....	Ch.239	- 824
Bingo, raffles, required.....	Ch.391	- 1448
Chemigation, seminar/exam option, fee increase.....	Ch. 68	- 181
Counselors, specialty standards.....	Ch. 65	- 166
Driver training schools, fees, renewals.....	Ch.180	- 461
Drivers, DUI, evidentiary test, suspend, reinstate....	Ch.413	- 1515
Drivers, no social security number.....	Ch.304	- 1126
Drivers, seasonal, farm-related industry.....	Ch.300	- 1105
Drivers, suspend, drug offense/conviction, oppose.....	HCR 33	- 1574
F&G, fishing, hunting, nonresident, fees increased....	Ch. 27	- 93
F&G, hunts/depredation, nonresident landowner.....	Ch.309	- 1140
Insurance agents/limited, exams, education.....	Ch.195	- 531
Liquor, liability, hotelkeepers, clarify.....	Ch.125	- 316
Liquor, reissuance, within 2 years, ability removed....	Ch.240	- 845
Liquor, renewal/suspension procedures, revised.....	Ch.347	- 1290
Manufactured homes, installation, required.....	Ch.372	- 1339
Medical, who can practice without.....	Ch.271	- 907
MV, dealers, 12 month period, renewal, when.....	Ch.297	- 1095
MV, plates, National Guard, distinctive.....	Ch.135	- 330
MV, plates, special, old timer/vintage, registration...Ch.	99	- 248
Naturopaths, licensure, Medicine, Bd, not required....	Ch.271	- 907
Pesticides, government agencies, exam fees, exempt....	Ch. 54	- 142
Public works, contractors, 12 month period.....	Ch.237	- 819
Real estate appraiser, exceptions, when.....	Ch.320	- 1178
Recreational vehicles, fees, distribution.....	Ch.286	- 973
Recreational vehicles, placement, rear/vehicle.....	Ch.286	- 973
Residential care facility, elderly.....	Ch.374	- 1353
Taxidermist, furbuyer, required.....	Ch.129	- 324

	Chapter	Page
LICENSES (Continued)		
Veterinarians, exams, inactive status, provisions.....	Ch. 72	- 189
LIENS		
Foreclosure proceedings, clarified.....	Ch.281	- 949
MV, notarization requirement, eliminated.....	Ch.283	- 957
Real property, mechanics, filing time, surety bond.....	Ch.378	- 1386
LIEUTENANT GOVERNOR		
Approp.....	Ch.363	- 1325
LIQUOR		
Beer, distributors, suppliers, business relations.....	Ch.312	- 1148
Dispensary Warehouse, approp, Permanent Bldg Acct.....	Ch.382	- 1400
Dispensary, approp.....	Ch.370	- 1333
DUI, evidentiary test, boat operators.....	Ch.250	- 873
DUI, evidentiary test, license suspension, reinstate...Ch.	413	- 1515
DUI, penalties, clarified.....	Ch.272	- 909
Fund, moneys transferred to General Fund.....	Ch.392	- 1456
License, liability, hotelkeepers, clarify.....	Ch.125	- 316
License, reissuance, within 2 years, ability removed...Ch.	240	- 845
License, renewal/suspension, procedures, revised.....	Ch.347	- 1290
Vendors, compensation, part of sales cost.....	Ch.238	- 824
Winery, licensed, selling domestic/only, removed.....	Ch.333	- 1232
LITERACY		
Week, 3/28/93, Workplace Productivity Year.....	HCR 3	- 1556
LIVESTOCK		
Brand inspection fees, increased.....	Ch.122	- 311
Brucellosis, control, coverage expanded.....	Ch. 13	- 49
Disease, inspection, clarify.....	Ch. 16	- 58
Horse Bd, assessment refund requests, delete.....	Ch.133	- 328
Horse owners, referendum, fund Horse Bd.....	Ch.133	- 328
Tuberculosis, testing, penalties, updated.....	Ch. 15	- 56
LOANS		
Consumer, delinquency charges.....	Ch.227	- 797
Health Professional, Repayment Program, criteria.....	Ch.141	- 373
Money, agreement in writing, \$50,000/more.....	Ch.397	- 1460
LOG SCALING		
Law, misdemeanor/prosecution, within 2 years.....	Ch. 91	- 218
LOGGING		
Log brands, registration, Scaling Practices, Bd.....	Ch. 92	- 219
Log scaling law, violation/prosecution, 2 years.....	Ch. 91	- 218
Scaling assessment, increased, forest products.....	Ch.130	- 325
LOTTERIES		
Com, approp.....	Ch.132	- 327
Com, bingo, raffles, regulate, with counties.....	Ch.391	- 1448
Director, class III gaming/Indian reservations.....	Ch.249	- 871
MAGISTRATES		
See COURTS, JUDGES		
MAMMOGRAPHY		
Insurance, exceptions.....	Ch.113	- 288
MANDATES		
Federal, drug offender/driving privileges, oppose.....	HCR 33	- 1574
Federal, states' rights, suggestions preferred.....	HJM 1	- 1540
MANUFACTURED HOMES		
See MOBILE HOMES		

MAPS Chapter - Page
 Computerized, system, county collect fees.....Ch.201 - 555

MECHANICS
 Lien, real property, filing time, surety bond.....Ch.378 - 1386

MEDICAID ASSISTANCE
 See PUBLIC ASSISTANCE

MEDICAL
 Ambulances, personnel, standards, definitons updated...Ch. 50 - 130
 Clinics, county hospital bds, own/operate.....Ch.112 - 283
 Licensure, exemptions, when.....Ch.271 - 907
 Medicaid, ICF/MR, property reimbursement rate.....Ch.351 - 1306
 Waste combustors, emissions, defined, air quality.....Ch.267 - 899

MEDICAL ASSISTANCE
 See PUBLIC ASSISTANCE

MEDICINE
 Bd, approp.....Ch.228 - 799
 Bd, licensure, who can practice without.....Ch.271 - 907

MEMORIALS
 Albertson, Joseph, recognition.....SCR101 - 1547
 Argonne National Laboratory, Integral Fast Reactor.....SJM107 - 1538
 Biodiesel, development/commercialization, urged.....SJM103 - 1535
 Delaney Clause, modify, pesticide residues in food.....SJM106 - 1537
 Endangered Species Act, economic impact.....HJM 2 - 1541
 Federal balanced budget, line item veto power.....SJM101 - 1533
 Federal mandates, states' rights, prefer suggestions...HJM 1 - 1540
 Flag, American, protection, U.S. constitution.....SJM102 - 1534
 Forest Health Act/National, support urged.....SJM104 - 1536
 Hells Canyon, National Park, opposed.....HJM 4 - 1543
 Insurance, state regulation, reject H.R.9/federal.....HJM 5 - 1544
 Reid, Harold, recognized.....HCR 11 - 1562
 Rights-of-way, public lands, preservation, urged.....HJM 6 - 1545
 Snail/Bruneau Hot Springs, not list endangered.....HJM 3 - 1542

MENTAL ILLNESS
 ICF/MR, Medicaid, property reimbursement rate.....Ch.351 - 1306

MILITARY AND MILITIA
 Div, approp.....Ch.244 - 852
 National Guard, MV, license plates, distinctive.....Ch.135 - 330
 Veterans Day, school program, to remember/honor.....Ch.269 - 904
 Veterans, disabled, service, any conflict, benefits....Ch.233 - 811
 Veterans, state employment, preference, exceptions.....Ch. 21 - 79

MINES AND MINING
 Definition, provided, sales tax act purposes.....Ch.319 - 1175
 Dredge/placer, bond amount/per acre, reclamation.....Ch.307 - 1137
 Tax, sales, production exemption, clarified.....Ch.319 - 1175

MINORS
 See CHILDREN, JUVENILES

MOBILE HOMES
 Manufactured homes, declared real property, option....Ch.167 - 424
 Manufactured homes, installation/inspection required...Ch.372 - 1339
 Manufactured homes, installation, licensure required...Ch.372 - 1339
 Parks, rent increase/agreements, damages, disputes.....Ch.380 - 1394

MORTGAGES
 Company, collection practices act, exempt.....Ch.165 - 416

MORTGAGES (Continued)	Chapter - Page
Foreclosure proceedings, clarified.....	Ch.281 - 949
MOSQUITO ABATEMENT	
Dists, annexation, alternate method.....	Ch. 81 - 211
Dists, H&W, Dept, duties deleted.....	Ch.199 - 548
MOTOR CARRIERS	
Fees, administrative, federal law, conform with.....	Ch.182 - 463
Transportation Dept, rules, gross weights.....	SCR104 - 1548
MOTOR FUELS	
See FUELS	
MOTOR VEHICLES	
All terrain, noise emission, limits.....	Ch.136 - 335
Audit guidelines, Transportation Dept, MV owner.....	Ch.138 - 341
Commercial, auto transporter, redefined.....	Ch.334 - 1234
Commercial, axles, consecutive/2/more, gross weight....	Ch.371 - 1333
Commercial, axles, group spacings, maximum loads.....	Ch.334 - 1234
Commercial, axles, single/groups, load limits.....	Ch.345 - 1283
Commercial, axles, suspension, variable load, weight...Ch.	376 - 1377
Commercial, axles, weight limits, rule amended.....	SCR112 - 1552
Commercial, semitrailers/double trailers, length.....	Ch.123 - 313
Commercial, use fees, records, audits.....	Ch.273 - 913
Dealers, license, 12 month period, renewal, when.....	Ch.297 - 1095
Driver training schools, licenses, fees, renewals.....	Ch.180 - 461
Driver, fleeing, police officer, felony.....	Ch.164 - 416
Drivers license/seasonal, farm-related industry.....	Ch.300 - 1105
Drivers license, no social security number.....	Ch.304 - 1126
Drivers license, suspend, drug offense, oppose.....	HCR 33 - 1574
DUI, evidentiary test, license suspension, reinstate...Ch.	413 - 1515
DUI, penalties, clarified.....	Ch.272 - 909
Fees, use, acct, apply prior/operating/Idaho.....	Ch.399 - 1463
Insurance, automobile/commercial, cancellation.....	Ch.231 - 803
Insurance, uninsured motorist, legislative study comm..HCR	40 - 1583
License plates, National Guard, distinctive.....	Ch.135 - 330
License plates, old timer/vintage, registration.....	Ch. 99 - 248
License plates, temporary permit/in lieu of.....	Ch.321 - 1179
Liens, notarization requirement, eliminated.....	Ch.283 - 957
Motor carriers, administrative fees, federal law.....	Ch.182 - 463
Motor carriers, gross weights, Transportation rules....	SCR104 - 1548
Motorbikes, noise emission, limits, exceptions.....	Ch.136 - 335
Records, inquiries answered, contract authorized.....	Ch.299 - 1100
Salesmen, licensure, exempt, specialty vehicles.....	Ch.230 - 803
Service contracts, regulations.....	Ch.340 - 1272
Tail lamps, vehicles 30 years/older.....	Ch. 95 - 244
Tires, waste, collection sites, management.....	Ch.375 - 1372
Titles, certificate of, electronic file, lienholders...Ch.	298 - 1097
Vehicles/emergency, Voluntary Fire Dept personnel.....	Ch.377 - 1385
Windshields/tinted, medical reasons.....	Ch.400 - 1465
MOTORBIKES	
Noise emission, limits, exceptions.....	Ch.136 - 335
NATIONAL GUARD	
License plates, MV, distinctive.....	Ch.135 - 330
NATIVE AMERICANS	
Gambling, class III, reservation, Lottery Director....	Ch.249 - 871

	Chapter	Page
NATIVE AMERICANS (Continued)		
Gaming Compact, cases/certain, legal issues resolve....	Ch.367	- 1330
Gaming compacts/state-tribal, negotiations.....	Ch.408	- 1500
Indian Affairs Issues, legislative study comm.....	HCR 34	- 1576
NATUROPATHS		
Practice, medical license, Medicine, Bd, not need.....	Ch.271	- 907
NORTHWEST NAZARENE COLLEGE		
See COLLEGES AND UNIVERSITIES		
NUCLEAR ENERGY		
Argonne National Laboratory, Integral Fast Reactor.....	SJM107	- 1538
NUCLEAR WASTES		
See WASTES		
NURSES AND NURSING		
Bd, approp.....	Ch.228	- 799
Peer assistance entity agreements, health professions..	Ch. 73	- 194
Practitioners, Health Professional Loan Repayment.....	Ch.141	- 373
OCCUPATIONAL LICENSES BUREAU		
Approp.....	Ch.228	- 799
Approp, additional FY93.....	Ch. 37	- 111
OFFICE ON AGING		
See AGING, OFFICE ON		
OPTOMETRY AND OPTOMETRISTS		
Bd, approp.....	Ch.228	- 799
Bd, approp, additional FY93.....	Ch. 37	- 111
Pharmaceutical agents, use of, practice defined.....	Ch.110	- 280
OREGON		
State, outfitters/guides, reciprocity, Snake River.....	Ch.260	- 891
Trail Wagon Train, approp, Parks/Recreation.....	Ch.360	- 1320
ORGANIZATIONS		
Charitable, fraternal, not food establishments.....	Ch.114	- 291
Charitable, solicitations, deceptive, unlawful.....	Ch.246	- 857
Nonprofit, educational, sales tax, exempt, clarify.....	Ch. 7	- 23
OUTFITTERS AND GUIDES		
Bd, approp.....	Ch.228	- 799
Bd, compensation, increased.....	Ch.257	- 886
Reciprocity, Oregon state, Snake River waters.....	Ch.260	- 891
Reciprocity, Washington state, Snake River waters.....	Ch.260	- 891
PARDONS AND PAROLE		
Com, approp.....	Ch.325	- 1183
Paroles, early, terminal medical condition.....	Ch.106	- 271
Probation, Corrections, Bd, responsibilities, felons...	Ch.101	- 254
PARENTS		
Parent-child relationship, termination, hearing.....	Ch. 88	- 216
PARKS AND RECREATION		
Dept, approp.....	Ch.354	- 1312
Dept, approp, additional, FY93.....	Ch. 58	- 162
Dept, approp, Oregon Trail Wagon Train reenactment.....	Ch.360	- 1320
Dept, approp, park development.....	Ch.386	- 1417
Dept, headquarters facility project, funds.....	SCR117	- 1553
Dept, reciprocal agreement, Snake River.....	Ch.252	- 877
Hells Canyon, National Park, opposed.....	HJM 4	- 1543
Improvement Acct, gas tax, distribution.....	Ch.301	- 1116

	Chapter - Page
PARTNERSHIPS	
Limited Liability Company Act, provided.....	Ch.224 - 760
PAY	
See SALARIES	
PERMANENT BUILDING ACCOUNT	
Approp.....	Ch.382 - 1400
Asbestos Abatement Projects, approp.....	Ch.382 - 1400
Capitol Mall Fiber-Optic Backbone, approp.....	Ch.382 - 1400
EPA Green Lights Program, approp.....	Ch.382 - 1400
Executive Residence Comm, approp.....	Ch.382 - 1400
ISU, Physical Science Building, approp.....	Ch.395 - 1458
Liquor Dispensary Warehouse Planning/Design, approp....	Ch.382 - 1400
NICI-Cottonwood/remodel, approp.....	Ch.382 - 1400
Underground Storage Tank Programs, approp.....	Ch.382 - 1400
PERMITS	
Air quality, Clean Air Act, title V.....	Ch.275 - 926
PERSONNEL COMMISSION	
Approp.....	Ch.151 - 387
Approp, additional FY93.....	Ch. 35 - 110
Classification/compensation plans, review.....	Ch.104 - 262
Correction, Dept, wardens, nonclassified.....	Ch. 77 - 204
Employees, disabled, hiring procedure/alternative.....	Ch. 67 - 177
Employees, state, salary recommendations, modified.....	HCR 20 - 1568
Personnel System, veterans/disabled, any conflict.....	Ch.233 - 811
PESTICIDES	
Government agencies, licensing, exam fees, exempt.....	Ch. 54 - 142
Residues, in food, Delaney Clause, modify.....	SJM106 - 1537
PETROLEUM	
Underground storage tanks, upgrade program.....	Ch.163 - 413
Underground storage tanks, upgrade program, finance....	Ch.310 - 1143
PHARMACIES AND PHARMACISTS	
Bd, approp.....	Ch.228 - 799
Peer assistance entity agreements, health professions..	Ch. 73 - 194
Practice, definitions provided.....	Ch. 49 - 126
PHYSICIANS AND SURGEONS	
Health Professional Loan Repayment Program, criteria...Ch.141 - 373	
Peer assistance entity agreements, health professions..	Ch. 73 - 194
Physicians, unlicensed practice, when.....	Ch.271 - 907
PLACER MINING	
See MINES AND MINING	
PLANNING AND ZONING	
Residential, homes, elderly persons, care, 8/less.....	Ch. 18 - 70
PLANTS	
Certification, agent, clarified.....	Ch. 69 - 182
PLATS AND VACATIONS	
Plats, copies, photographic process, silver image.....	Ch.343 - 1282
PODIATRISTS	
Trade names, use of, prohibition against removed.....	Ch.314 - 1165
POLICEMEN	
MV, driver, fleeing, attempt/elude, felony.....	Ch.164 - 416
PERSI, disability retirement, eligibility, when.....	Ch.178 - 458
POST Academy, approp.....	Ch.241 - 849
Scholarships, dependents.....	Ch.346 - 1288

	Chapter - Page
POLICEMEN (Continued)	
State, approp.....	Ch.241 - 849
POLLUTION	
See ENVIRONMENT	
PORT OF ENTRY	
Transportation Dept, approp.....	Ch.356 - 1316
POTATOES	
See AGRICULTURE	
PRINTING	
Contract, legislative bills.....	HCR 5 - 1557
Contract, legislative journals.....	HCR 8 - 1559
Contract, Session Laws.....	HCR 15 - 1564
State, Shop, oversight function repealed.....	Ch.330 - 1228
PRISONERS	
Controlled substance/weapon, possession.....	Ch.166 - 423
Firefighters/inmates, outside state of conviction.....	Ch. 80 - 208
Inmates, sexual contact by officer, felony.....	Ch.222 - 759
Jail, county, classification system.....	Ch.213 - 578
Jail, county, debts, sheriff not pay.....	Ch.213 - 578
Life sentence/less than, civil rights, sue/be sued.....	Ch.120 - 308
Paroles, early, terminal medical condition.....	Ch.106 - 271
Probation, Correction, Bd, responsibilities, felons.....	Ch.101 - 254
PRISONS	
See CORRECTIONAL INSTITUTIONS	
PROBATE	
Wills, property/personal, value increase, affidavit....	Ch.253 - 878
PROFESSIONAL STANDARDS COMMISSION	
Teachers, misconduct allegation, certificate/status....	Ch.111 - 281
PROFESSIONS	
Health care, peer assistance entity agreements.....	Ch. 73 - 194
Peer review comm/private, records, disclosure exempt...Ch.302 - 1118	
PROPERTY	
Personal, estate, value increased, affidavit.....	Ch.253 - 878
Personal, leases, any transaction, UCC.....	Ch.287 - 977
Real, lien, mechanics, filing time, surety bond.....	Ch.378 - 1386
Real, manufactured homes, declaration option.....	Ch.167 - 424
Real, personal, Nonprofit Association, Uniform Act.....	Ch.282 - 952
Real, receivers, appointment of, trust deed.....	Ch.280 - 948
Recreation Dists, fee in lieu of taxes.....	Ch.285 - 973
Subdivision lots, 6 or more, one owner, valuation.....	Ch.405 - 1473
Tax, ad valorem, budget increase, notice by mail.....	Ch.390 - 1445
Tax, ad valorem, circuit breaker, dwelling owner.....	Ch. 17 - 66
Tax, ad valorem, exemption, Equalization/Bd, approve...Ch.214 - 580	
Tax, excess levied, interest payment.....	Ch.266 - 898
Tax, F&G, Dept, fees in lieu of taxes.....	Ch.317 - 1172
Tax, homeowner exemption, 50/50, new homes.....	Ch.270 - 906
Tax, utilities/certain, power/irrigation, exemptions...Ch.295 - 1092	
PROPERTY TAX	
See TAX AND TAXATION, PROPERTY	
PUBLIC ASSISTANCE	
Medicaid, ICF/MR, property reimbursement rate.....	Ch.351 - 1306
PUBLIC BROADCASTING	
Approp.....	Ch.173 - 432

	Chapter - Page
PUBLIC EMPLOYEES	
See EMPLOYEES AND EMPLOYMENT	
PUBLIC EMPLOYEES RETIREMENT SYSTEM	
See RETIREMENT	
PUBLIC UTILITIES	
See UTILITIES	
PUBLIC UTILITIES COMMISSION	
See UTILITIES	
PUBLIC WORKS	
Contractors License Bd, approp.....	Ch.228 - 799
Contractors, licensure, 12 month period.....	Ch.237 - 819
Div, approp, additional FY93.....	Ch. 98 - 246
RACING	
Com, approp.....	Ch.241 - 849
RACKETEERING	
Restitution, court ordered, investigating costs.....	Ch.105 - 266
RAFFLES	
County, Lottery Com, regulate, charitable.....	Ch.391 - 1448
RAPE	
Male rape, punishment.....	Ch.263 - 895
REAL ESTATE	
Appraiser, licensure, Transportation Dept employees....	Ch.320 - 1178
Com, approp.....	Ch.228 - 799
Com, disciplinary actions, fine, increased.....	Ch.116 - 292
Licensees, errors/omissions insurance, required.....	Ch.396 - 1459
REAL PROPERTY	
See PROPERTY	
REAPPORTIONMENT	
Legislative Redistricting Com, appointment.....	SJR105 - 1530
RECLAMATION	
Mining, dredge/placer, bond amount/per acre.....	Ch.307 - 1137
RECORDS	
Bank, privilege from disclosure, when.....	Ch.187 - 477
County, classification/retention.....	Ch.140 - 371
MV, inquiries answered, contract authorized.....	Ch.299 - 1100
MV, title/certificate of, electronic, lienholders.....	Ch.298 - 1097
Public, Act, adoption decrees, confidential.....	Ch.315 - 1166
Public, Agriculture, Dept, lab services, disclosure....	Ch.198 - 543
Public, business lists, Agriculture, Dept, distribute..	Ch.117 - 294
Public, litigation, disclosure exempt.....	Ch. 31 - 101
Public, peer review comm/private, disclosure exempt....	Ch.302 - 1118
Research, unpublished/in progress, disclosure.....	Ch.190 - 483
RECREATION	
Dist, property, fee in lieu of taxes.....	Ch.285 - 973
RECREATIONAL VEHICLES	
All terrain vehicles, noise emission, limits.....	Ch.136 - 335
License, fees, distribution.....	Ch.286 - 973
License, placement, rear of vehicle.....	Ch.286 - 973
Motorbikes, noise emission, limits, exceptions.....	Ch.136 - 335
RECYCLING PROGRAMS	
Tires, waste, collection sites, management.....	Ch.375 - 1372
REFERENDUMS	
County, conform, election consolidation, dates.....	Ch.313 - 1157

	Chapter - Page
RENTERS	
Mobile home park, rent increase/agreements, damages....	Ch.380 - 1394
REPORTS	
Campaign finance, filing, time period revised.....	Ch.203 - 557
RESEARCH	
Unpublished, in progress, disclosure exempt.....	Ch.190 - 483
RESIDENTIAL CARE FACILITY	
Administrators, client/number of, licensure.....	Ch.373 - 1345
Board/Care Act, mentally ill, disabled/physically.....	Ch.373 - 1345
Elderly persons, 8/less reside, residential zoning.....	Ch. 18 - 70
Residential care, elderly, care/payment levels.....	Ch.374 - 1353
RESOLUTIONS, CONCURRENT	
Adoptive parents, social investigation, H&W rule.....	SCR108 - 1550
Albertson, Joseph, recognition.....	SCR101 - 1547
Aquifers, recharge, legislative study comm.....	HCR 26 - 1571
Bakes, Robert E., Justice Supreme Court, honored.....	HCR14 - 1563
Bills, legislative, printing contract.....	HCR 5 - 1557
Budget Address, Governor.....	HCR 2 - 1555
Child custody/visitation, legislative study comm.....	SCR114 - 1553
Criminal Code, recodify, legislative study comm.....	HCR 16 - 1566
Doane, Dr. Leon, Northwest Nazarene College, honored...	HCR 39 - 1582
Employees/state, certain, bonus/\$50.....	HCR 21 - 1569
Employees/state, salary recommendations, modified.....	HCR 20 - 1568
Federal mandate, drug offender/driving privileges.....	HCR 33 - 1574
Indian Affairs Issues, legislative study comm.....	HCR 34 - 1576
Journals, legislative, printing contract.....	HCR 8 - 1559
Literacy Week, 3/28/93, Workplace Productivity Year....	HCR 3 - 1556
Local government/optional forms, consolidation study...	HCR 27 - 1572
Parks & Recreation/Dept, headquarters facility, funds...	SCR117 - 1553
Public Lands Week, May 10, 1993, recognized.....	HCR 32 - 1574
Reid, Harold, recognized.....	HCR 11 - 1562
Session Laws, printing contract.....	HCR 15 - 1564
State of Budget Address.....	HCR 2 - 1555
State of State Address.....	HCR 1 - 1555
Streamflow, minimum, Crystal Springs.....	SCR105 - 1549
Tax Com, sales/use tax, rules, amended.....	HCR 36 - 1577
Taxation matters, legislative study comm.....	HCR 28 - 1573
Telecomm '92 report, telecommunications, adopted.....	HCR 23 - 1570
Transportation Dept, rule, motor carriers, amended....	SCR104 - 1548
Transportation Dept, rule, weight limits/axles, amend...	SCR112 - 1552
Uninsured motorists, legislative study comm.....	HCR 40 - 1583
Volunteers Overseas Cooperative Assistance, support....	HCR 7 - 1559
Warsaw Ghetto uprising, 50th anniversary, commemorate..	SCR110 - 1551
Water Resources Research Institute, education.....	HCR 19 - 1567
RESOLUTIONS, JOINT	
Reapportionment Com, appointment, membership.....	SJR105 - 1530
RETIREMENT	
PERSI, approp.....	Ch.293 - 1091
PERSI, disability retirement, clarified.....	Ch.251 - 875
PERSI, disability retirement, firefighters/police.....	Ch.178 - 458
PERSI, false claims, misdemeanor penalty.....	Ch.349 - 1294
PERSI, magistrate judge, resign, sit again.....	Ch. 82 - 212
PERSI, reporting requirements, failure to comply.....	Ch.348 - 1293

RETIREMENT (Continued)	Chapter	Page
PERSI, school dist retirees, additional benefits.....	Ch.398	- 1461
PERSI, technical changes.....	Ch.350	- 1295
PERSI, university staff, optional, limits.....	Ch.268	- 902
REVENUE		
Revenue & Taxation, Dept, approp.....	Ch.366	- 1328
Tax Appeals, Bd, trial de novo, clarify, Dist Court....	Ch.290	- 1081
Tax Comm, approp.....	Ch.366	- 1328
Tax/gas, distribution, Park & Recreation Improvement...	Ch.301	- 1116
REVENUE AND TAXATION		
See REVENUE, TAX AND TAXATION		
RIVERS		
Boise, Basin, State Water Plan, adopted 12/3/92.....	Ch.415	- 1525
Snake, aquifer, recharge, legislative study comm.....	HCR 26	- 1571
Snake, boating laws, reciprocal agreements.....	Ch.252	- 877
Snake, Outfitters/Guides, reciprocity.....	Ch.260	- 891
Streamflow, minimum, Crystal Springs.....	SCR105	- 1549
ROADS		
Rights of way, abandonment, validation.....	Ch.412	- 1505
RULES		
Administrative, Bulletin, publication, 1992/APA.....	Ch.245	- 853
Administrative, certain, continue July 1, 1994.....	Ch.342	- 1281
Administrative, proposed, newspaper notice, revised....	Ch.245	- 853
H&W, Dept, adoptive parents, social investigation.....	SCR108	- 1550
Public Health Dists, comply APA.....	Ch.296	- 1094
Tax Com, sales/use tax, amended.....	HCR 36	- 1577
Transportation Dept, motor carriers, gross weights....	SCR104	- 1548
Transportation Dept, weight limits/suspension axles....	SCR112	- 1552
SALARIES		
Employees/state, bonus/\$50, when.....	HCR 21	- 1569
Employees/state, bonus/lump sum, limit/\$1000, when....	Ch.318	- 1173
Employees/state, recommendations, adopted/modified....	HCR 20	- 1568
Employees/state, schedule, 2% adjustment.....	Ch.226	- 792
Employees/state, severance pay, prohibited, when.....	Ch.336	- 1265
Highway Dist Com, schedule revised.....	Ch.109	- 278
Judges, Justices, annual, increased.....	Ch.217	- 680
PUC, members, annual, increased.....	Ch. 45	- 117
SALES		
UCC, leases, personal property, any transaction.....	Ch.287	- 977
SALES TAX		
See TAX AND TAXATION, SALES		
SAVINGS AND LOAN ASSOCIATIONS		
Business, Saturdays, holidays, allowed.....	Ch. 52	- 133
SCALING		
Assessment, forest products harvested.....	Ch.130	- 325
Log, Law, misdemeanor/prosecution, within 2 years....	Ch. 91	- 218
Practices, Bd, log brands, registration.....	Ch. 92	- 219
SCHOLARSHIPS		
See STUDENTS		
SCHOOL DISTRICTS		
Children, blind, Braille, study team, assess value....	Ch.134	- 330
Children, gifted/talented, responsibility.....	Ch.409	- 1501
Elections, Trustees, Bd, clerk, duties/certain.....	Ch. 51	- 132

	Chapter	- Page
SCHOOL DISTRICTS (Continued)		
Elections, Trustees, Bd, recall petitions, filing.....	Ch. 64	- 166
Open enrollment options, within home dist.....	Ch. 76	- 202
PERSI, retirees, additional benefits.....	Ch.398	- 1461
SCHOOLS		
Age, redefined, expanded, 1st grade, disabled child....	Ch.121	- 310
Bd, trustees, recall petitions, file, when.....	Ch. 64	- 166
Children/blind, Braille, study team, assess value of...	Ch.134	- 330
Children, gifted/talented, School Dist responsible....	Ch.409	- 1501
Community Library Dists, fiscal year, conformity.....	Ch.316	- 1171
Education, Bd, split, higher/public education.....	Ch.404	- 1470
Firearms/concealed, on premises, criminal sanctions....	Ch.153	- 388
Open enrollment options, within home dist.....	Ch. 76	- 202
Private, records request, law enforcement notified....	Ch.188	- 479
Private, records withheld, nonpayment fees.....	Ch.188	- 479
Proprietary, operation requirements, bonds, permits....	Ch. 57	- 154
Proprietary, Student Tuition Recovery Act.....	Ch. 57	- 154
Public, approp.....	Ch.411	- 1503
Public, approp, retirement, FICA, unemployment.....	Ch.411	- 1503
Public, bus drivers, physical exam, standards.....	Ch. 56	- 153
Public, Income Fund, approp.....	Ch.411	- 1503
Teachers, misconduct allegation, certificate, status...	Ch.111	- 281
Teachers, retirees, PERSI, additional benefits.....	Ch.398	- 1461
Veterans Day, school program, to remember/honor.....	Ch.269	- 904
SEARCH AND RESCUE OPERATIONS		
Act, F&G, violations, fines, % increased.....	Ch.311	- 1146
SECRETARY OF STATE		
Approp.....	Ch.406	- 1474
Arts, Com, approp, additional FY93.....	Ch. 60	- 164
Fees, filing, increased.....	Ch.338	- 1268
SECURITIES		
Registration, exempt, fairness hearing, Finance, Dept..	Ch.162	- 412
SEEDS		
Certification, agent, clarified.....	Ch. 69	- 182
Label requirements, measure/net weight.....	Ch. 70	- 184
Pure, Law, violations, civil penalty, fine increased...	Ch.207	- 568
SELF-GOVERNING AGENCIES		
Approp.....	Ch.228	- 799
Dept, Hispanic Com, approp, additional FY93.....	Ch. 61	- 164
Lottery Com, approp.....	Ch.132	- 327
SENIOR CITIZENS		
Aging, Office on, approp.....	Ch.191	- 488
Homes, 8/less reside, zoned residential.....	Ch. 18	- 70
Residential care facility, care/payment levels.....	Ch.374	- 1353
SESSION LAWS		
Printing contract.....	HCR 15	- 1564
SEWERS		
Dists, Bds, compensation increased.....	Ch. 44	- 116
SEX		
Abuse, child, repeat offenders, mandatory minimum.....	Ch.152	- 387
Offenders, registration, required.....	Ch.155	- 391
Offenders, victims of, HIV test, counseling.....	Ch. 19	- 71
Sexual contact/inmate, correctional facility agent.....	Ch.222	- 759

	Chapter - Page
SHERIFFS	
County, not pay inmates debts.....	Ch.213 - 578
SHORTHAND REPORTERS	
Bd, approp.....	Ch.228 - 799
SNAKE RIVER	
See RIVERS	
SOCIAL SECURITY	
Drivers license, no number.....	Ch.304 - 1126
STATE AGENCIES	
Audits/post, State Auditor, conduct.....	Ch.388 - 1435
Dept heads, authority, employee removal.....	Ch.235 - 817
Performance plans/annual, procedure, report.....	Ch.168 - 425
STREAMS	
See RIVERS	
STUDENTS	
Blind, Braille, study team, assess importance of.....	Ch.134 - 330
Firearms, concealed, school premises, penalties.....	Ch.153 - 388
Gifted/talented, education, School Dist responsible....	Ch.409 - 1501
Open enrollment options, within home dist.....	Ch. 76 - 202
Private schools, records request, law enforcement.....	Ch.188 - 479
Private schools, records withheld, when.....	Ch.188 - 479
Scholarships, firefighter/police officer dependents....	Ch.346 - 1288
School age, redefined/expanded, 1st grade, disabled....	Ch.121 - 310
STUDIES	
Aquifers, recharge, legislative, comm.....	HCR 26 - 1571
Child custody/visitation, legislative, comm.....	SCR114 - 1553
Criminal Code, recodification, legislative, comm.....	HCR 16 - 1566
Indian Affairs Issues, legislative, comm.....	HCR 34 - 1576
Local government/optional forms, consolidation study...	HCR 27 - 1572
Taxation matters, legislative council, comm.....	HCR 28 - 1573
Uninsured motorists, legislative, comm.....	HCR 40 - 1583
SUBDIVISIONS	
Lots, 6 or more, one owner, valuation.....	Ch.405 - 1473
SUBPOENAS	
Potato Com, power, authorized.....	Ch.211 - 572
SUPERINTENDENT OF PUBLIC INSTRUCTION	
Approp.....	Ch.143 - 377
SURVEYING AND SURVEYORS	
Land, corner perpetuation, indicate presence of.....	Ch.206 - 564
TAX AND TAXATION	
Appeals, Bd, approp.....	Ch.366 - 1328
Appeals, Bd, trial de novo, clarified, Dist Court.....	Ch.290 - 1081
Assessment, irrigation/canal company, amount/share....	Ch.108 - 276
Assessment, subdivision lots, 6 or more, one owner.....	Ch.405 - 1473
Bill of Rights, Taxpayer.....	Ch. 94 - 224
Com, approp.....	Ch.366 - 1328
Com, sales/use tax, rules, amended.....	HCR 36 - 1577
Dist, ad valorem, budget, increase, notify by mail....	Ch.390 - 1445
Dist, consolidation, legislative study comm.....	HCR 27 - 1572
Electronic funds transfer, payment, when.....	Ch. 8 - 25
Estate, special use valuation, recapture.....	Ch. 6 - 21
Gas, distribution, Park/Recreation Improvement Acct....	Ch.301 - 1116
Horse Bd, assessment refund requests, delete.....	Ch.133 - 328

	Chapter	Page
TAX AND TAXATION (Continued)		
Illegal drugs, entire amount possessed.....	Ch. 9	- 26
Taxation matters, legislative study comm.....	HCR 28	- 1573
Taxpayer Bill of Rights.....	Ch. 94	- 224
TAX AND TAXATION, INCOME		
Bill of Rights, Taxpayer.....	Ch. 94	- 224
Corporate, unitary groups, combined reporting.....	Ch.284	- 958
Corporations, "dividend gross up", deductions.....	Ch. 3	- 5
Credit, investment credits, clarify.....	Ch. 2	- 3
Electronic funds transfer, payment, when.....	Ch. 8	- 25
Internal Revenue Code, taxable income, defined.....	Ch. 3	- 5
Internal Revenue Code, 1993, adopted.....	Ch. 1	- 3
Refunds, deficiency, statutes of limitations.....	Ch. 47	- 119
Taxpayer's Bill of Rights.....	Ch. 94	- 224
Withholding, employers, register, Tax Com.....	Ch. 5	- 16
TAX AND TAXATION, PROPERTY		
Ad valorem, budget, increase, notify by mail.....	Ch.390	- 1445
Ad valorem, circuit breaker, dwelling owner, clarify...Ch.	17	- 66
Ad valorem, exemption, Equalization, Bd, approve.....	Ch.214	- 580
Ad valorem, homeowner exemption, 50/50, new homes.....	Ch.270	- 906
County, excess levied, interest payment.....	Ch.266	- 898
F&G, Dept, property, fees in lieu of taxes.....	Ch.317	- 1172
Utilities, power for irrigation, exemptions.....	Ch.295	- 1092
TAX AND TAXATION, SALES		
Act, technical corrections.....	Ch. 26	- 87
ARC, Association Retarded Citizens, exemption.....	Ch.402	- 1468
Exemptions, contractors, colleges/nonprofit.....	Ch. 7	- 23
Production exemption, farming/mining, clarified.....	Ch.319	- 1175
Tax Com, rules, amended.....	HCR 36	- 1577
TAXIDERMISTS		
License, required.....	Ch.129	- 324
Recordkeeping, alternative forms.....	Ch. 78	- 206
TEACHERS		
Misconduct, allegation, certificate, status of.....	Ch.111	- 281
PERSI, retirees, additional benefits.....	Ch.398	- 1461
TELECOMMUNICATIONS		
Telecomm '92 report, adopted.....	HCR 23	- 1570
Universal Service Fund, MTS/WATS access service.....	Ch.219	- 683
TELEPHONES		
Corporation, collection practices act, exempt.....	Ch.165	- 416
Corporation, tariffs/price list, changes, PUC.....	Ch.208	- 569
MTS/WATS access service, Universal Service Fund.....	Ch.219	- 683
Solicitors, registration, Attorney General office.....	Ch.156	- 399
TENANTS		
Mobile home park, rent increase/agreements, damages....	Ch.380	- 1394
TIMBER		
See FORESTS AND FORESTRY		
TIRES		
See MOTOR VEHICLES		
TRANSPORTATION		
Dept, approp.....	Ch.145	- 380
Dept, approp, addtional, FY93, Highway Div.....	Ch.352	- 1311
Dept, approp, Aeronautics Div.....	Ch.145	- 380

TRANSPORTATION (Continued)	Chapter - Page
Dept, approp, highways.....	Ch.145 - 380
Dept, approp, ports of entry.....	Ch.356 - 1316
Dept, approp, Traffic Safety Com.....	Ch.145 - 380
Dept, audits, MV owner, guidelines.....	Ch.138 - 341
Dept, employees, real estate appraiser, licensure.....	Ch.320 - 1178
Dept, MV, records, inquiries answered, contract.....	Ch.299 - 1100
Dept, rules, motor carriers, gross weights.....	SCR104 - 1548
Dept, rules, weight limits/suspension axles.....	SCR112 - 1552
TREASURER AND TREASURIES	
State, approp.....	Ch.381 - 1399
State, investment, underground storage tank/upgrade....	Ch.310 - 1143
TRUCKING	
Commercial, axles, consecutive, 2/more, gross weight...Ch.	371 - 1333
Commercial, axles, group spacings, maximum loads.....Ch.	334 - 1234
Commercial, axles, single/groups, load limits.....Ch.	345 - 1283
Commercial, axles, suspension, variable load, weight...Ch.	376 - 1377
Commercial, axles, suspension, weight limits, rule.....SCR	112 - 1552
Commercial, semitrailers/double trailers, length.....Ch.	123 - 313
Commercial, use fees, records, audits, reports.....Ch.	273 - 913
TRUCKS	
See MOTOR VEHICLES	
TRUSTS	
Deeds, receivers, appointment of, real property.....Ch.	280 - 948
TUBERCULOSIS	
Livestock, testing, penalties, updated.....Ch.	15 - 56
Patient, indigent, hospitalization, payment.....Ch.	40 - 113
TUITION	
Student, Recovery Acct, proprietary schools.....Ch.	57 - 154
UNDERGROUND STORAGE TANKS	
See FUELS, PETROLEUM	
UNEMPLOYMENT	
Benefits, base period/alternate, overpayments.....Ch.	181 - 461
Benefits, eligibility, extended, determination.....Ch.	20 - 73
Benefits, eligibility, requalification, extended.....Ch.	10 - 30
Insurance, coverage clarified, exemptions added.....Ch.	119 - 297
UNIFORM COMMERCIAL CODE	
Centralized, approp.....Ch.	406 - 1474
Leases, personal property, any transaction.....Ch.	287 - 977
Negotiable Instruments, adopted.....Ch.	288 - 1019
Secured transactions, code reference deleted.....Ch.	33 - 108
UNIFORM CONTROLLED SUBSTANCES ACT	
See CONTROLLED SUBSTANCES ACT	
UNIFORM LAWS	
Com, approp.....Ch.	406 - 1474
UNIVERSITY OF IDAHO	
See COLLEGES AND UNIVERSITIES	
UTILITIES	
Electric, gas, power/irrigation, property tax.....Ch.	295 - 1092
Public, electrical/gas, energy conservation, rates.....Ch.	218 - 682
PUC, approp.....Ch.	225 - 791
PUC, approp, personnel costs.....Ch.	364 - 1326
PUC, intervenors, award for costs, increased.....Ch.	234 - 816

	Chapter	Page
UTILITIES (Continued)		
PUC, telephone corporation, tariffs/price list, file...	Ch.208	569
VEHICLES		
See MOTOR VEHICLES, RECREATIONAL VEHICLES		
VETERANS		
Day, school program, to remember/honor.....	Ch.269	904
Disabled, benefits, service, any conflict.....	Ch.233	811
Employment, preference, state employment, limited.....	Ch. 21	79
VETERINARY MEDICINE		
Bd, approp.....	Ch.228	799
Bd, discipline, practitioners convicted of crimes.....	Ch. 71	188
Licensure, exams, inactive status, provisions.....	Ch. 72	189
VETOES		
Catastrophic Health Care Fund/"CAT", line item veto....	Ch.370	1333
VICTIMS		
Crime, compensation program, fines paid, increased.....	Ch.278	940
Crime, compensation, offset, no double recovery.....	Ch.236	818
Sexual offenders, HIV test, counseling, health care....	Ch. 19	71
VISUALLY IMPAIRED		
See BLIND		
VITAL STATISTICS		
Adoption, records, confidential.....	Ch.315	1166
VOCATIONAL EDUCATION		
Approp.....	Ch.323	1182
Approp, Displaced Homemaker Program.....	Ch.323	1182
Approp, Displaced Homemaker Program, additional FY93...	Ch. 62	165
VOCATIONAL REHABILITATION		
Act, federal, amendments 1992 adopted.....	Ch.183	464
Approp.....	Ch.361	1321
Div, approp, additional FY93.....	Ch. 63	165
VOLUNTEER PROGRAMS		
Overseas Cooperative Assistance, Washington, D.C.....	HCR 7	1559
VOTERS		
Ballots, absentee, county clerk mail, when.....	Ch.100	253
WASHINGTON		
D.C., Volunteers Overseas Cooperative Assistance.....	HCR 7	1559
State, outfitters/guides, reciprocity, Snake River....	Ch.260	891
WASTES		
Combustor, medical, emissions, defined, air quality....	Ch.267	899
Hazardous, Management Act, revised, updated.....	Ch.291	1082
Nuclear, Integral Fast Reactor, Argonne Laboratory.....	SJM107	1538
Solid, collection, fees, county, procedure.....	Ch. 41	113
Solid, Management Law, technical corrections.....	Ch.139	342
Tires, collection sites, management.....	Ch.375	1372
WATER RESOURCES		
Bd, streamflow, minimum, Crystal Springs.....	SCR105	1549
Bd, State Water Plan, Boise River Basin, 12/3/92.....	Ch.415	1525
Bd, State Water Plan, Henry's Fork Basin, 12/3/92.....	Ch. 66	167
Dept, approp.....	Ch.355	1314
Dept, approp, Snake Basin Adjudications.....	Ch.355	1314
Dept, water, approp, temporary approval, when.....	Ch.255	880
Dept, water, drought, point of diversion, change.....	Ch.161	410
Dept, weather modification activities.....	Ch. 32	106

	Chapter - Page
WATER RESOURCES (Continued)	
Research Institute, education programs.....	HCR 19 - 1567
WATER	
Approp, temporary approval, Water Resources, Dept.....	Ch.255 - 880
Aquifers, recharge, legislative study comm.....	HCR 26 - 1571
Dists, Bds, compensation increased.....	Ch. 44 - 116
Drought, diversion point, temporary change.....	Ch.161 - 410
Irrigation Dists, contracts, improvement.....	Ch.261 - 892
Irrigation Dists, contracts, lateral dists.....	Ch.259 - 890
Irrigation Dists, create Local Improvement Dist.....	Ch.407 - 1475
Irrigation Dists, indebtedness contracts, payment.....	Ch.212 - 574
Irrigation Dists, lands reinstated, orders filed.....	Ch.209 - 570
Irrigation Dists, lands, limit grounds/exclusion.....	Ch.262 - 894
Irrigation, canal systems, assessments, amount.....	Ch.108 - 276
Irrigation, power for, utilities, property tax exempt..	Ch.295 - 1092
Quality Council, Big Payette Lake, created.....	Ch.200 - 550
Resources Research Institute, education programs.....	HCR 19 - 1567
State, Plan, Boise River Basin/Upper, adopt 12/3/92....	Ch.415 - 1525
State, Plan, Henry's Fork Basin, adopted 12/3/92.....	Ch. 66 - 167
Streamflow, minimum, Crystal Springs.....	SCR105 - 1549
WEAPONS	
Firearms, concealed, school premises, unlawful.....	Ch.153 - 388
Firearms, drive-by shootings, felony.....	Ch.254 - 879
Inmates, delivery/manufacture/possession of, felony...	Ch.166 - 423
Use of, drug trafficking, sentence extended.....	Ch.264 - 896
WEATHER	
Modification, Water Resources, Dept.....	Ch. 32 - 106
WEEDS	
Noxious, control, county/landowner/state, duties.....	Ch.247 - 859
WELLS	
Geothermal, land/state, drilling, bond increase.....	Ch.289 - 1081
WILDLIFE	
Antlers, horns, naturally shed, possession allowed.....	Ch. 79 - 206
Depredation, prevention, control, Agriculture, Dept....	Ch. 30 - 98
Endangered Species Act, economic impact, consider.....	HJM 2 - 1541
Grizzly Bear Management Oversight Comm.....	Ch.403 - 1469
Grizzly bears, recovery funds, F&G, authorized, when...	Ch.403 - 1469
Snail/Bruneau Hot Springs, not list endangered.....	HJM 3 - 1542
Wolf environmental impact statement, thru May 1994....	Ch.332 - 1231
WILLS	
Estate, property/personal, affidavit, value.....	Ch.253 - 878
WINE	
License, by the drink, renewal/suspension.....	Ch.347 - 1290
Winery/licensed, selling domestic/only, removed.....	Ch.333 - 1232
WOLF	
See WILDLIFE	
WOMEN	
Programs, Com, approp.....	Ch.243 - 852
WORKER'S COMPENSATION	
Burial expenses, sum/maximum, increased.....	Ch.341 - 1277
Insurance, deductibles optional, offered.....	Ch.223 - 759
Insurance, premium tax, increased.....	Ch.202 - 556

YOUTH

Chapter - Page

See CHILDREN

YOUTH REHABILITATION ACT

Minors, possession/inhalants, not under purview of.....Ch.154 - 390

Youth offender, H&W/Dept, discharge, penalty/not all...Ch. 84 - 214

ZONING

See PLANNING AND ZONING

TABLE OF AMENDMENTS, REPEALS, ADDITIONS AND REFERENCES

FIRST EXTRAORDINARY SESSION - FIFTY-FIRST LEGISLATURE

CODE INDEX

Code citation, action, bill number and
session law chapter number is shown
of bills which passed

	Chapter - Page
TITLE 18	
18-3801 Repealed	Ch. 2 - 5
18-3801 New Section Added	Ch. 2 - 5
18-3802 Repealed	Ch. 2 - 5
18-3802 New Section Added	Ch. 2 - 5
TITLE 67	
67-7701 New Section Added	Ch. 2 - 4
67-7702 New Section Added	Ch. 2 - 4
67-7703 New Section Added	Ch. 2 - 4
IDAHO CONSTITUTION	
Art. III, Sec. 20 Amended	HJR4 - 8

TABLE OF AMENDMENTS, REPEALS, ADDITIONS AND REFERENCES

FIRST REGULAR SESSION - FIFTY-SECOND LEGISLATURE

CODE INDEX

Code citation, action, bill number and
session law chapter number is shown
of bills which passed

		Chapter - Page
TITLE 1		
1-401	Repealed	Ch. 90 - 218
1-402	Amended	Ch.196 - 535
1-410	Repealed	Ch. 90 - 218
1-805	Amended	Ch.248 - 870
1-806	Amended	Ch.248 - 870
1-808	Amended	Ch.248 - 870
1-2221	Amended	Ch. 82 - 212
1-2222	Amended	Ch.217 - 680
TITLE 5		
5-230	Amended	Ch.120 - 309
5-408	Amended	Ch. 83 - 213
5-508	Amended	Ch. 89 - 217
TITLE 6		
6-101	Amended	Ch.281 - 949
6-302	Referred to	Ch.380 - 1398
6-303	Referred to	Ch.380 - 1398
Chapter 9	Referred to	Ch. 69 - 184
Chapter 9	Referred to	Ch.239 - 828
Chapter 19	Referred to	Ch. 73 - 197
TITLE 7		
Chapter 9	Referred to	Ch.312 - 1156
7-1202	Amended	Ch.335 - 1252,1262
7-1204	Amended	Ch.335 - 1253,1263
TITLE 8		
8-601A	New Section Added	Ch.280 - 949
TITLE 9		
9-302	Referred to	Ch.315 - 1170
9-328	Referred to	Ch. 78 - 206
9-331	Referred to	Ch.140 - 373
9-332	Referred to	Ch.140 - 373
9-337	Referred to	Ch.216 - 676
9-338	Referred to	Ch.168 - 427
9-340	Amended	Ch. 31 - 101
9-340	Amended	Ch. 94 - 224
9-340	Amended	Ch.155 - 394
9-340	Amended	Ch.190 - 483
9-340	Amended	Ch.198 - 543

TITLE 9 (Continued)		Chapter	-	Page
9-340	Amended	Ch.302	-	1119
9-340	Amended	Ch.327	-	1119
9-340	Amended	Ch.388	-	1439
9-340	Referred to	Ch.239	-	828
9-348	Amended	Ch.117	-	294
9-350	New Section Added	Ch.389	-	1444
9-505	Amended	Ch.397	-	1460
TITLE 11				
Chapter 6	Referred to	Ch. 9	-	29
TITLE 12				
12-117	Amended	Ch.216	-	589
12-117	Referred to	Ch.138	-	342
TITLE 14				
14-402	Amended	Ch. 6	-	22
14-404A	New Section Added	Ch. 6	-	22
14-409	Amended	Ch. 6	-	23
TITLE 15				
15-3-1201	Amended	Ch.253	-	879
15-5-602	Amended	Ch. 24	-	83
TITLE 16				
16-1619	Referred to	Ch. 73	-	197
16-1620	Referred to	Ch. 73	-	197
16-1803	Amended	Ch.154	-	390
16-1832	Amended	Ch. 84	-	214
16-2009	Amended	Ch. 88	-	216
TITLE 18				
18-113	Referred to	Ch.349	-	1295
18-310	Amended	Ch.120	-	309
18-310	Amended	Ch.184	-	465
18-311	Repealed	Ch.120	-	310
18-801	Repealed	Ch.107	-	276
18-801	New Section Added	Ch.107	-	274
18-802	Repealed	Ch.107	-	276
18-802	New Section Added	Ch.107	-	274
18-803	Repealed	Ch.107	-	276
18-803	New Section Added	Ch.107	-	275
18-804	Repealed	Ch.107	-	276
18-804	New Section Added	Ch.107	-	275
18-805	Repealed	Ch.107	-	276
18-805	New Section Added	Ch.107	-	275
18-918	New Section Added	Ch.344	-	1283
18-1502B	New Section Added	Ch.154	-	390
18-1505A	New Section Added	Ch.179	-	460
18-1506	Referred to	Ch.152	-	388
18-1506	Referred to	Ch.155	-	392
18-1506	Referred to	Ch.278	-	940
18-1506A	Referred to	Ch.155	-	392
18-1507	Referred to	Ch.155	-	392
18-1507	Referred to	Ch.278	-	940
18-1507A	Referred to	Ch.155	-	392
18-1508	Referred to	Ch.152	-	388
18-1508	Referred to	Ch.155	-	392

TITLE 18 (Continued)		Chapter	Page
18-1508	Referred to	Ch.278	- 940
18-1508A	Referred to	Ch.152	- 388
18-1508A	Referred to	Ch.155	- 392
18-1508A	Referred to	Ch.278	- 940
18-2511	Amended	Ch.166	- 424
18-2604	Amended	Ch. 46	- 118
18-3302D	New Section Added	Ch.153	- 388
18-3316	Referred to	Ch.184	- 466
18-3317	New Section Added	Ch.254	- 880
Chapter 38	Referred to	Ch.391	- 1450
18-4006	Referred to	Ch.272	- 911
18-4511	Amended	Ch.188	- 479
18-6101	Referred to	Ch.155	- 392
18-6101	Referred to	Ch.278	- 940
18-6108	Referred to	Ch.155	- 392
18-6108	Referred to	Ch.278	- 940
18-6108	Amended	Ch.263	- 896
18-6109	New Section Added	Ch.263	- 896
18-6110	New Section Added	Ch.222	- 759
18-6605	Referred to	Ch.155	- 392
18-6605	Referred to	Ch.278	- 940
18-6608	Referred to	Ch.155	- 392
18-6608	Referred to	Ch.278	- 940
18-7003	Repealed	Ch.107	- 276
18-7006	Repealed	Ch.107	- 276
18-7007	Repealed	Ch.107	- 276
18-7804	Amended	Ch.105	- 269
18-7804	Referred to	Ch.105	- 269
18-8002	Amended	Ch.413	- 1516
18-8002	Referred to	Ch.250	- 874
18-8002A	New Section Added	Ch.413	- 1519
18-8005	Amended	Ch.272	- 909
18-8201	Amended	Ch.105	- 270
18-8201	Referred to	Ch.105	- 269
18-8301	New Section Added	Ch.155	- 392
18-8302	New Section Added	Ch.155	- 392
18-8303	New Section Added	Ch.155	- 392
18-8304	New Section Added	Ch.155	- 392
18-8305	New Section Added	Ch.155	- 393
18-8306	New Section Added	Ch.155	- 393
18-8307	New Section Added	Ch.155	- 393
18-8308	New Section Added	Ch.155	- 394
18-8309	New Section Added	Ch.155	- 394
18-8310	New Section Added	Ch.155	- 394
18-8311	New Section Added	Ch.155	- 394
TITLE 19			
19-403	Referred to	Ch.307	- 1137
19-2407	Amended	Ch. 87	- 216
19-2513	Amended	Ch.106	- 272
19-2520	Amended	Ch. 86	- 215
19-2520	Amended	Ch.101	- 255
19-2520	Redesignated 19-2521	Ch. 86	- 215

TITLE 19 (Continued)		Chapter	-	Page
19-2520	Redesignated 19-2521	Ch.101	-	255
19-2520	Amended	Ch.264	-	897
19-2520G	New Section Added	Ch.152	-	387
19-2521	Redesignated from 19-2520	Ch. 86	-	215
19-2521	Redesignated from 19-2520	Ch.101	-	255
19-4705	Amended	Ch.311	-	1146
19-4902	Amended	Ch.265	-	898
19-4904	Amended	Ch.265	-	898
19-5307	Amended	Ch.236	-	818
TITLE 20				
20-219	Amended	Ch.101	-	256
20-223	Amended	Ch.106	-	271
20-408	Amended	Ch.327	-	1198
20-602	Amended	Ch.213	-	579
20-603	Repealed	Ch.213	-	579
20-614	Amended	Ch.213	-	579
TITLE 21				
21-135	Amended	Ch.274	-	926
21-810	Amended	Ch.387	-	1419
TITLE 22				
22-103	Amended	Ch. 30	-	98
Chapter 2	Referred to	Ch. 55	-	152
22-202A	Amended	Ch.210	-	571
22-415	Amended	Ch. 70	-	184
22-421	Amended	Ch.207	-	568
22-1103	Amended	Ch. 69	-	182
22-1103	Redesignated 22-1503	Ch. 69	-	182
22-1104	Amended	Ch. 69	-	183
22-1104	Redesignated 22-1504	Ch. 69	-	183
22-1104	Amended	Ch.216	-	589
22-1108	Amended	Ch. 69	-	184
22-1108	Redesignated 22-1508	Ch. 69	-	184
22-1109	Amended	Ch. 69	-	184
22-1109	Redesignated 22-1509	Ch. 69	-	184
22-1207	Amended	Ch.211	-	572
22-1209	Amended	Ch.327	-	1199
22-1213	Amended	Ch.216	-	590
22-1407	Amended	Ch. 68	-	181
22-1503	Redesignated from 22-1103	Ch. 69	-	182
22-1504	Redesignated from 22-1104	Ch. 69	-	183
22-1508	Redesignated from 22-1108	Ch. 69	-	184
22-1509	Redesignated from 22-1109	Ch. 69	-	184
22-2401	Redesignated from 22-2470	Ch.247	-	860
22-2402	Redesignated from 22-2472	Ch.247	-	860
22-2403	Redesignated from 22-2473	Ch.247	-	861
22-2404	New Section Added	Ch.247	-	863
22-2405	Redesignated from 22-2474	Ch.247	-	864
22-2406	Redesignated from 22-2482	Ch.247	-	866
22-2407	Redesignated from 22-2471	Ch.247	-	867
22-2408	Redesignated from 22-2481	Ch.247	-	868
22-2409	Redesignated from 22-2488	Ch.247	-	868
22-2410	Redesignated from 22-2484	Ch.247	-	869

	Chapter	Page
TITLE 22 (Continued)		
22-2470	Amended	Ch.247 - 860
22-2470	Redesignated 22-2401	Ch.247 - 860
22-2471	Amended	Ch.247 - 867
22-2471	Redesignated 22-2407	Ch.247 - 867
22-2472	Amended	Ch.247 - 860
22-2472	Redesignated 22-2402	Ch.247 - 860
22-2473	Amended	Ch.247 - 861
22-2473	Redesignated 22-2403	Ch.247 - 861
22-2474	Amended	Ch.247 - 864
22-2474	Redesignated 22-2405	Ch.247 - 864
22-2475	Repealed	Ch.247 - 866
22-2476	Repealed	Ch.247 - 864
22-2476	Repealed	Ch.247 - 869
22-2478	Repealed	Ch.247 - 869
22-2479	Repealed	Ch.247 - 869
22-2480	Repealed	Ch.247 - 869
22-2481	Amended	Ch.247 - 868
22-2481	Redesignated 22-2408	Ch.247 - 868
22-2482	Amended	Ch.247 - 866
22-2482	Redesignated 22-2406	Ch.247 - 866
22-2483	Repealed	Ch.247 - 867
22-2484	Amended	Ch.247 - 869
22-2484	Redesignated 22-2410	Ch.247 - 869
22-2485	Repealed	Ch.247 - 869
22-2486	Repealed	Ch.247 - 869
22-2487	Repealed	Ch.247 - 864
22-2488	Amended	Ch.247 - 868
22-2488	Redesignated 22-2409	Ch.247 - 868
22-2518	Amended	Ch. 11 - 37
22-2520	Amended	Ch. 11 - 38
22-2919	Amended	Ch.327 - 1200
22-3114	Amended	Ch.216 - 590
22-3319	Amended	Ch.327 - 1200
22-3402	Amended	Ch. 54 - 142
22-3404	Amended	Ch. 54 - 144
22-3405	Amended	Ch. 54 - 147
22-3406	Amended	Ch. 54 - 147
22-3420	Amended	Ch. 54 - 149
22-3607	Amended	Ch.327 - 1201
22-3707	Amended	Ch.327 - 1202
22-3813	Amended	Ch.216 - 591
22-4010	Amended	Ch.327 - 1202
TITLE 23		
23-305	Amended	Ch.238 - 824
23-903	Amended	Ch.240 - 846
23-933	Amended	Ch.347 - 1291
23-1015	Amended	Ch.216 - 592
23-1016	Amended	Ch.216 - 593
23-1037	Amended	Ch.347 - 1291
23-1101	New Section Added	Ch.312 - 1148
23-1102	New Section Added	Ch.312 - 1148
23-1103	New Section Added	Ch.312 - 1150

TITLE 23 (Continued)

	Chapter	Page
23-1104	New Section Added	Ch.312 - 1151
23-1105	New Section Added	Ch.312 - 1153
23-1106	New Section Added	Ch.312 - 1154
23-1107	New Section Added	Ch.312 - 1154
23-1108	New Section Added	Ch.312 - 1155
23-1109	New Section Added	Ch.312 - 1155
23-1110	New Section Added	Ch.312 - 1155
23-1111	New Section Added	Ch.312 - 1156
23-1112	New Section Added	Ch.312 - 1156
23-1113	New Section Added	Ch.312 - 1157
23-1306	Amended	Ch.333 - 1232
23-1308A	Amended	Ch.333 - 1233
23-1328	Amended	Ch.333 - 1283
23-1331	Amended	Ch.347 - 1292

TITLE 25

25-202	Amended	Ch. 16 - 58
25-204	Amended	Ch. 16 - 59
25-207	Amended	Ch. 16 - 59
25-208	Amended	Ch. 16 - 59
25-209	Amended	Ch. 16 - 60
25-210	Amended	Ch. 16 - 60
25-211	Amended	Ch. 16 - 61
25-212	Amended	Ch. 16 - 61
25-213	Amended	Ch. 16 - 62
25-214A	Amended	Ch. 16 - 62
25-215	Amended	Ch. 16 - 63
25-216	Amended	Ch. 16 - 63
25-217	Amended	Ch. 16 - 64
25-218	Amended	Ch. 16 - 64
25-221	Amended	Ch. 16 - 65
25-221A	Amended	Ch. 16 - 65
25-222	Amended	Ch. 16 - 65
25-225A	Amended	Ch.216 - 594
25-233	Amended	Ch. 16 - 66
25-236	Amended	Ch. 16 - 66
25-301	Amended	Ch. 15 - 56
25-302	Amended	Ch. 15 - 56
25-303	Amended	Ch. 15 - 57
25-304	Amended	Ch. 15 - 57
25-306	Amended	Ch. 15 - 57
25-307	Amended	Ch. 15 - 57
25-308	Amended	Ch. 15 - 58
25-402	Amended	Ch. 14 - 55
25-403	Amended	Ch. 14 - 55
25-601	Amended	Ch. 13 - 49
25-602	Amended	Ch. 13 - 50
25-603	Amended	Ch. 13 - 50
25-604	Amended	Ch. 13 - 50
25-605	Amended	Ch. 13 - 50
25-606	Amended	Ch. 13 - 51
25-607	Amended	Ch. 13 - 51
25-608	Amended	Ch. 13 - 52

TITLE 25 (Continued)		Chapter	-	Page
25-609	Amended	Ch. 13	-	52
25-610	Amended	Ch. 13	-	52
25-611	Amended	Ch. 13	-	52
25-612	Amended	Ch. 13	-	53
25-613	Amended	Ch. 13	-	53
25-613A	Amended	Ch.216	-	595
25-614	Amended	Ch. 13	-	53
25-614A	Amended	Ch. 13	-	53
25-614A	Amended	Ch.216	-	595
25-615	Amended	Ch. 13	-	54
25-616	Amended	Ch. 13	-	54
25-1160	Amended	Ch.122	-	311
25-2506	Amended	Ch.133	-	328
25-2507	Amended	Ch.327	-	1203
25-2510	New Section Added	Ch.133	-	328
25-2717	Amended	Ch. 12	-	39
25-2718	Amended	Ch. 12	-	40
25-2719	Amended	Ch. 12	-	42
25-2720	Amended	Ch. 12	-	43
25-2721	Amended	Ch. 12	-	44
25-2722	Amended	Ch. 12	-	45
25-2723	Amended	Ch. 12	-	46
25-2725	Amended	Ch. 12	-	47
25-2726	Amended	Ch. 12	-	48
25-2728	New Section Added	Ch. 12	-	49
25-3112	Amended	Ch.327	-	1203
TITLE 26				
26-213	Amended	Ch. 53	-	137
26-309	Amended	Ch. 52	-	133
26-309	Amended	Ch. 53	-	139
26-701	Amended	Ch. 53	-	141
26-716	Amended	Ch. 52	-	135
26-1111	Amended	Ch.187	-	477
26-1112	Amended	Ch.187	-	478
26-1204	Repealed	Ch. 85	-	214
26-1205	Repealed	Ch. 85	-	214
26-1209	Repealed	Ch. 85	-	214
26-1212	Amended	Ch. 53	-	141
26-1213	Amended	Ch. 53	-	142
26-1809	Amended	Ch.216	-	596
26-1855	Amended	Ch. 52	-	135
26-1856	Amended	Ch. 52	-	135
Chapter 22	Referred to	Ch.224	-	785
26-2229A	Amended	Ch.165	-	417
26-2234	Amended	Ch.165	-	418
26-2235	Amended	Ch.165	-	419
26-2236	Amended	Ch.165	-	420
26-2239	Amended	Ch.165	-	420
26-2242	Amended	Ch.165	-	421
26-2244	Amended	Ch.165	-	421
26-2249	Amended	Ch.216	-	596
26-2250	Amended	Ch.165	-	422

TITLE 26 (Continued)		Chapter	- Page
26-2251	Repealed	Ch.165	- 423
26-2251	New Section Added	Ch.165	- 423
26-2252	Repealed	Ch.165	- 423
26-2802	Referred to	Ch.165	- 421
26-2805	Amended	Ch.216	- 596
TITLE 27			
Chapter 1	Referred to	Ch.256	- 885
27-116	Amended	Ch.256	- 882
TITLE 28			
Title 28	Referred to	Ch.312	- 1149
28-1-105	Amended	Ch.287	- 1013
28-1-105	Amended	Ch.288	- 1074
28-1-201	Amended	Ch.287	- 1013
28-1-201	Amended	Ch.288	- 1013
28-1-207	Amended	Ch.288	- 1079
28-2-403	Amended	Ch.288	- 1079
28-2-511	Amended	Ch.288	- 1079
28-3-101	Repealed	Ch.288	- 1021
28-3-101	New Section Added	Ch.288	- 1021
28-3-102	Repealed	Ch.288	- 1021
28-3-102	New Section Added	Ch.288	- 1021
28-3-103	Repealed	Ch.288	- 1021
28-3-103	New Section Added	Ch.288	- 1021
28-3-104	Repealed	Ch.288	- 1021
28-3-104	New Section Added	Ch.288	- 1023
28-3-105	Repealed	Ch.288	- 1021
28-3-105	New Section Added	Ch.288	- 1024
28-3-106	Repealed	Ch.288	- 1021
28-3-106	New Section Added	Ch.288	- 1024
28-3-107	Repealed	Ch.288	- 1021
28-3-107	New Section Added	Ch.288	- 1024
28-3-108	Repealed	Ch.288	- 1021
28-3-108	New Section Added	Ch.288	- 1024
28-3-109	Repealed	Ch.288	- 1021
28-3-109	New Section Added	Ch.288	- 1025
28-3-110	Repealed	Ch.288	- 1021
28-3-110	New Section Added	Ch.288	- 1025
28-3-111	Repealed	Ch.288	- 1021
28-3-111	New Section Added	Ch.288	- 1026
28-3-112	Repealed	Ch.288	- 1021
28-3-112	New Section Added	Ch.288	- 1026
28-3-113	Repealed	Ch.288	- 1021
28-3-113	New Section Added	Ch.288	- 1026
28-3-114	Repealed	Ch.288	- 1021
28-3-114	New Section Added	Ch.288	- 1027
28-3-115	Repealed	Ch.288	- 1021
28-3-115	New Section Added	Ch.288	- 1027
28-3-116	Repealed	Ch.288	- 1021
28-3-116	New Section Added	Ch.288	- 1027
28-3-117	Repealed	Ch.288	- 1021
28-3-117	New Section Added	Ch.288	- 1028
28-3-118	Repealed	Ch.288	- 1021

TITLE 28 (Continued)

	Chapter	Page
28-3-118	New Section Added	Ch.288 - 1028
28-3-119	Repealed	Ch.288 - 1021
28-3-119	New Section Added	Ch.288 - 1029
28-3-120	Repealed	Ch.288 - 1021
28-3-121	Repealed	Ch.288 - 1021
28-3-122	Repealed	Ch.288 - 1021
28-3-201	Repealed	Ch.288 - 1021
28-3-201	New Section Added	Ch.288 - 1029
28-3-202	Repealed	Ch.288 - 1021
28-3-202	New Section Added	Ch.288 - 1029
28-3-203	Repealed	Ch.288 - 1021
28-3-203	New Section Added	Ch.288 - 1029
28-3-204	Repealed	Ch.288 - 1021
28-3-204	New Section Added	Ch.288 - 1030
28-3-205	Repealed	Ch.288 - 1021
28-3-205	New Section Added	Ch.288 - 1030
28-3-206	Repealed	Ch.288 - 1021
28-3-206	New Section Added	Ch.288 - 1030
28-3-207	Repealed	Ch.288 - 1021
28-3-207	New Section Added	Ch.288 - 1032
28-3-208	Repealed	Ch.288 - 1021
28-3-301	Repealed	Ch.288 - 1021
28-3-301	New Section Added	Ch.288 - 1032
28-3-302	Repealed	Ch.288 - 1021
28-3-302	New Section Added	Ch.288 - 1032
28-3-303	Repealed	Ch.288 - 1021
28-3-303	New Section Added	Ch.288 - 1033
28-3-304	Repealed	Ch.288 - 1021
28-3-304	New Section Added	Ch.288 - 1033
28-3-305	Repealed	Ch.288 - 1021
28-3-305	New Section Added	Ch.288 - 1034
28-3-306	Repealed	Ch.288 - 1021
28-3-306	New Section Added	Ch.288 - 1035
28-3-307	Repealed	Ch.288 - 1021
28-3-307	New Section Added	Ch.288 - 1035
28-3-308	New Section Added	Ch.288 - 1035
28-3-309	New Section Added	Ch.288 - 1036
28-3-310	New Section Added	Ch.288 - 1036
28-3-311	New Section Added	Ch.288 - 1037
28-3-401	Repealed	Ch.288 - 1021
28-3-401	New Section Added	Ch.288 - 1038
28-3-402	Repealed	Ch.288 - 1021
28-3-402	New Section Added	Ch.288 - 1038
28-3-403	Repealed	Ch.288 - 1021
28-3-403	New Section Added	Ch.288 - 1039
28-3-404	Repealed	Ch.288 - 1021
28-3-404	New Section Added	Ch.288 - 1039
28-3-405	Repealed	Ch.288 - 1021
28-3-405	New Section Added	Ch.288 - 1039
28-3-406	Repealed	Ch.288 - 1021
28-3-406	New Section Added	Ch.288 - 1041
28-3-407	Repealed	Ch.288 - 1021

TITLE 28 (Continued)		Chapter	Page
28-3-407	New Section Added	Ch.288	- 1041
28-3-408	Repealed	Ch.288	- 1021
28-3-408	New Section Added	Ch.288	- 1041
28-3-409	Repealed	Ch.288	- 1021
28-3-409	New Section Added	Ch.288	- 1042
28-3-410	Repealed	Ch.288	- 1021
28-3-410	New Section Added	Ch.288	- 1042
28-3-411	Repealed	Ch.288	- 1021
28-3-411	New Section Added	Ch.288	- 1042
28-3-412	Repealed	Ch.288	- 1021
28-3-412	New Section Added	Ch.288	- 1043
28-3-413	Repealed	Ch.288	- 1021
28-3-413	New Section Added	Ch.288	- 1043
28-3-414	Repealed	Ch.288	- 1021
28-3-414	New Section Added	Ch.288	- 1043
28-3-415	Repealed	Ch.288	- 1021
28-3-415	New Section Added	Ch.288	- 1044
28-3-416	Repealed	Ch.288	- 1021
28-3-416	New Section Added	Ch.288	- 1044
28-3-417	Repealed	Ch.288	- 1021
28-3-417	New Section Added	Ch.288	- 1045
28-3-418	Repealed	Ch.288	- 1021
28-3-418	New Section Added	Ch.288	- 1046
28-3-419	Repealed	Ch.288	- 1021
28-3-419	New Section Added	Ch.288	- 1046
28-3-420	New Section Added	Ch.288	- 1047
28-3-501	Repealed	Ch.288	- 1021
28-3-501	New Section Added	Ch.288	- 1047
28-3-502	Repealed	Ch.288	- 1021
28-3-502	New Section Added	Ch.288	- 1048
28-3-503	Repealed	Ch.288	- 1021
28-3-503	New Section Added	Ch.288	- 1049
28-3-504	Repealed	Ch.288	- 1021
28-3-504	New Section Added	Ch.288	- 1050
28-3-505	Repealed	Ch.288	- 1021
28-3-505	New Section Added	Ch.288	- 1050
28-3-506	Repealed	Ch.288	- 1021
28-3-507	Repealed	Ch.288	- 1021
28-3-508	Repealed	Ch.288	- 1021
28-3-509	Repealed	Ch.288	- 1021
28-3-510	Repealed	Ch.288	- 1021
28-3-510A	Repealed	Ch.288	- 1021
28-3-510B	Repealed	Ch.288	- 1021
28-3-510C	Repealed	Ch.288	- 1021
28-3-511	Repealed	Ch.288	- 1021
28-3-601	Repealed	Ch.288	- 1021
28-3-601	New Section Added	Ch.288	- 1050
28-3-602	Repealed	Ch.288	- 1021
28-3-602	New Section Added	Ch.288	- 1051
28-3-603	Repealed	Ch.288	- 1021
28-3-603	New Section Added	Ch.288	- 1051
28-3-604	Repealed	Ch.288	- 1021

TITLE 28 (Continued)		Chapter	Page
28-3-604	New Section Added	Ch.288	- 1051
28-3-605	Repealed	Ch.288	- 1021
28-3-605	New Section Added	Ch.288	- 1052
28-3-606	Repealed	Ch.288	- 1021
28-3-701	Repealed	Ch.288	- 1021
28-3-801	Repealed	Ch.288	- 1021
28-3-802	Repealed	Ch.288	- 1021
28-3-803	Repealed	Ch.288	- 1021
28-3-804	Repealed	Ch.288	- 1021
28-3-805	Repealed	Ch.288	- 1021
28-4-101	Amended	Ch.288	- 1053
28-4-102	Amended	Ch.288	- 1053
28-4-103	Amended	Ch.288	- 1053
28-4-104	Amended	Ch.288	- 1054
28-4-105	Amended	Ch.288	- 1056
28-4-106	Amended	Ch.288	- 1056
28-4-106	Redesignated 28-4-107	Ch.288	- 1056
28-4-106	New Section Added	Ch.288	- 1056
28-4-107	Amended	Ch.288	- 1056
28-4-107	Redesignated 28-4-108	Ch.288	- 1056
28-4-107	Redesignated from 28-4-106	Ch.288	- 1057
28-4-108	Amended	Ch.288	- 1057
28-4-108	Redesignated 28-4-109	Ch.288	- 1057
28-4-108	Redesignated from 28-4-107	Ch.288	- 1056
28-4-109	Repealed	Ch.288	- 1021
28-4-109	Redesignated from 28-4-108	Ch.288	- 1057
28-4-110	New Section Added	Ch.288	- 1057
28-4-111	New Section Added	Ch.288	- 1058
28-4-201	Amended	Ch.288	- 1058
28-4-202	Amended	Ch.288	- 1058
28-4-203	Amended	Ch.288	- 1059
28-4-204	Amended	Ch.288	- 1059
28-4-205	Amended	Ch.288	- 1060
28-4-206	Amended	Ch.288	- 1060
28-4-207	Repealed	Ch.288	- 1021
28-4-207	New Section Added	Ch.288	- 1060
28-4-208	Amended	Ch.288	- 1061
28-4-208	Redesignated 28-4-210	Ch.288	- 1062
28-4-208	New Section Added	Ch.288	- 1061
28-4-209	Amended	Ch.288	- 1062
28-4-209	Redesignated 28-4-211	Ch.288	- 1063
28-4-209	New Section Added	Ch.288	- 1062
28-4-210	Amended	Ch.288	- 1062
28-4-210	Redesignated 28-4-212	Ch.288	- 1063
28-4-210	Redesignated from 28-4-208	Ch.288	- 1062
28-4-211	Repealed	Ch.288	- 1064
28-4-211	Redesignated from 28-4-209	Ch.288	- 1063
28-4-212	Amended	Ch.288	- 1063
28-4-212	Redesignated 28-4-214	Ch.288	- 1065
28-4-212	Redesignated from 28-4-210	Ch.288	- 1063
28-4-213	Amended	Ch.288	- 1065
28-4-213	Redesignated 28-4-215	Ch.288	- 1063

TITLE 28 (Continued)

	Chapter	Page
28-4-213	New Section Added	Ch.288 - 1064
28-4-214	Amended	Ch.288 - 1066
28-4-214	Redesignated 28-4-216	Ch.288 - 1066
28-4-214	Redesignated from 28-4-212	Ch.288 - 1065
28-4-215	Redesignated from 28-4-213	Ch.288 - 1065
28-4-216	Redesignated from 28-4-214	Ch.288 - 1066
28-4-301	Amended	Ch.288 - 1067
28-4-302	Amended	Ch.288 - 1068
28-4-303	Amended	Ch.288 - 1068
28-4-401	Amended	Ch.288 - 1069
28-4-402	Amended	Ch.288 - 1069
28-4-403	Amended	Ch.288 - 1070
28-4-405	Amended	Ch.288 - 1070
28-4-406	Amended	Ch.288 - 1071
28-4-407	Amended	Ch.288 - 1072
28-4-501	Amended	Ch.288 - 1073
28-4-502	Amended	Ch.288 - 1073
28-4-503	Amended	Ch.288 - 1073
28-4-504	Amended	Ch.288 - 1074
28-6-101	Repealed	Ch.288 - 1074
28-6-102	Repealed	Ch.288 - 1074
28-6-103	Repealed	Ch.288 - 1074
28-6-104	Repealed	Ch.288 - 1074
28-6-105	Repealed	Ch.288 - 1074
28-6-106	Repealed	Ch.288 - 1074
28-6-107	Repealed	Ch.288 - 1074
28-6-108	Repealed	Ch.288 - 1074
28-6-109	Repealed	Ch.288 - 1074
28-6-110	Repealed	Ch.288 - 1074
28-6-111	Repealed	Ch.288 - 1074
28-9-111	Repealed	Ch.288 - 1074
28-9-113	Amended	Ch.287 - 1018
28-9-203	Amended	Ch.288 - 1080
28-9-407	Amended	Ch. 33 - 108
28-12-101	New Section Added	Ch.287 - 978
28-12-102	New Section Added	Ch.287 - 978
28-12-103	New Section Added	Ch.287 - 978
28-12-104	New Section Added	Ch.287 - 981
28-12-105	New Section Added	Ch.287 - 981
28-12-106	New Section Added	Ch.287 - 982
28-12-107	New Section Added	Ch.287 - 982
28-12-108	New Section Added	Ch.287 - 982
28-12-109	New Section Added	Ch.287 - 982
28-12-201	New Section Added	Ch.287 - 983
28-12-202	New Section Added	Ch.287 - 984
28-12-203	New Section Added	Ch.287 - 984
28-12-204	New Section Added	Ch.287 - 984
28-12-205	New Section Added	Ch.287 - 984
28-12-206	New Section Added	Ch.287 - 984
28-12-207	New Section Added	Ch.287 - 985
28-12-208	New Section Added	Ch.287 - 985
28-12-209	New Section Added	Ch.287 - 985

TITLE 28 (Continued)

		Chapter - Page
28-12-210	New Section Added	Ch.287 - 986
28-12-211	New Section Added	Ch.287 - 986
28-12-212	New Section Added	Ch.287 - 986
28-12-213	New Section Added	Ch.287 - 987
28-12-214	New Section Added	Ch.287 - 987
28-12-215	New Section Added	Ch.287 - 988
28-12-216	New Section Added	Ch.287 - 988
28-12-217	New Section Added	Ch.287 - 988
28-12-218	New Section Added	Ch.287 - 988
28-12-219	New Section Added	Ch.287 - 989
28-12-220	New Section Added	Ch.287 - 989
28-12-221	New Section Added	Ch.287 - 990
28-12-301	New Section Added	Ch.287 - 990
28-12-302	New Section Added	Ch.287 - 990
28-12-303	New Section Added	Ch.287 - 990
28-12-304	New Section Added	Ch.287 - 992
28-12-305	New Section Added	Ch.287 - 992
28-12-306	New Section Added	Ch.287 - 993
28-12-307	New Section Added	Ch.287 - 993
28-12-308	New Section Added	Ch.287 - 994
28-12-309	New Section Added	Ch.287 - 994
28-12-310	New Section Added	Ch.287 - 996
28-12-311	New Section Added	Ch.287 - 997
28-12-401	New Section Added	Ch.287 - 997
28-12-402	New Section Added	Ch.287 - 997
28-12-403	New Section Added	Ch.287 - 997
28-12-404	New Section Added	Ch.287 - 998
28-12-405	New Section Added	Ch.287 - 998
28-12-406	New Section Added	Ch.287 - 998
28-12-407	New Section Added	Ch.287 - 999
28-12-501	New Section Added	Ch.287 - 999
28-12-502	New Section Added	Ch.287 - 1000
28-12-503	New Section Added	Ch.287 - 1000
28-12-504	New Section Added	Ch.287 - 1000
28-12-505	New Section Added	Ch.287 - 1001
28-12-506	New Section Added	Ch.287 - 1001
28-12-507	New Section Added	Ch.287 - 1001
28-12-508	New Section Added	Ch.287 - 1001
28-12-509	New Section Added	Ch.287 - 1003
28-12-510	New Section Added	Ch.287 - 1003
28-12-511	New Section Added	Ch.287 - 1003
28-12-512	New Section Added	Ch.287 - 1004
28-12-513	New Section Added	Ch.287 - 1004
28-12-514	New Section Added	Ch.287 - 1005
28-12-515	New Section Added	Ch.287 - 1005
28-12-516	New Section Added	Ch.287 - 1005
28-12-517	New Section Added	Ch.287 - 1006
28-12-518	New Section Added	Ch.287 - 1006
28-12-519	New Section Added	Ch.287 - 1007
28-12-520	New Section Added	Ch.287 - 1007
28-12-521	New Section Added	Ch.287 - 1008
28-12-522	New Section Added	Ch.287 - 1008

TITLE 28 (Continued)		Chapter	Page
28-12-523	New Section Added	Ch.287	- 1008
28-12-524	New Section Added	Ch.287	- 1009
28-12-525	New Section Added	Ch.287	- 1009
28-12-526	New Section Added	Ch.287	- 1010
28-12-527	New Section Added	Ch.287	- 1010
28-12-528	New Section Added	Ch.287	- 1011
28-12-529	New Section Added	Ch.287	- 1011
28-12-530	New Section Added	Ch.287	- 1012
28-12-531	New Section Added	Ch.287	- 1012
28-12-532	New Section Added	Ch.287	- 1013
28-36-101	New Section Added	Ch.232	- 807
28-36-102	New Section Added	Ch.232	- 807
28-36-103	New Section Added	Ch.232	- 808
28-36-104	New Section Added	Ch.232	- 808
28-36-105	New Section Added	Ch.232	- 808
28-36-106	New Section Added	Ch.232	- 809
28-36-107	New Section Added	Ch.232	- 809
28-36-108	New Section Added	Ch.232	- 809
28-36-109	New Section Added	Ch.232	- 809
28-36-110	New Section Added	Ch.232	- 809
28-36-111	New Section Added	Ch.232	- 811
28-41-301	Referred to	Ch.165	- 420
28-41-301	Referred to	Ch.283	- 958
28-42-201	Amended	Ch.227	- 798
28-42-301	Amended	Ch.227	- 798
28-44-108	Amended	Ch. 42	- 114
TITLE 29			
29-116	New Section Added	Ch.397	- 1461
TITLE 30			
30-1-128	Amended	Ch.338	- 1269
30-3-1	New Section Added	Ch.220	- 687
30-3-2	New Section Added	Ch.220	- 687
30-3-3	New Section Added	Ch.220	- 688
30-3-4	New Section Added	Ch.220	- 688
30-3-5	New Section Added	Ch.220	- 689
30-3-6	New Section Added	Ch.220	- 689
30-3-7	New Section Added	Ch.220	- 690
30-3-8	New Section Added	Ch.220	- 690
30-3-9	New Section Added	Ch.220	- 690
30-3-10	New Section Added	Ch.220	- 690
30-3-11	New Section Added	Ch.220	- 691
30-3-12	New Section Added	Ch.220	- 692
30-3-13	New Section Added	Ch.220	- 693
30-3-14	New Section Added	Ch.220	- 694
30-3-15	New Section Added	Ch.220	- 694
30-3-16	New Section Added	Ch.220	- 694
30-3-17	New Section Added	Ch.220	- 694
30-3-18	New Section Added	Ch.220	- 695
30-3-19	New Section Added	Ch.220	- 695
30-3-20	New Section Added	Ch.220	- 695
30-3-21	New Section Added	Ch.220	- 696
30-3-22	New Section Added	Ch.220	- 696

TITLE 30 (Continued)		Chapter	Page
30-3-23	New Section Added	Ch.220	- 696
30-3-24	New Section Added	Ch.220	- 697
30-3-25	New Section Added	Ch.220	- 697
30-3-26	New Section Added	Ch.220	- 698
30-3-27	New Section Added	Ch.220	- 698
30-3-28	New Section Added	Ch.220	- 699
30-3-29	New Section Added	Ch.220	- 700
30-3-30	New Section Added	Ch.220	- 700
30-3-31	New Section Added	Ch.220	- 700
30-3-32	New Section Added	Ch.220	- 701
30-3-33	New Section Added	Ch.220	- 701
30-3-34	New Section Added	Ch.220	- 701
30-3-35	New Section Added	Ch.220	- 701
30-3-36	New Section Added	Ch.220	- 702
30-3-37	New Section Added	Ch.220	- 702
30-3-38	New Section Added	Ch.220	- 702
30-3-39	New Section Added	Ch.220	- 702
30-3-40	New Section Added	Ch.220	- 702
30-3-41	New Section Added	Ch.220	- 702
30-3-42	New Section Added	Ch.220	- 702
30-3-43	New Section Added	Ch.220	- 703
30-3-44	New Section Added	Ch.220	- 703
30-3-45	New Section Added	Ch.220	- 703
30-3-46	New Section Added	Ch.220	- 703
30-3-47	New Section Added	Ch.220	- 704
30-3-48	New Section Added	Ch.220	- 704
30-3-49	New Section Added	Ch.220	- 705
30-3-50	New Section Added	Ch.220	- 705
30-3-51	New Section Added	Ch.220	- 706
30-3-52	New Section Added	Ch.220	- 706
30-3-53	New Section Added	Ch.220	- 707
30-3-54	New Section Added	Ch.220	- 708
30-3-55	New Section Added	Ch.220	- 709
30-3-56	New Section Added	Ch.220	- 709
30-3-57	New Section Added	Ch.220	- 709
30-3-58	New Section Added	Ch.220	- 709
30-3-59	New Section Added	Ch.220	- 710
30-3-60	New Section Added	Ch.220	- 710
30-3-61	New Section Added	Ch.220	- 710
30-3-62	New Section Added	Ch.220	- 712
30-3-63	New Section Added	Ch.220	- 712
30-3-64	New Section Added	Ch.220	- 712
30-3-65	New Section Added	Ch.220	- 712
30-3-66	New Section Added	Ch.220	- 712
30-3-67	New Section Added	Ch.220	- 712
30-3-68	New Section Added	Ch.220	- 713
30-3-69	New Section Added	Ch.220	- 713
30-3-70	New Section Added	Ch.220	- 713
30-3-71	New Section Added	Ch.220	- 714
30-3-72	New Section Added	Ch.220	- 714
30-3-73	New Section Added	Ch.220	- 715
30-3-74	New Section Added	Ch.220	- 715

TITLE 30 (Continued)

	Chapter	Page
30-3-75	New Section Added	Ch.220 - 715
30-3-76	New Section Added	Ch.220 - 715
30-3-77	New Section Added	Ch.220 - 716
30-3-78	New Section Added	Ch.220 - 716
30-3-79	New Section Added	Ch.220 - 716
30-3-80	New Section Added	Ch.220 - 717
30-3-81	New Section Added	Ch.220 - 717
30-3-82	New Section Added	Ch.220 - 718
30-3-83	New Section Added	Ch.220 - 718
30-3-84	New Section Added	Ch.220 - 719
30-3-85	New Section Added	Ch.220 - 719
30-3-86	New Section Added	Ch.220 - 719
30-3-87	New Section Added	Ch.220 - 720
30-3-88	New Section Added	Ch.220 - 720
30-3-89	New Section Added	Ch.220 - 722
30-3-90	New Section Added	Ch.220 - 722
30-3-91	New Section Added	Ch.220 - 722
30-3-92	New Section Added	Ch.220 - 723
30-3-93	New Section Added	Ch.220 - 724
30-3-94	New Section Added	Ch.220 - 724
30-3-95	New Section Added	Ch.220 - 725
30-3-96	New Section Added	Ch.220 - 725
30-3-97	New Section Added	Ch.220 - 726
30-3-98	New Section Added	Ch.220 - 726
30-3-99	New Section Added	Ch.220 - 727
30-3-100	New Section Added	Ch.220 - 727
30-3-101	New Section Added	Ch.220 - 727
30-3-102	New Section Added	Ch.220 - 728
30-3-103	New Section Added	Ch.220 - 729
30-3-104	New Section Added	Ch.220 - 729
30-3-105	New Section Added	Ch.220 - 729
30-3-106	New Section Added	Ch.220 - 730
30-3-107	New Section Added	Ch.220 - 730
30-3-108	New Section Added	Ch.220 - 731
30-3-109	New Section Added	Ch.220 - 731
30-3-110	New Section Added	Ch.220 - 731
30-3-111	New Section Added	Ch.220 - 732
30-3-112	New Section Added	Ch.220 - 732
30-3-113	New Section Added	Ch.220 - 733
30-3-114	New Section Added	Ch.220 - 734
30-3-115	New Section Added	Ch.220 - 734
30-3-116	New Section Added	Ch.220 - 735
30-3-117	New Section Added	Ch.220 - 736
30-3-118	New Section Added	Ch.220 - 736
30-3-119	New Section Added	Ch.220 - 736
30-3-120	New Section Added	Ch.220 - 737
30-3-121	New Section Added	Ch.220 - 737
30-3-122	New Section Added	Ch.220 - 738
30-3-123	New Section Added	Ch.220 - 738
30-3-124	New Section Added	Ch.220 - 739
30-3-125	New Section Added	Ch.220 - 739
30-3-126	New Section Added	Ch.220 - 739

TITLE 30 (Continued)		Chapter	Page
30-3-127	New Section Added	Ch.220	- 740
30-3-128	New Section Added	Ch.220	- 741
30-3-129	New Section Added	Ch.220	- 741
30-3-130	New Section Added	Ch.220	- 742
30-3-131	New Section Added	Ch.220	- 742
30-3-132	New Section Added	Ch.220	- 743
30-3-133	New Section Added	Ch.220	- 743
30-3-134	New Section Added	Ch.220	- 744
30-3-135	New Section Added	Ch.220	- 744
30-3-136	New Section Added	Ch.220	- 744
30-3-137	New Section Added	Ch.220	- 745
30-3-138	New Section Added	Ch.220	- 745
30-3-139	New Section Added	Ch.220	- 745
30-3-140	New Section Added	Ch.220	- 745
30-3-141	New Section Added	Ch.220	- 746
30-3-142	New Section Added	Ch.220	- 746
30-3-143	New Section Added	Ch.220	- 746
30-3-144	New Section Added	Ch.220	- 746
30-3-145	New Section Added	Ch.220	- 747
30-301	Repealed	Ch.220	- 687
30-302	Repealed	Ch.220	- 687
30-303	Repealed	Ch.220	- 687
30-304	Repealed	Ch.220	- 687
30-305	Repealed	Ch.220	- 687
30-306	Repealed	Ch.220	- 687
30-307	Repealed	Ch.220	- 687
30-308	Repealed	Ch.220	- 687
30-308A	Repealed	Ch.220	- 687
30-309	Repealed	Ch.220	- 687
30-310	Repealed	Ch.220	- 687
30-311	Repealed	Ch.220	- 687
30-312	Repealed	Ch.220	- 687
30-313	Repealed	Ch.220	- 687
30-314	Repealed	Ch.220	- 687
30-315	Repealed	Ch.220	- 687
30-316	Repealed	Ch.220	- 687
30-317	Repealed	Ch.220	- 687
30-318	Repealed	Ch.220	- 687
30-319	Repealed	Ch.220	- 687
30-320	Repealed	Ch.220	- 687
30-321	Repealed	Ch.220	- 687
30-322	Repealed	Ch.220	- 687
30-323	Repealed	Ch.220	- 687
30-324	Repealed	Ch.220	- 687
30-325	Repealed	Ch.220	- 687
30-326	Repealed	Ch.220	- 687
30-327	Repealed	Ch.220	- 687
30-328	Repealed	Ch.220	- 687
30-329	Amended	Ch.338	- 1269
30-329	Repealed	Ch.220	- 687
Chapter 13	Referred to	Ch.239	- 831
30-1435A	New Section Added	Ch.162	- 412

TITLE 30 (Continued)		Chapter	-	Page
30-1447	Amended	Ch.216	-	596
30-1518	Amended	Ch.216	-	597
TITLE 31				
31-709	Amended	Ch.140	-	373
31-717	Amended	Ch.313	-	1158
Chapter 8	Referred to	Ch. 55	-	152
31-808	Amended	Ch.256	-	882
31-819	Referred to	Ch. 25	-	86
31-819	Referred to	Ch.139	-	354
31-870	Amended	Ch. 41	-	114
31-871	Repealed	Ch.140	-	372
31-871	New Section Added	Ch.140	-	372
31-875	New Section Added	Ch.201	-	555
31-1424	Amended	Ch.362	-	1323
31-1424	Repealed	Ch.362	-	1324
31-1424	New Section Added	Ch.362	-	1324
31-1424A	New Section Added	Ch.329	-	1228
31-1509	Repealed	Ch.103	-	262
31-1509	New Section Added	Ch.103	-	262
31-1510	Repealed	Ch.103	-	262
31-1511	Repealed	Ch.103	-	262
31-1604	Amended	Ch. 25	-	86
31-1701	Amended	Ch.327	-	1204
31-1701	Amended	Ch.387	-	1419
31-1905	Amended	Ch.313	-	1158
31-3201A	Amended	Ch.196	-	536
31-3502	Amended	Ch.112	-	284
31-3503	Amended	Ch.112	-	285
31-3513	Amended	Ch.112	-	285
31-3514	Amended	Ch.112	-	286
31-3517	Amended	Ch.387	-	1419
31-3607	Amended	Ch.112	-	287
31-4313	Amended	Ch.387	-	1421
31-4318A	New Section Added	Ch.285	-	973
Chapter 44	Referred to	Ch.139	-	343
TITLE 32				
32-706A	Amended	Ch.160	-	409
32-1202	Amended	Ch.335	-	1244, 1255
32-1205	Amended	Ch.335	-	1246, 1256
32-1206	Amended	Ch.335	-	1247, 1258
32-1207	Amended	Ch.335	-	1248, 1258
32-1209	Amended	Ch.335	-	1249, 1259
32-1216	New Section Added	Ch.337	-	1266
TITLE 33				
33-101	Amended	Ch.404	-	1471
33-102	Amended	Ch.404	-	1472
33-102A	Amended	Ch.404	-	1472
33-107	Amended	Ch. 57	-	154
33-107A	Amended	Ch.268	-	902
33-201	Amended	Ch.121	-	311
33-205	Referred to	Ch.153	-	389
Chapter 4	Referred to	Ch.303	-	1125

TITLE 33 (Continued)		Chapter	Page
33-428	Amended	Ch. 64	- 166
33-502B	Amended	Ch. 51	- 133
33-512	Amended	Ch. 269	- 904
33-701	Amended	Ch. 327	- 1204
33-701	Amended	Ch. 387	- 1421
33-1208	Amended	Ch. 111	- 281
33-1209	Amended	Ch. 216	- 597
33-1228	Amended	Ch. 398	- 1461
33-1402	Amended	Ch. 76	- 202
33-1509	Amended	Ch. 56	- 153
33-2002	Amended	Ch. 134	- 330
33-2003	Amended	Ch. 409	- 1501
33-2114	Amended	Ch. 327	- 1208
33-2301	Amended	Ch. 183	- 465
33-2401	Repealed	Ch. 57	- 155
33-2401	New Section Added	Ch. 57	- 156
33-2402	Repealed	Ch. 57	- 155
33-2402	New Section Added	Ch. 57	- 156
33-2403	Repealed	Ch. 57	- 155
33-2403	New Section Added	Ch. 57	- 157
33-2404	Repealed	Ch. 57	- 155
33-2404	New Section Added	Ch. 57	- 157
33-2405	Repealed	Ch. 57	- 155
33-2405	New Section Added	Ch. 57	- 157
33-2406	Repealed	Ch. 57	- 155
33-2406	New Section Added	Ch. 57	- 159
33-2407	Repealed	Ch. 57	- 155
33-2407	New Section Added	Ch. 57	- 159
33-2408	Repealed	Ch. 57	- 155
33-2408	New Section Added	Ch. 57	- 159
33-2409	Repealed	Ch. 57	- 155
33-2409	New Section Added	Ch. 57	- 161
33-2601	Repealed	Ch. 186	- 468
33-2601	New Section Added	Ch. 186	- 468
33-2602	Repealed	Ch. 186	- 468
33-2602	New Section Added	Ch. 186	- 468
33-2603	Repealed	Ch. 186	- 468
33-2603	New Section Added	Ch. 186	- 468
33-2604	Repealed	Ch. 186	- 468
33-2604	New Section Added	Ch. 186	- 469
33-2605	Repealed	Ch. 186	- 468
33-2605	New Section Added	Ch. 186	- 469
33-2606	Repealed	Ch. 186	- 468
33-2606	New Section Added	Ch. 186	- 470
33-2607	Repealed	Ch. 186	- 468
33-2607	New Section Added	Ch. 186	- 470
33-2608	Repealed	Ch. 186	- 468
33-2608	New Section Added	Ch. 186	- 471
33-2609	New Section Added	Ch. 186	- 471
33-2609	Redesignated 33-2612	Ch. 186	- 472

TITLE 33 (Continued)		Chapter	-	Page
33-2610	Redesignated 33-2613	Ch.186	-	472
33-2610	New Section Added	Ch.186	-	471
33-2611	Redesignated 33-2614	Ch.186	-	473
33-2611	New Section Added	Ch.186	-	472
33-2612	Redesignated 33-2615	Ch.186	-	473
33-2612	Redesignated from 33-2609	Ch.186	-	472
33-2613	Redesignated 33-2616	Ch.186	-	474
33-2613	Redesignated from 33-2610	Ch.186	-	472
33-2614	Redesignated 33-2617	Ch.186	-	475
33-2614	Redesignated from 33-2611	Ch.186	-	473
33-2615	Redesignated 33-2618	Ch.186	-	475
33-2615	Redesignated from 33-2612	Ch.186	-	473
33-2616	Redesignated 33-2619	Ch.186	-	476
33-2616	Redesignated from 33-2613	Ch.186	-	474
33-2617	Redesignated 33-2620	Ch.186	-	476
33-2617	Redesignated from 33-2614	Ch.186	-	475
33-2618	Redesignated from 33-2615	Ch.186	-	475
33-2619	Redesignated from 33-2616	Ch.186	-	476
33-2620	Redesignated from 33-2617	Ch.186	-	476
Chapter 27	Referred to	Ch.186	-	472
33-2702	Amended	Ch.303	-	1124
33-2705	Amended	Ch.303	-	1124
33-2716	Amended	Ch.303	-	1125
33-2726	Amended	Ch.327	-	1208
33-2726	Amended	Ch.387	-	1424
33-2728	Amended	Ch.303	-	1125
33-2739	Amended	Ch.316	-	1171
33-2802	Amended	Ch.404	-	1473
33-4302A	New Section Added	Ch.346	-	1289
33-4307	Amended	Ch.346	-	1289
TITLE 34				
34-106	Amended	Ch.313	-	1158
34-106	Referred to	Ch.303	-	1124
34-617	Amended	Ch.159	-	409
34-702A	Amended	Ch.313	-	1159
34-1003	Amended	Ch.100	-	253
34-1101	Amended	Ch.313	-	1163
Chapter 14	Referred to	Ch.303	-	1124
34-1401	Amended	Ch.379	-	1392
34-1401	Amended	Ch.313	-	1160
34-1403	Amended	Ch.313	-	1160
34-1404	Repealed	Ch.313	-	1161
34-1404	New Section Added	Ch.313	-	1161
34-1405	Amended	Ch.313	-	1161
34-1406	Amended	Ch.313	-	1162
34-1407	Amended	Ch.313	-	1162
34-1707	Amended	Ch.313	-	1163
TITLE 36				
36-104	Amended	Ch.197	-	539
36-104	Amended	Ch.216	-	599
36-106	Amended	Ch.309	-	1140
36-407	Amended	Ch. 27	-	93

		Chapter	Page
TITLE 36 (Continued)			
36-409	Amended	Ch. 27	- 95
36-411	Amended	Ch. 414	- 1524
36-412	Amended	Ch. 414	- 1524
36-414	Amended	Ch. 327	- 1208
36-501	Amended	Ch. 79	- 207
36-501	Referred to	Ch. 307	- 1137
36-601	Amended	Ch. 129	- 324
36-603	Amended	Ch. 78	- 206
36-604	Amended	Ch. 78	- 206
36-715	Amended	Ch. 332	- 1231
36-716	New Section Added	Ch. 403	- 1470
36-1406	New Section Added	Ch. 307	- 1137
36-2106	Amended	Ch. 257	- 886
36-2114	Amended	Ch. 216	- 602
36-2115	Amended	Ch. 216	- 603
36-2120	New Section Added	Ch. 260	- 891
Chapter 41	Referred to	Ch. 340	- 1277
TITLE 37			
37-2732	Amended	Ch. 105	- 266
37-2732	Referred to	Ch. 264	- 897
37-2732B	Referred to	Ch. 184	- 466
37-2732B	Referred to	Ch. 264	- 897
37-2745	Amended	Ch. 158	- 408
TITLE 38			
38-101	Amended	Ch. 93	- 222
38-111	Amended	Ch. 93	- 223
38-210	Amended	Ch. 216	- 603
38-808	Amended	Ch. 92	- 219
38-1209	Amended	Ch. 130	- 325
38-1221	Amended	Ch. 91	- 219
38-1222	Amended	Ch. 216	- 603
38-1306	Amended	Ch. 216	- 604
38-1517	Amended	Ch. 327	- 1211
38-1601	New Section Added	Ch. 80	- 208
TITLE 39			
Chapter 1	Referred to	Ch. 139	- 343
39-103	Amended	Ch. 267	- 900
39-103	Referred to	Ch. 200	- 551
39-105	Amended	Ch. 139	- 365
39-105	Amended	Ch. 275	- 928
39-107	Amended	Ch. 216	- 605
39-108	Amended	Ch. 275	- 933
39-108	Referred to	Ch. 375	- 1377
39-115	Amended	Ch. 275	- 936
39-117	Amended	Ch. 275	- 937
39-118B	New Section Added	Ch. 275	- 927
39-118C	New Section Added	Ch. 275	- 927
39-118D	New Section Added	Ch. 275	- 928
39-118E	New Section Added	Ch. 275	- 937
39-141	Amended	Ch. 50	- 131
39-144	Amended	Ch. 50	- 133
39-257	Amended	Ch. 315	- 1167

TITLE 39 (Continued)		Chapter	- Page
39-259A	Amended	Ch.315	- 1168
39-270	Amended	Ch.315	- 1170
Chapter 4	Referred to	Ch.139	- 344
39-414	Amended	Ch.139	- 370
39-414A	Amended	Ch.327	- 1211
39-416	Amended	Ch.296	- 1094
39-501	Repealed	Ch. 40	- 113
39-502	Repealed	Ch. 40	- 113
39-503	Repealed	Ch. 40	- 113
39-504	Repealed	Ch. 40	- 113
39-505	Repealed	Ch. 40	- 113
39-506	Repealed	Ch. 40	- 113
39-507	Repealed	Ch. 40	- 113
39-508	Repealed	Ch. 40	- 113
39-509	Repealed	Ch. 40	- 113
39-510	Repealed	Ch. 40	- 113
39-511	Repealed	Ch. 40	- 113
39-512	Repealed	Ch. 40	- 113
39-513	Repealed	Ch. 40	- 113
39-514	Repealed	Ch. 40	- 113
39-515	Repealed	Ch. 40	- 113
39-516	Repealed	Ch. 40	- 113
39-517	Repealed	Ch. 40	- 113
39-604	Amended	Ch. 19	- 71
39-605	Amended	Ch.216	- 607
39-1107	Amended	Ch. 23	- 83
39-1108	Amended	Ch.416	- 1528
39-1119	New Section Added	Ch.416	- 1529
39-1301 thru			
39-1314	Referred to	Ch.112	- 284
39-1319	Amended	Ch.137	- 337
39-1319	Referred to	Ch.112	- 285
39-1325a	Amended	Ch.137	- 338
39-1354	New Section Added	Ch.137	- 339
39-1355	New Section Added	Ch.137	- 339
39-1356	New Section Added	Ch.137	- 340
39-1357	New Section Added	Ch.137	- 340
39-1602	Amended	Ch.114	- 291
39-1805	Amended	Ch.125	- 317
39-1809	New Section Added	Ch.125	- 317
39-1810	New Section Added	Ch.125	- 318
39-2002	Amended	Ch.216	- 608
39-2804	Amended	Ch.199	- 548
39-2805	Amended	Ch.199	- 549
39-2806	Amended	Ch. 81	- 211
39-2807	Amended	Ch.199	- 549
39-3301	Amended	Ch.373	- 1346
39-3302	Amended	Ch.373	- 1347
39-3303	Amended	Ch.373	- 1349
39-3304	Amended	Ch.373	- 1350
39-3305	Amended	Ch.373	- 1350
39-3305	Referred to	Ch.374	- 1357

TITLE 39 (Continued)		Chapter	Page
39-3306	Amended	Ch. 373	- 1350
39-3330	Amended	Ch. 373	- 1350
39-3340	Amended	Ch. 373	- 1351
39-3342	Amended	Ch. 373	- 1351
39-3352	Amended	Ch. 373	- 1352
39-3371	Amended	Ch. 373	- 1353
39-3501	New Section Added	Ch. 374	- 1354
39-3502	New Section Added	Ch. 374	- 1355
39-3503	New Section Added	Ch. 374	- 1356
39-3504	New Section Added	Ch. 374	- 1357
39-3505	New Section Added	Ch. 374	- 1357
39-3506	New Section Added	Ch. 374	- 1357
39-3507	New Section Added	Ch. 374	- 1358
39-3508	New Section Added	Ch. 374	- 1358
39-3509	New Section Added	Ch. 374	- 1358
39-3510	New Section Added	Ch. 374	- 1359
39-3511	New Section Added	Ch. 374	- 1359
39-3512	New Section Added	Ch. 374	- 1359
39-3513	New Section Added	Ch. 374	- 1359
39-3514	New Section Added	Ch. 374	- 1359
39-3515	New Section Added	Ch. 374	- 1359
39-3516	New Section Added	Ch. 374	- 1360
39-3517	New Section Added	Ch. 374	- 1362
39-3518	New Section Added	Ch. 374	- 1362
39-3519	New Section Added	Ch. 374	- 1362
39-3520	New Section Added	Ch. 374	- 1362
39-3521	New Section Added	Ch. 374	- 1364
39-3522	New Section Added	Ch. 374	- 1364
39-3523	New Section Added	Ch. 374	- 1364
39-3524	New Section Added	Ch. 374	- 1364
39-3525	New Section Added	Ch. 374	- 1365
39-3526	New Section Added (RESERVED)	Ch. 374	- 1365
39-3527	New Section Added (RESERVED)	Ch. 374	- 1365
39-3528	New Section Added (RESERVED)	Ch. 374	- 1365
39-3529	New Section Added (RESERVED)	Ch. 374	- 1365
39-3530	New Section Added	Ch. 374	- 1365
39-3531	New Section Added	Ch. 374	- 1365
39-3532	New Section Added	Ch. 374	- 1366
39-3533	New Section Added	Ch. 374	- 1366
39-3534	New Section Added (RESERVED)	Ch. 374	- 1366
39-3535	New Section Added (RESERVED)	Ch. 374	- 1366
39-3536	New Section Added (RESERVED)	Ch. 374	- 1366
39-3537	New Section Added (RESERVED)	Ch. 374	- 1366
39-3538	New Section Added (RESERVED)	Ch. 374	- 1366
39-3539	New Section Added (RESERVED)	Ch. 374	- 1366
39-3540	New Section Added	Ch. 374	- 1366
39-3541	New Section Added	Ch. 374	- 1366
39-3542	New Section Added	Ch. 374	- 1366
39-3543	New Section Added	Ch. 374	- 1367
39-3544	New Section Added	Ch. 374	- 1367
39-3545	New Section Added	Ch. 374	- 1368
39-3546	New Section Added	Ch. 374	- 1368

TITLE 39 (Continued)

	Chapter	Page
39-3547	New Section Added	Ch.374 - 1368
39-3548	New Section Added	Ch.374 - 1368
39-3549	New Section Added	Ch.374 - 1368
39-3550	New Section Added	Ch.374 - 1368
39-3551	New Section Added	Ch.374 - 1368
39-3552	New Section Added	Ch.374 - 1369
39-3553	New Section Added	Ch.374 - 1369
39-3554	New Section Added	Ch.374 - 1370
39-3555	New Section Added	Ch.374 - 1370
39-3556	New Section Added	Ch.374 - 1370
39-3557	New Section Added	Ch.374 - 1371
39-3558	New Section Added	Ch.374 - 1371
39-3559	New Section Added	Ch.374 - 1372
39-4120	Amended	Ch.216 - 608
39-4403	Amended	Ch.291 - 1083
39-4404	Amended	Ch.216 - 608
39-4404	Amended	Ch.291 - 1085
39-4406	Amended	Ch.291 - 1086
39-4407	Amended	Ch.291 - 1086
39-4410	Amended	Ch.291 - 1087
39-4411	Amended	Ch.291 - 1088
39-4416	Amended	Ch.291 - 1089
39-4427	Amended	Ch.291 - 1090
39-4909	Amended	Ch.216 - 609
39-5302	Referred to	Ch.179 - 460
39-5814	Amended	Ch.216 - 609
39-5902	Amended	Ch.141 - 373
39-6412	Amended	Ch.387 - 1425
39-6501	Amended	Ch.375 - 1373
39-6502	Amended	Ch.375 - 1373
39-6503	Amended	Ch.375 - 1374
39-6504	Amended	Ch.375 - 1374
39-6505	Amended	Ch.375 - 1375
39-6506	Amended	Ch.375 - 1376
39-6507	Amended	Ch.375 - 1376
39-6601	New Section Added	Ch.200 - 550
39-6602	New Section Added	Ch.200 - 550
39-6603	New Section Added	Ch.200 - 551
39-6604	New Section Added	Ch.200 - 551
39-6605	New Section Added	Ch.200 - 552
39-6606	New Section Added	Ch.200 - 552
39-6607	New Section Added	Ch.200 - 553
39-6608	New Section Added	Ch.200 - 553
39-6609	New Section Added	Ch.200 - 553
39-6610	New Section Added	Ch.200 - 554
39-6611	New Section Added	Ch.200 - 554
39-6612	New Section Added	Ch.200 - 555
39-7401	Amended	Ch.139 - 343
39-7402	Amended	Ch.139 - 344
39-7402A	Redesignated from 39-7421	Ch.139 - 345
39-7403	Amended	Ch.139 - 345
39-7404	Amended	Ch.139 - 350

TITLE 39 (Continued)		Chapter	Page
39-7406	Amended	Ch.139	- 351
39-7407	Amended	Ch.139	- 352
39-7408	Amended	Ch.139	- 354
39-7409	Amended	Ch.139	- 355
39-7410	Repealed	Ch.139	- 356
39-7410	Redesignated from 39-7413	Ch.139	- 356
39-7411	Amended	Ch.139	- 360
39-7411	Redesignated 39-7412	Ch.139	- 360
39-7411	New Section Added	Ch.139	- 358
39-7412	Amended	Ch.139	- 361
39-7412	Redesignated 39-7413	Ch.139	- 361
39-7412	Redesignated from 39-7411	Ch.139	- 360
39-7413	Amended	Ch.139	- 356
39-7413	Redesignated 39-7410	Ch.139	- 356
39-7413	Redesignated from 39-7412	Ch.139	- 361
39-7414	Repealed	Ch.139	- 356
39-7414	New Section Added	Ch.139	- 362
39-7415	Amended	Ch.139	- 362
39-7416	Amended	Ch.139	- 363
39-7417	Amended	Ch.139	- 363
39-7418	Amended	Ch.139	- 364
39-7419	Amended	Ch.139	- 364
39-7420	Amended	Ch.139	- 365
39-7421	Redesignated 39-7402A	Ch.139	- 345
TITLE 40			
40-106	Amended	Ch.412	- 1505
40-107	Amended	Ch.142	- 376
40-117	Amended	Ch.412	- 1506
40-202	Amended	Ch.412	- 1506
40-203	Amended	Ch.412	- 1507
40-203A	Amended	Ch.412	- 1509
40-204A	New Section Added	Ch.142	- 376
40-208	New Section Added	Ch.412	- 1510
40-409	Amended	Ch.387	- 1425
40-604	Amended	Ch.412	- 1511
40-607	Amended	Ch.127	- 322
40-709	Amended	Ch.126	- 319
40-709	Amended	Ch.177	- 456
40-710	Repealed	Ch.126	- 321
40-715	Amended	Ch.126	- 321
40-1310	Amended	Ch.412	- 1513
40-1314	Amended	Ch.109	- 279
40-1317	Amended	Ch.387	- 1426
40-1404	Amended	Ch.109	- 278
TITLE 41			
41-219	Amended	Ch.194	- 494
41-223	Amended	Ch.194	- 495
41-227	Amended	Ch.194	- 496
41-242	Amended	Ch.216	- 612
41-254	Amended	Ch. 43	- 115
41-254	Amended	Ch.128	- 323
41-254	Referred to	Ch.128	- 323

TITLE 41 (Continued)		Chapter	-	Page
41-267	Amended	Ch.401	-	1468
41-313	Amended	Ch.279	-	946
41-313A	New Section Added	Ch.279	-	948
41-401	Amended	Ch.124	-	315
41-406	Amended	Ch.118	-	295
41-510	Referred to	Ch.176	-	439
41-511	Referred to	Ch.176	-	439
41-609	Amended	Ch.194	-	498
41-613	Amended	Ch.194	-	499
41-614	Amended	Ch.194	-	499
41-706	Amended	Ch.194	-	500
41-714	Amended	Ch.194	-	501
41-715	Amended	Ch.194	-	501
41-731	Amended	Ch.194	-	501
41-733	Amended	Ch.194	-	502
Chapter 10	Referred to	Ch.340	-	1276
41-1021	Referred to	Ch.176	-	436
41-1024	Referred to	Ch.176	-	436
41-1038	Amended	Ch.195	-	532
41-1045	Amended	Ch.195	-	531
41-1046	Amended	Ch.195	-	533
41-1211	Amended	Ch. 22	-	79
41-1214	Amended	Ch. 22	-	80
41-1215	Amended	Ch. 22	-	80
41-1218	Amended	Ch. 22	-	81
41-1220	Amended	Ch. 22	-	81
41-1232	Amended	Ch. 22	-	81
41-1233	Amended	Ch. 22	-	82
41-1302	Referred to	Ch.176	-	455
41-1333	New Section Added	Ch.339	-	1271
41-1435	Amended	Ch.216	-	612
41-1701	New Section Added	Ch.194	-	502
41-1702	New Section Added	Ch.194	-	502
41-1703	New Section Added	Ch.194	-	503
41-1704	New Section Added	Ch.194	-	503
41-1705	New Section Added	Ch.194	-	506
41-1706	New Section Added	Ch.194	-	506
41-1842	Amended	Ch.231	-	804
41-1911	Amended	Ch.185	-	467
41-2140	Amended	Ch.305	-	1129
41-2144	Amended	Ch.113	-	288
41-2202	Referred to	Ch.176	-	439
41-2210	Amended	Ch.305	-	1130
41-2218	Amended	Ch.113	-	289
41-2303	Amended	Ch. 48	-	125
41-2843	Amended	Ch.194	-	506
Chapter 33	Referred to	Ch.194	-	506
41-3437	Amended	Ch.305	-	1132
41-3441	Amended	Ch.113	-	289
41-3603	Amended	Ch.279	-	947
41-3608	Amended	Ch.279	-	944
41-3613	Amended	Ch.279	-	946

TITLE 41 (Continued)		Chapter	- Page
41-3801	Amended	Ch.194	- 507
41-3801B	New Section Added	Ch.194	- 508
41-3802	Amended	Ch.194	- 509
41-3804	Repealed	Ch.194	- 512
41-3805	Amended	Ch.194	- 512
41-3805B	New Section Added	Ch.194	- 515
41-3806	Amended	Ch.194	- 519
41-3807	Amended	Ch.194	- 522
41-3808	Amended	Ch.194	- 524
41-3809	Amended	Ch.194	- 524
41-3810	Amended	Ch.194	- 525
41-3812	Repealed	Ch.194	- 526
41-3814	Repealed	Ch.194	- 526
41-3814	New Section Added	Ch.194	- 526
41-3815	Amended	Ch.194	- 526
41-3816	New Section Added	Ch.194	- 527
41-3817	New Section Added	Ch.194	- 528
41-3818	New Section Added	Ch.194	- 528
41-3819	New Section Added	Ch.194	- 529
41-3820	New Section Added	Ch.194	- 530
41-3932	Amended	Ch.305	- 1132
41-3936	Amended	Ch.113	- 290
41-4023	Amended	Ch.305	- 1134
41-4025	Amended	Ch.113	- 290
41-4701	New Section Added	Ch.176	- 435
41-4702	New Section Added	Ch.176	- 435
41-4703	New Section Added	Ch.176	- 435
41-4704	New Section Added	Ch.176	- 438
41-4705	New Section Added	Ch.176	- 439
41-4706	New Section Added	Ch.176	- 439
41-4707	New Section Added	Ch.176	- 443
41-4708	New Section Added	Ch.176	- 443
41-4709	New Section Added	Ch.176	- 446
41-4710	New Section Added	Ch.176	- 447
41-4711	New Section Added	Ch.176	- 447
41-4712	New Section Added	Ch.176	- 453
41-4713	New Section Added	Ch.176	- 454
41-4714	New Section Added	Ch.176	- 454
41-4715	New Section Added	Ch.176	- 454
41-4716	New Section Added	Ch.176	- 454
41-5001	Amended	Ch.163	- 413
41-5001	Repealed	Ch.310	- 1143
41-5002	Repealed	Ch.310	- 1143
41-5003	Repealed	Ch.310	- 1143
41-5004	Repealed	Ch.310	- 1143
41-5005	Amended	Ch.163	- 415
41-5005	Repealed	Ch.310	- 1143
41-5006	Amended	Ch.163	- 415
41-5006	Repealed	Ch.310	- 1143
41-5109	Amended	Ch.194	- 530
TITLE 42			
42-202A	New Section Added	Ch.255	- 880

TITLE 42 (Continued)		Chapter	-	Page
42-203D	Amended	Ch.216	-	612
42-222A	New Section Added	Ch.161	-	411
42-238	Amended	Ch.216	-	613
42-619	Amended	Ch.387	-	1426
42-1605	Amended	Ch.216	-	617
42-1607	Amended	Ch.216	-	618
42-1701A	Amended	Ch.216	-	619
42-1701A	Referred to	Ch.161	-	411
42-1734A	Referred to	Ch. 66	-	168
42-1734D	Amended	Ch.216	-	620
42-1737	Amended	Ch.216	-	621
42-1805	Amended	Ch. 32	-	106
42-2201	Amended	Ch.108	-	276
42-2201A	New Section Added	Ch.108	-	277
42-3115	Amended	Ch.258	-	887
42-3115	Amended	Ch.327	-	1212
42-3115	Amended	Ch.387	-	1428
42-3116	Amended	Ch.258	-	890
42-3209	Amended	Ch. 44	-	116
42-3209	Amended	Ch.387	-	1431
42-3805	Amended	Ch.216	-	622
42-4005	Amended	Ch.216	-	623
42-4012	Amended	Ch.216	-	624
42-4416	Amended	Ch.327	-	1214
42-4416	Amended	Ch.387	-	1432
TITLE 43				
Chapter 1	Referred to	Ch.407	-	1476
43-329	Referred to	Ch.209	-	570
43-329	Referred to	Ch.262	-	895
43-330A	New Section Added	Ch.261	-	892
43-330B	New Section Added	Ch.261	-	892
43-330C	New Section Added	Ch.261	-	893
43-330D	New Section Added	Ch.261	-	893
43-330E	New Section Added	Ch.261	-	894
43-330F	New Section Added	Ch.261	-	894
43-330G	New Section Added	Ch.261	-	894
43-333	Referred to	Ch.209	-	570
43-333	Referred to	Ch.262	-	895
43-701	Referred to	Ch.407	-	1487
43-730	Amended	Ch.259	-	890
Chapter 9	Referred to	Ch.261	-	893
43-901	Referred to	Ch.407	-	1480
43-1102	Amended	Ch.262	-	895
43-1120	New Section Added	Ch.209	-	570
43-1121	New Section Added	Ch.209	-	571
43-1508	Referred to	Ch.407	-	1496
43-1509	Referred to	Ch.407	-	1496
43-2301	Amended	Ch.212	-	575
43-2305	Amended	Ch.212	-	577
43-2501	New Section Added	Ch.407	-	1476
43-2502	New Section Added	Ch.407	-	1476
43-2503	New Section Added	Ch.407	-	1477

TITLE 43 (Continued)

		Chapter	Page
43-2504	New Section Added	Ch.407	- 1477
43-2505	New Section Added	Ch.407	- 1478
43-2506	New Section Added	Ch.407	- 1478
43-2507	New Section Added	Ch.407	- 1479
43-2508	New Section Added	Ch.407	- 1480
43-2509	New Section Added	Ch.407	- 1481
43-2510	New Section Added	Ch.407	- 1481
43-2511	New Section Added	Ch.407	- 1482
43-2512	New Section Added	Ch.407	- 1482
43-2513	New Section Added	Ch.407	- 1483
43-2514	New Section Added	Ch.407	- 1484
43-2515	New Section Added	Ch.407	- 1484
43-2516	New Section Added	Ch.407	- 1485
43-2517	New Section Added	Ch.407	- 1485
43-2518	New Section Added	Ch.407	- 1486
43-2519	New Section Added	Ch.407	- 1486
43-2520	New Section Added	Ch.407	- 1487
43-2521	New Section Added	Ch.407	- 1487
43-2522	New Section Added	Ch.407	- 1488
43-2523	New Section Added	Ch.407	- 1488
43-2524	New Section Added	Ch.407	- 1489
43-2525	New Section Added	Ch.407	- 1489
43-2526	New Section Added	Ch.407	- 1490
43-2527	New Section Added	Ch.407	- 1490
43-2528	New Section Added	Ch.407	- 1490
43-2529	New Section Added	Ch.407	- 1490
43-2530	New Section Added	Ch.407	- 1491
43-2531	New Section Added	Ch.407	- 1491
43-2532	New Section Added	Ch.407	- 1492
43-2533	New Section Added	Ch.407	- 1493
43-2534	New Section Added	Ch.407	- 1493
43-2535	New Section Added	Ch.407	- 1494
43-2536	New Section Added	Ch.407	- 1494
43-2537	New Section Added	Ch.407	- 1494
43-2538	New Section Added	Ch.407	- 1495
43-2539	New Section Added	Ch.407	- 1495
43-2540	New Section Added	Ch.407	- 1495
43-2541	New Section Added	Ch.407	- 1495
43-2542	New Section Added	Ch.407	- 1496
43-2543	New Section Added	Ch.407	- 1496
43-2544	New Section Added	Ch.407	- 1497
43-2545	New Section Added	Ch.407	- 1497
43-2546	New Section Added	Ch.407	- 1497
43-2547	New Section Added	Ch.407	- 1497
43-2548	New Section Added	Ch.407	- 1498
43-2549	New Section Added	Ch.407	- 1498
43-2550	New Section Added	Ch.407	- 1498
43-2551	New Section Added	Ch.407	- 1499
43-2552	New Section Added	Ch.407	- 1499
43-2553	New Section Added	Ch.407	- 1499
43-2554	New Section Added	Ch.407	- 1499

TITLE 44 (Continued)

	Chapter	Page
44-2101	Amended	Ch.372 - 1340
44-2101	Redesignated 44-2101A	Ch.372 - 1340
44-2101	New Section Added	Ch.372 - 1340
44-2101A	Redesignated from 44-2101	Ch.372 - 1340
44-2103	Amended	Ch.372 - 1341
44-2105	Repealed	Ch.372 - 1342
44-2105	New Section Added	Ch.372 - 1342
44-2106	Amended	Ch.372 - 1343
44-2106	Redesignated 44-2107	Ch.372 - 1343
44-2106	New Section Added	Ch.372 - 1342
44-2107	Redesignated from 44-2106	Ch.372 - 1343
44-2201	Amended	Ch.372 - 1343
44-2201	Referred to	Ch.380 - 1396
44-2202	Amended	Ch.372 - 1343
44-2204	Amended	Ch.372 - 1344

TITLE 45

45-507	Amended	Ch.378 - 1387
45-511	Amended	Ch.378 - 1387
45-518	New Section Added	Ch.378 - 1388
45-519	New Section Added	Ch.378 - 1388
45-520	New Section Added	Ch.378 - 1389
45-521	New Section Added	Ch.378 - 1390
45-522	New Section Added	Ch.378 - 1390
45-523	New Section Added	Ch.378 - 1391
45-524	New Section Added	Ch.378 - 1391
45-1503	Amended	Ch.281 - 951
45-1505	Referred to	Ch.280 - 949

TITLE 47

47-324	Amended	Ch.216 - 625
47-701	Referred to	Ch.319 - 1175
47-701A	Referred to	Ch.319 - 1175
47-718	Amended	Ch.216 - 626
47-1317	Amended	Ch.308 - 1138
47-1318	Amended	Ch.216 - 627
47-1320	Amended	Ch.216 - 628
47-1505	Amended	Ch.216 - 629
47-1513	Amended	Ch.216 - 630
47-1608	Amended	Ch.289 - 1081

TITLE 48

Chapter 6	Referred to	Ch.246 - 859
48-602	Amended	Ch.102 - 256
48-603B	Amended	Ch.102 - 257
48-606	Amended	Ch.102 - 258
48-606	Referred to	Ch.246 - 859
48-611	Amended	Ch.102 - 260
48-614	Amended	Ch.102 - 260
48-615	Amended	Ch.102 - 261
48-616	Amended	Ch.102 - 261
48-1005	Amended	Ch.156 - 400
48-1201	New Section Added	Ch.246 - 857
48-1202	New Section Added	Ch.246 - 858
48-1203	New Section Added	Ch.246 - 859

TITLE 48 (Continued)		Chapter	-	Page
48-1204	New Section Added	Ch.246	-	859
48-1205	New Section Added	Ch.246	-	859
48-1206	New Section Added	Ch.246	-	859
TITLE 49				
49-102	Amended	Ch.334	-	1234
49-105	Amended	Ch.300	-	1106
49-105	Referred to	Ch. 56	-	153
49-120	Amended	Ch.135	-	331
49-121	Amended	Ch.334	-	1236
49-123	Amended	Ch.376	-	1377
49-201	Amended	Ch.299	-	1100
49-202	Amended	Ch.299	-	1101
49-202	Referred to	Ch.298	-	1099
49-301	Amended	Ch.300	-	1109
49-306	Amended	Ch.304	-	1126
49-306	Amended	Ch.300	-	1106
49-313	Amended	Ch.300	-	1112
49-318	Amended	Ch.300	-	1113
49-319	Amended	Ch.300	-	1113
49-328	Amended	Ch.413	-	1523
49-335	Amended	Ch.300	-	1115
49-402	Amended	Ch. 99	-	248
49-402	Amended	Ch.135	-	333
49-404	Amended	Ch.135	-	334
49-406	Repealed	Ch. 99	-	250
49-406	New Section Added	Ch. 99	-	250
49-406A	Repealed	Ch. 99	-	251
49-406A	New Section Added	Ch. 99	-	251
49-432	Referred to	Ch.321	-	1180
49-434	Amended	Ch.273	-	914
49-434	Amended	Ch.399	-	1463
49-436	Amended	Ch.216	-	632
49-436	Amended	Ch.273	-	917
49-438	Amended	Ch.273	-	921
49-439	New Section Added	Ch.138	-	342
49-445	Amended	Ch.286	-	974
49-448	Amended	Ch.286	-	974
49-504	Amended	Ch.321	-	1179
49-505	Amended	Ch.298	-	1097
49-510	Amended	Ch.283	-	957
49-510	Amended	Ch.298	-	1098
49-511	Amended	Ch.298	-	1099
49-513	Amended	Ch.298	-	1099
49-517	Amended	Ch.298	-	1099
49-906	Amended	Ch. 95	-	244
49-910A	Amended	Ch.377	-	1385
49-944	Amended	Ch.400	-	1466
49-1001	Amended	Ch.273	-	921
49-1001	Amended	Ch.334	-	1238
49-1001	Amended	Ch.345	-	1284
49-1001	Amended	Ch.371	-	1334
49-1001	Amended	Ch.376	-	1380

TITLE 49 (Continued)

	Chapter	- Page
49-1010	Amended	Ch.123 - 313
49-1010	Amended	Ch.334 - 1242
49-1404	Amended	Ch.164 - 416
49-1601	Amended	Ch.230 - 803
49-1607	Amended	Ch.297 - 1095
49-1611	Amended	Ch.297 - 1096
49-1621	Amended	Ch.216 - 635
49-1634	Amended	Ch.297 - 1097
49-2104	Amended	Ch.180 - 461
49-2202	Referred to	Ch.291 - 1088
49-2203	Referred to	Ch.291 - 1088
49-2443	Amended	Ch.304 - 1128
49-2801	New Section Added	Ch.340 - 1272
49-2802	New Section Added	Ch.340 - 1273
49-2803	New Section Added	Ch.340 - 1273
49-2804	New Section Added	Ch.340 - 1274
49-2805	New Section Added	Ch.340 - 1275
49-2806	New Section Added	Ch.340 - 1275
49-2807	New Section Added	Ch.340 - 1276
49-2808	New Section Added	Ch.340 - 1276
49-2809	New Section Added	Ch.340 - 1276
49-2810	New Section Added	Ch.340 - 1277
TITLE 50		
50-210	Referred to	Ch.186 - 469
50-222	Repealed	Ch. 55 - 152
50-222	New Section Added	Ch. 55 - 152
Chapter 4	Referred to	Ch.313 - 1160
Chapter 4	Referred to	Ch.379 - 1393
50-414	New Section Added	Ch.379 - 1394
50-414	Repealed	Ch.379 - 1394
50-416	Repealed	Ch.379 - 1394
50-417	Repealed	Ch.379 - 1394
50-418	Repealed	Ch.379 - 1394
50-419	Repealed	Ch.379 - 1394
50-420	Repealed	Ch.379 - 1394
50-421	Repealed	Ch.379 - 1394
50-423	Repealed	Ch.379 - 1394
50-424	Repealed	Ch.379 - 1394
50-429	Amended	Ch.379 - 1393
50-453	Amended	Ch.379 - 1394
50-476	Repealed	Ch.379 - 1394
50-501	Amended	Ch.313 - 1165
50-801 thru		
50-813	Referred to	Ch.186 - 469
50-1010	Amended	Ch.327 - 1217
50-1010	Amended	Ch.387 - 1434
Chapter 13	Referred to	Ch.206 - 568
Chapter 13	Referred to	Ch.412 - 1509
50-1310	Amended	Ch.343 - 1282
50-1315	Amended	Ch.412 - 1514
50-1502	Amended	Ch.350 - 1295
50-1526	New Section Added	Ch.349 - 1294

TITLE 50 (Continued)		Chapter	Page
50-1527	New Section Added	Ch. 349	- 1294
50-1903	Amended	Ch. 215	- 581
50-1904	Amended	Ch. 215	- 583
50-1909	Amended	Ch. 215	- 585
50-1916	Amended	Ch. 215	- 585
50-1918	Amended	Ch. 215	- 586
50-1924	Amended	Ch. 215	- 587
50-2707	Amended	Ch. 327	- 1217
TITLE 53			
53-262	Amended	Ch. 338	- 1270
53-601	New Section Added	Ch. 224	- 761
53-602	New Section Added	Ch. 224	- 762
53-603	New Section Added	Ch. 224	- 762
53-604	New Section Added	Ch. 224	- 763
53-605	New Section Added	Ch. 224	- 764
53-606	New Section Added	Ch. 224	- 764
53-607	New Section Added	Ch. 224	- 764
53-608	New Section Added	Ch. 224	- 764
53-609	New Section Added	Ch. 224	- 765
53-610	New Section Added	Ch. 224	- 765
53-611	New Section Added	Ch. 224	- 765
53-612	New Section Added	Ch. 224	- 766
53-613	New Section Added	Ch. 224	- 766
53-614	New Section Added	Ch. 224	- 767
53-615	New Section Added	Ch. 224	- 767
53-616	New Section Added	Ch. 224	- 769
53-617	New Section Added	Ch. 224	- 769
53-618	New Section Added	Ch. 224	- 770
53-619	New Section Added	Ch. 224	- 770
53-620	New Section Added	Ch. 224	- 770
53-621	New Section Added	Ch. 224	- 771
53-622	New Section Added	Ch. 224	- 771
53-623	New Section Added	Ch. 224	- 772
53-624	New Section Added	Ch. 224	- 772
53-625	New Section Added	Ch. 224	- 772
53-626	New Section Added	Ch. 224	- 773
53-627	New Section Added	Ch. 224	- 773
53-628	New Section Added	Ch. 224	- 773
53-629	New Section Added	Ch. 224	- 773
53-630	New Section Added	Ch. 224	- 774
53-631	New Section Added	Ch. 224	- 774
53-632	New Section Added	Ch. 224	- 774
53-633	New Section Added	Ch. 224	- 774
53-634	New Section Added	Ch. 224	- 774
53-635	New Section Added	Ch. 224	- 775
53-636	New Section Added	Ch. 224	- 775
53-637	New Section Added	Ch. 224	- 776
53-638	New Section Added	Ch. 224	- 776
53-639	New Section Added	Ch. 224	- 776
53-640	New Section Added	Ch. 224	- 777
53-641	New Section Added	Ch. 224	- 777
53-642	New Section Added	Ch. 224	- 779

TITLE 53 (Continued)

	Chapter	Page
53-643	New Section AddedCh.224	- 779
53-644	New Section AddedCh.224	- 779
53-645	New Section AddedCh.224	- 780
53-646	New Section AddedCh.224	- 780
53-647	New Section AddedCh.224	- 780
53-648	New Section AddedCh.224	- 780
53-649	New Section AddedCh.224	- 781
53-650	New Section AddedCh.224	- 781
53-651	New Section AddedCh.224	- 781
53-652	New Section AddedCh.224	- 782
53-653	New Section AddedCh.224	- 782
53-654	New Section AddedCh.224	- 782
53-655	New Section AddedCh.224	- 783
53-656	New Section AddedCh.224	- 783
53-657	New Section AddedCh.224	- 784
53-658	New Section AddedCh.224	- 785
53-659	New Section AddedCh.224	- 785
53-660	New Section AddedCh.224	- 786
53-661	New Section AddedCh.224	- 786
53-662	New Section AddedCh.224	- 786
53-663	New Section AddedCh.224	- 786
53-664	New Section AddedCh.224	- 788
53-665	New Section AddedCh.224	- 788
53-666	New Section AddedCh.224	- 789
53-667	New Section AddedCh.224	- 789
53-668	New Section AddedCh.224	- 789
53-669	New Section AddedCh.224	- 790
53-670	New Section AddedCh.224	- 790
53-671	New Section AddedCh.224	- 790
53-672	New Section AddedCh.224	- 790
53-701	New Section AddedCh.282	- 953
53-702	New Section AddedCh.282	- 953
53-703	New Section AddedCh.282	- 953
53-704	New Section AddedCh.282	- 953
53-705	New Section AddedCh.282	- 953
53-706	New Section AddedCh.282	- 954
53-707	New Section AddedCh.282	- 955
53-708	New Section AddedCh.282	- 955
53-709	New Section AddedCh.282	- 955
53-710	New Section AddedCh.282	- 955
53-711	New Section AddedCh.282	- 956
53-712	New Section AddedCh.282	- 956
53-713	New Section AddedCh.282	- 956
53-714	New Section AddedCh.282	- 956
53-715	New Section AddedCh.282	- 956
53-716	New Section AddedCh.282	- 956
53-717	New Section AddedCh.282	- 956
TITLE 54		
Title 54	Referred to	Ch. 57 - 157
Title 54	Referred to	Ch.302 - 1120
54-202	Repealed	Ch.239 - 826
54-202	New Section Added	Ch.239 - 826

TITLE 54 (Continued)		Chapter	Page
54-203	Repealed	Ch.239	- 844
54-203	New Section Added	Ch.239	- 844
54-204	New Section Added	Ch.239	- 826
54-205	Amended	Ch.239	- 829
54-206	Repealed	Ch.239	- 829
54-206	New Section Added	Ch.239	- 829
54-208	Amended	Ch.239	- 832
54-209	Repealed	Ch.239	- 833
54-209	New Section Added	Ch.239	- 833
54-210	Repealed	Ch.239	- 834
54-210	New Section Added	Ch.239	- 834
54-211	Repealed	Ch.239	- 834
54-211	New Section Added	Ch.239	- 835
54-212	Amended	Ch.239	- 836
54-212	Redesignated 54-213	Ch.239	- 836
54-212	New Section Added	Ch.239	- 836
54-213	Redesignated from 54-212	Ch.239	- 836
54-213	Repealed	Ch.239	- 836
54-214	Amended	Ch.239	- 837
54-214	Redesignated 54-215	Ch.239	- 837
54-214	New Section Added	Ch.239	- 837
54-215	Amended	Ch.239	- 838
54-215	Redesignated 54-216	Ch.239	- 838
54-215	Redesignated from 54-214	Ch.239	- 837
54-216	Amended	Ch.239	- 839
54-216	Redesignated 54-217	Ch.239	- 839
54-216	Redesignated from 54-215	Ch.239	- 838
54-217	Amended	Ch.239	- 840
54-217	Redesignated 54-219	Ch.239	- 840
54-217	Redesignated from 54-216	Ch.239	- 839
54-218	Repealed	Ch.239	- 839
54-218	New Section Added	Ch.239	- 839
54-218A	Repealed	Ch.239	- 839
54-219	Amended	Ch.239	- 843
54-219	Redesignated 54-222	Ch.239	- 843
54-219	Redesignated from 54-217	Ch.239	- 840
54-220	Amended	Ch.239	- 843
54-220	Redesignated 54-223	Ch.239	- 843
54-220	New Section Added	Ch.239	- 841
54-221	Repealed	Ch.239	- 842
54-221	New Section Added	Ch.239	- 842
54-222	Amended	Ch.239	- 844
54-222	Redesignated 54-224	Ch.239	- 844
54-222	Redesignated from 54-219	Ch.239	- 843
54-223	Amended	Ch.239	- 844
54-223	Redesignated 54-225	Ch.239	- 844
54-223	Redesignated from 54-220	Ch.239	- 843
54-224	Repealed	Ch.239	- 844
54-224	Redesignated from 54-222	Ch.239	- 844
54-225	Redesignated from 54-223	Ch.239	- 844
54-226	New Section Added	Ch.239	- 845
54-305	Amended	Ch.216	- 635

TITLE 54 (Continued)		Chapter	-	Page
54-521	Amended	Ch.216	-	637
54-530	Amended	Ch.216	-	638
Chapter 6	Referred to	Ch. 73	-	195
54-608	Amended	Ch.216	-	638
54-609	Amended	Ch.314	-	1166
54-610	Amended	Ch.216	-	639
54-611	Amended	Ch.216	-	640
Chapter 7	Referred to	Ch. 73	-	195
54-704	Amended	Ch.157	-	402
54-705	Amended	Ch.157	-	402
54-707	Amended	Ch.216	-	641
54-708	Amended	Ch.157	-	404
54-709	Amended	Ch.157	-	405
54-712	Amended	Ch.157	-	405
54-713	Amended	Ch.157	-	407
54-713	Redesignated 54-714	Ch.157	-	407
54-713	New Section Added	Ch.157	-	407
54-714	Redesignated from 54-713	Ch.157	-	407
54-817	Amended	Ch.216	-	642
54-835	Amended	Ch.216	-	643
Chapter 9	Referred to	Ch. 73	-	195
54-912	Amended	Ch.216	-	643
54-1009	Amended	Ch.216	-	645
54-1117	Amended	Ch.216	-	646
54-1126	Repealed	Ch.216	-	646
54-1220	Amended	Ch.216	-	646
54-1220	Referred to	Ch.206	-	568
54-1234	Referred to	Ch.206	-	567
Chapter 14	Referred to	Ch. 73	-	195
Chapter 15	Referred to	Ch. 73	-	195
54-1501	Amended	Ch.110	-	280
54-1510	Amended	Ch.216	-	647
54-1511	Repealed	Ch.216	-	649
54-1513	Amended	Ch.216	-	649
54-1518	Amended	Ch.216	-	649
54-1612	Amended	Ch.216	-	650
54-1614	Amended	Ch.216	-	650
Chapter 17	Referred to	Ch. 73	-	195
54-1704	Amended	Ch. 49	-	126
54-1705	Amended	Ch. 49	-	126
54-1726	Amended	Ch.216	-	650
54-1727	Repealed	Ch.216	-	651
Chapter 18	Referred to	Ch. 73	-	195
Chapter 18	Referred to	Ch.179	-	460
54-1804	Amended	Ch.271	-	907
54-1804	Referred to	Ch.157	-	403
54-1904A	Amended	Ch.237	-	820
54-1909	Repealed	Ch.237	-	820
54-1911	Amended	Ch.237	-	820
54-1912	Amended	Ch.237	-	821
54-1913	Amended	Ch.237	-	822
54-1915	Amended	Ch.216	-	651

TITLE 54 (Continued)		Chapter	Page
54-1916	Amended	Ch.216	- 653
54-1916	Amended	Ch.237	- 823
54-2029A	New Section Added	Ch.396	- 1459
54-2040	Amended	Ch.116	- 293
54-2042	Amended	Ch.216	- 654
Chapter 21	Referred to	Ch. 73	- 195
54-2104	Amended	Ch. 72	- 190
54-2107	Amended	Ch. 72	- 191
54-2108	Repealed	Ch. 72	- 189
54-2109	Repealed	Ch. 72	- 189
54-2110	Amended	Ch. 72	- 192
54-2111	Amended	Ch. 72	- 193
54-2112	Amended	Ch. 72	- 193
54-2113	Amended	Ch. 71	- 188
54-2114	Amended	Ch.216	- 654
54-2115	Amended	Ch.216	- 654
54-2214	Amended	Ch.216	- 655
54-2215	Amended	Ch.216	- 655
54-2216	Repealed	Ch.216	- 655
Chapter 23	Referred to	Ch. 73	- 195
54-2305	Amended	Ch.216	- 656
54-2412	Amended	Ch.216	- 657
54-2413	Amended	Ch.216	- 657
54-2604	Amended	Ch.128	- 323
54-2608	Amended	Ch.216	- 657
54-2819	Amended	Ch.216	- 658
54-2820	Amended	Ch.216	- 659
54-2912	Amended	Ch.216	- 659
54-3003	Amended	Ch.204	- 560
54-3004	Amended	Ch.216	- 661
54-3114	Amended	Ch.216	- 661
Chapter 32	Referred to	Ch. 73	- 195
54-3314	Amended	Ch.216	- 662
54-3321	Amended	Ch.216	- 662
Chapter 34	Referred to	Ch. 73	- 195
54-3404	Amended	Ch. 65	- 166
54-3404	Amended	Ch.205	- 563
54-3905 [54-3805]			
	Amended	Ch.216	- 663
54-4105	Amended	Ch.320	- 1178
54-4213	Amended	Ch.216	- 663
54-4215	Amended	Ch.216	- 664
54-4401	New Section Added	Ch. 73	- 194
54-4402	New Section Added	Ch. 73	- 195
54-4403	New Section Added	Ch. 73	- 196
54-4404	New Section Added	Ch. 73	- 196
54-4405	New Section Added	Ch. 73	- 196
54-4406	New Section Added	Ch. 73	- 196
54-4407	New Section Added	Ch. 73	- 196
TITLE 55			
55-1601	Amended	Ch.206	- 564
55-1602	Amended	Ch.206	- 564

TITLE 55 (Continued)		Chapter	-	Page
55-1603	Amended	Ch.206	-	565
55-1604	Amended	Ch.206	-	565
55-1605	Amended	Ch.206	-	566
55-1607	Amended	Ch.206	-	566
55-1608	Amended	Ch.206	-	566
55-1609	Amended	Ch.206	-	567
55-1610	Repealed	Ch.206	-	567
55-1611	Amended	Ch.206	-	567
55-1612	Amended	Ch.206	-	567
55-1613	Amended	Ch.206	-	567
Chapter 19	Referred to	Ch.206	-	568
55-2006	Amended	Ch.380	-	1395
55-2007	Amended	Ch.380	-	1395
55-2014	Repealed	Ch.380	-	1397
55-2014	New Section Added	Ch.380	-	1397
55-2016	Amended	Ch.380	-	1398
55-2016	Redesignated 55-2017	Ch.380	-	1398
55-2016	New Section Added	Ch.380	-	1398
55-2017	Amended	Ch.380	-	1399
55-2017	Redesignated 55-2019	Ch.380	-	1399
55-2017	Redesignated from 55-2016	Ch.380	-	1398
55-2018	New Section Added	Ch.380	-	1399
55-2019	Redesignated from 55-2017	Ch.380	-	1399
TITLE 56				
56-108	Amended	Ch.351	-	1307
56-113	Amended	Ch.351	-	1310
56-130	Amended	Ch.327	-	1217
56-133	Amended	Ch.216	-	664
56-207	Referred to	Ch.374	-	1356
56-208	Referred to	Ch.374	-	1356
56-209a	Referred to	Ch.374	-	1356
56-450	Amended	Ch.327	-	1218
TITLE 57				
Chapter 2	Referred to	Ch.362	-	1325
57-203	Referred to	Ch.362	-	1324
57-1801	Referred to	Ch.301	-	1118
TITLE 58				
58-140	Amended	Ch. 28	-	96
58-307	Amended	Ch.331	-	1229
58-405	Amended	Ch.216	-	665
58-406	Amended	Ch. 29	-	97
TITLE 59				
Chapter 4	Referred to	Ch. 82	-	212
59-501	Amended	Ch.327	-	1219
59-502	Amended	Ch.217	-	682
59-509	Referred to	Ch.221	-	749
Chapter 13	Referred to	Ch. 82	-	212
59-1302	Amended	Ch.350	-	1296
59-1305	Amended	Ch.350	-	1301
59-1314	Amended	Ch.216	-	665
59-1327	New Section Added	Ch.349	-	1294
59-1328	New Section Added	Ch.348	-	1294

TITLE 59 (Continued)		Chapter	Page
59-1329	New Section Added	Ch.350	- 1302
59-1342	Referred to	Ch.350	- 1297
59-1343	Amended	Ch.350	- 1302
59-1346	Amended	Ch.350	- 1302
59-1352	Amended	Ch.178	- 458
59-1352	Amended	Ch.251	- 875
59-1353	Amended	Ch.251	- 876
59-1354	Amended	Ch.251	- 876
59-1359	Amended	Ch.350	- 1304
59-1360	Amended	Ch.350	- 1304
59-1394	Referred to	Ch.118	- 296
59-1603	Amended	Ch.318	- 1174
59-1905	Referred to	Ch.215	- 581
TITLE 60			
60-109	Referred to	Ch.220	- 692
60-109A	Referred to	Ch.390	- 1446
TITLE 61			
61-215	Amended	Ch. 45	- 117
61-336	New Section Added	Ch.218	- 683
61-617A	Amended	Ch.234	- 816
61-812	Amended	Ch.182	- 463
61-815A	Amended	Ch.182	- 464
TITLE 62			
62-603	Referred to	Ch.165	- 421
62-606	Amended	Ch.208	- 570
62-610	Amended	Ch.219	- 683
TITLE 63			
63-105	Amended	Ch.214	- 580
63-105A	Amended	Ch.317	- 1172
63-105J	Amended	Ch.295	- 1092
63-105DD	Referred to	Ch.270	- 907
63-106	Amended	Ch.295	- 1093
63-107	Amended	Ch. 17	- 67
63-117	Amended	Ch. 17	- 67
63-202	Amended	Ch.405	- 1473
63-307B	Amended	Ch.167	- 424
63-307C	New Section Added	Ch.167	- 425
63-1903	Referred to	Ch.168	- 428
63-2202	Amended	Ch.266	- 899
63-2225	Amended	Ch.390	- 1445
63-2410	Amended	Ch. 47	- 123
63-2412	Amended	Ch.301	- 1116
63-3002	Amended	Ch.284	- 959
63-3004	Amended	Ch. 1	- 3
63-3006A	New Section Added	Ch.224	- 790
63-3006A	Referred to	Ch.224	- 767
63-3022	Amended	Ch. 3	- 6
63-3022	Amended	Ch.284	- 959
63-3024A	Amended	Ch. 3	- 10
63-3027	Amended	Ch.284	- 964
63-3027B	Amended	Ch.284	- 969
63-3027C	Amended	Ch.284	- 971

TITLE 63 (Continued)		Chapter	-	Page
63-3027E	Amended	Ch. 284	-	972
63-3029B	Amended	Ch. 2	-	4
63-3030	Amended	Ch. 3	-	12
63-3030A	Amended	Ch. 3	-	14
63-3033	Amended	Ch. 3	-	14
63-3035	Amended	Ch. 5	-	16
63-3036	Amended	Ch. 5	-	19
63-3044	Amended	Ch. 94	-	229
63-3045	Amended	Ch. 94	-	230
63-3045	Referred to	Ch. 9	-	29
63-3045B	New Section Added	Ch. 94	-	231
63-3046	Amended	Ch. 5	-	20
63-3049	Amended	Ch. 94	-	233
63-3055	Amended	Ch. 94	-	234
63-3065	Amended	Ch. 94	-	234
63-3067	Referred to	Ch. 9	-	30
63-3068	Repealed	Ch. 47	-	119
63-3068	New Section Added	Ch. 47	-	119
63-3072	Repealed	Ch. 47	-	119
63-3072	New Section Added	Ch. 47	-	122
63-3074	Amended	Ch. 3	-	15
63-3074	Referred to	Ch. 26	-	92
63-3076	Amended	Ch. 94	-	235
63-3605B	New Section Added	Ch. 319	-	1175
63-3612	Amended	Ch. 26	-	87
63-3616	Amended	Ch. 26	-	88
63-3622B	Amended	Ch. 7	-	24
63-3622D	Amended	Ch. 319	-	1175
63-3622F	Amended	Ch. 26	-	89
63-3622N	Amended	Ch. 26	-	89
63-3622O	Amended	Ch. 7	-	24
63-3622O	Amended	Ch. 402	-	1468
63-3622R	Amended	Ch. 26	-	90
63-3623B	Amended	Ch. 26	-	91
63-3629	Amended	Ch. 94	-	236
63-3629	Referred to	Ch. 3	-	15
63-3631	Amended	Ch. 94	-	237
63-3632	Amended	Ch. 94	-	237
63-3633	Amended	Ch. 26	-	91
63-3635	Amended	Ch. 26	-	92
63-3637	Repealed	Ch. 26	-	93
63-3812	Amended	Ch. 94	-	238
63-3812	Amended	Ch. 290	-	1082
63-3816	Amended	Ch. 94	-	238
63-3905	Amended	Ch. 270	-	907
63-4001	New Section Added	Ch. 94	-	239
63-4002	New Section Added	Ch. 94	-	239
63-4003	New Section Added	Ch. 94	-	240
63-4004	New Section Added	Ch. 94	-	241
63-4005	New Section Added	Ch. 94	-	241
63-4006	New Section Added	Ch. 94	-	242
63-4007	New Section Added	Ch. 94	-	242

TITLE 63 (Continued)		Chapter	- Page
63-4008	New Section Added	Ch. 94	- 243
63-4009	New Section Added	Ch. 94	- 243
63-4010	New Section Added	Ch. 94	- 243
63-4011	New Section Added	Ch. 94	- 243
63-4202	Amended	Ch. 9	- 27
63-4203	Amended	Ch. 9	- 27
63-4208	Amended	Ch. 9	- 28
63-4211	New Section Added	Ch. 9	- 29
TITLE 67			
67-429	Amended	Ch.327	- 1187
67-429A	New Section Added	Ch.408	- 1500
67-435	Amended	Ch.327	- 1225
67-441	Repealed	Ch.327	- 1225
67-442	Repealed	Ch.327	- 1225
67-443	Repealed	Ch.327	- 1225
67-444	Repealed	Ch.327	- 1225
67-445	Repealed	Ch.327	- 1225
67-446	Repealed	Ch.327	- 1225
67-447	Repealed	Ch.327	- 1225
67-448	Repealed	Ch.327	- 1225
67-449	Repealed	Ch.327	- 1225
67-450	Repealed	Ch.327	- 1225
67-450A	Amended	Ch.327	- 1219
67-450B	New Section Added	Ch.387	- 1418
67-451	Amended	Ch.393	- 1456
67-454	Amended	Ch.216	- 666
67-457	New Section Added	Ch.327	- 1190
67-458	New Section Added	Ch.327	- 1191
67-459	New Section Added	Ch.327	- 1191
67-460	New Section Added	Ch.327	- 1192
67-461	New Section Added	Ch.327	- 1192
67-462	New Section Added	Ch.327	- 1193
67-463	New Section Added	Ch.327	- 1193
67-464	New Section Added	Ch.327	- 1193
67-802	Amended	Ch.216	- 667
67-904	Amended	Ch.216	- 669
67-910	Amended	Ch.338	- 1270
67-1010	Amended	Ch.327	- 1220
67-1104	Amended	Ch.327	- 1220
67-1210	Amended	Ch.310	- 1143
67-1601	New Section Added	Ch.388	- 1436
67-1602	New Section Added	Ch.388	- 1436
67-1603	New Section Added	Ch.388	- 1436
67-1604	New Section Added	Ch.388	- 1437
67-1605	New Section Added	Ch.388	- 1438
67-1606	New Section Added	Ch.388	- 1438
67-1901	New Section Added	Ch.168	- 426
67-1902	New Section Added	Ch.168	- 426
67-1903	New Section Added	Ch.168	- 427
67-2026	Amended	Ch. 8	- 25
67-2026A	New Section Added	Ch. 8	- 26
67-2328	Referred to	Ch.407	- 1481

TITLE 67 (Continued)		Chapter	-	Page
67-2340 thru				
67-2344	Referred to	Ch.186	-	470
67-2405	Amended	Ch.235	-	817
67-2509	Repealed	Ch.330	-	1228
67-2743E	Amended	Ch.187	-	479
67-2743E	Referred to	Ch.187	-	477
67-2761	Amended	Ch.216	-	670
67-3502	Amended	Ch.327	-	1221
67-3503	Amended	Ch.327	-	1222
67-3503	Referred to	Ch.168	-	427
67-3507	Amended	Ch.168	-	428
67-3508	Amended	Ch.327	-	1222
67-4129A	Amended	Ch.327	-	1223
67-4223	Amended	Ch.286	-	975
67-4909	Amended	Ch.387	-	1435
Chapter 52	Referred to	Ch. 13	-	54
Chapter 52	Referred to	Ch. 57	-	158
Chapter 52	Referred to	Ch. 73	-	195
Chapter 52	Referred to	Ch.103	-	262
Chapter 52	Referred to	Ch.119	-	308
Chapter 52	Referred to	Ch.136	-	336
Chapter 52	Referred to	Ch.139	-	360
Chapter 52	Referred to	Ch.176	-	454
Chapter 52	Referred to	Ch.194	-	530
Chapter 52	Referred to	Ch.200	-	554
Chapter 52	Referred to	Ch.216	-	590
Chapter 52	Referred to	Ch.337	-	1268
Chapter 52	Referred to	Ch.342	-	1281
Chapter 52	Referred to	Ch.372	-	1342
Chapter 52	Referred to	Ch.391	-	1455
Chapter 52	Referred to	Ch.396	-	1459
67-5201	Amended	Ch.216	-	670
67-5203	Amended	Ch.216	-	672
67-5203	Amended	Ch.245	-	854
67-5204	Amended	Ch.216	-	673
67-5205	Amended	Ch.245	-	854
67-5205	Referred to	Ch.115	-	292
67-5206	Amended	Ch.216	-	673
67-5221	Amended	Ch.216	-	674
67-5221	Amended	Ch.245	-	856
67-5227	Amended	Ch.216	-	675
67-5241	Amended	Ch.216	-	676
67-5250	Amended	Ch.216	-	676
67-5252	Amended	Ch.216	-	677
67-5270 thru				
67-5279	Referred to	Ch.194	-	496
67-5273	Amended	Ch.216	-	677
67-5302	Amended	Ch. 75	-	198
67-5302	Amended	Ch.233	-	811
67-5303	Amended	Ch. 77	-	204
67-5309	Amended	Ch. 67	-	177
67-5309	Amended	Ch.104	-	362

TITLE 67 (Continued)		Chapter	Page
67-5309C	Amended	Ch.226	- 792
67-5313	Amended	Ch. 21	- 79
67-5342	New Section Added	Ch.336	- 1125
67-5702	Amended	Ch.221	- 748
67-5703	Amended	Ch.221	- 748
67-5704	Amended	Ch.221	- 748
67-5718	Amended	Ch.306	- 1135
67-5745	Amended	Ch.221	- 749
67-5747	Amended	Ch.221	- 749
67-5748	Amended	Ch.221	- 750
67-5760	Amended	Ch.221	- 751
67-5761	Amended	Ch.221	- 751
67-5762	Amended	Ch.221	- 752
67-5767	Amended	Ch.221	- 753
67-5768	Amended	Ch.221	- 753
67-5769	Amended	Ch.221	- 753
67-5771	Amended	Ch.221	- 754
67-5772	Amended	Ch.221	- 755
67-5773	Redesignated from 65-5773	Ch.221	- 755
67-5774	Amended	Ch.221	- 756
67-5775	Amended	Ch.221	- 756
67-5776	Amended	Ch.221	- 757
67-5777	Amended	Ch.221	- 757
67-5778	Amended	Ch.221	- 758
67-6102	Amended	Ch.327	- 1224
67-6220	Amended	Ch.327	- 1224
67-6519	Amended	Ch.216	- 678
67-6520	Amended	Ch.216	- 678
67-6521	Amended	Ch.216	- 679
67-6526	Amended	Ch. 55	- 150
67-6530	Amended	Ch. 18	- 70
67-6531	Amended	Ch. 18	- 70
67-6532	Amended	Ch. 18	- 71
67-6602	Amended	Ch.189	- 481
67-6607	Amended	Ch.203	- 557
67-6608	Amended	Ch.203	- 559
67-6625A	Amended	Ch.203	- 559
67-7037	New Section Added	Ch.250	- 873
67-7038	New Section Added	Ch.146	- 382
67-7050	New Section Added	Ch.252	- 877
67-7125	Repealed	Ch.136	- 336
67-7125	New Section Added	Ch.136	- 336
67-7409	Amended	Ch.249	- 871
67-7450	Amended	Ch.327	- 1224
67-7604	Amended	Ch.327	- 1225
67-7604	Repealed	Ch.387	- 1435
67-7701	Repealed	Ch.391	- 1449
67-7701	New Section Added	Ch.391	- 1449
67-7702	Repealed	Ch.391	- 1449
67-7702	New Section Added	Ch.391	- 1449
67-7703	Repealed	Ch.391	- 1449
67-7703	New Section Added	Ch.391	- 1450

TITLE 67 (Continued)		Chapter	- Page
67-7704	New Section Added	Ch.391	- 1450
67-7705	New Section Added	Ch.391	- 1450
67-7706	New Section Added	Ch.391	- 1451
67-7707	New Section Added	Ch.391	- 1452
67-7708	New Section Added	Ch.391	- 1453
67-7709	New Section Added	Ch.391	- 1455
67-7710	New Section Added	Ch.391	- 1455
67-7711	New Section Added	Ch.391	- 1456

TITLE 72			
72-102	Amended	Ch.341	- 1277
72-306A	New Section Added	Ch.223	- 759
Chapter 5	Referred to	Ch.350	- 1295
72-523	Amended	Ch.202	- 556
72-523	Referred to	Ch.223	- 760
72-1016	Amended	Ch.278	- 941
72-1019	Amended	Ch.278	- 941
72-1025	Amended	Ch.278	- 940
72-1306	Amended	Ch.181	- 461
72-1316	Amended	Ch.119	- 297
72-1316A	Amended	Ch.119	- 300
72-1342	Amended	Ch. 10	- 30
72-1346	Amended	Ch.119	- 300
72-1367A	Amended	Ch. 20	- 73
72-1367A	Amended	Ch. 10	- 31
72-1367B	Repealed	Ch. 20	- 78
72-1368	Amended	Ch.119	- 305
72-1369	Amended	Ch.181	- 462
72-1403	Amended	Ch.350	- 1304
72-1423	Amended	Ch.350	- 1305
72-1425	Amended	Ch.350	- 1306
72-1445	Amended	Ch.178	- 458
72-1447	Amended	Ch.350	- 1306

IDAHO CONSTITUTION

Art.III, Sec.2	Amendment Proposed	SJR105	- 1530
Art.III, Sec.26	Referred to	Ch.312	- 1148

LAWS OF 1977

Ch.46	Amended	Ch.101	- 254
-------	---------------	--------	-------

LAWS OF 1989

Ch.138	Amended	Ch.216	- 587
Ch.278, Sec.1	Referred to	Ch.382	- 1401

LAWS OF 1990

Ch.213	Amended	Ch. 24	- 83
Ch.213, Sec.21	Amended	Ch.187	- 477
Ch.213, Sec.22	Amended	Ch.187	- 478
Ch.213, Sec.43	Amended	Ch.291	- 1088
Ch.213, Sec.82	Amended	Ch. 65	- 166
Ch.213, Sec.94	Amended	Ch.187	- 479
Ch.213, Sec.109	Amended	Ch. 10	- 30

LAWS OF 1990 (Continued)

	Chapter - Page
Ch.254	AmendedCh.216 - 602
Ch.413, Sec.2	AmendedCh. 69 - 182

LAWS OF 1991

Ch.232, Sec.1	Referred toCh.382 - 1401
Ch.308, Sec.2	AmendedCh.375 - 1377
Ch.308, Sec.3	AmendedCh.375 - 1377

LAWS OF 1992

Ch.35	AmendedCh.135 - 331
Ch.125, Sec.1	Referred toCh. 96 - 245
Ch.127, Sec.1	Referred toCh. 37 - 111
Ch.127, Sec.1	Referred toCh. 61 - 164
Ch.176	AmendedCh.313 - 1158
Ch.176, Sec.4	AmendedCh.379 - 1392
Ch.181, Sec.2	Referred toCh. 39 - 112
Ch.186	AmendedCh.135 - 333
Ch.202, Sec.1	Referred toCh. 38 - 112
Ch.204, Sec.2	Referred toCh. 63 - 165
Ch.207, Sec.2	Referred toCh. 98 - 246
Ch.210, Sec.2	Referred toCh. 58 - 162
Ch.211, Sec.2	Referred toCh. 74 - 197
Ch.214, Sec.3	Referred toCh.148 - 385
Ch.232	AmendedCh.135 - 331
Ch.261	AmendedCh.135 - 331, 333
Ch.263	Referred toCh.115 - 292
Ch.263, Sec.3	AmendedCh.245 - 854
Ch.263, Sec.6	AmendedCh.245 - 854
Ch.263, Sec.10	AmendedCh.245 - 856
Ch.287, Sec.2	Referred toCh.229 - 801
Ch.291, Sec.2	Referred toCh. 97 - 246
Ch.294, Sec.1	Referred toCh. 59 - 163
Ch.298, Sec.1	Referred toCh.115 - 292
Ch.299, Sec.1	Referred toCh. 36 - 110
Ch.300, Sec.1	Referred toCh. 35 - 110
Ch.301, Sec.1	Referred toCh. 60 - 164
Ch.302, Sec.2	Referred toCh.410 - 1502
Ch.304, Sec.2	Referred toCh. 62 - 162
Ch.305, Sec.4	AmendedCh.267 - 899
Ch.320, Sec.1	Referred toCh. 34 - 109
Ch.326	Referred toCh.369 - 1332

CONSTITUTION OF THE UNITED STATES

21st Amendment	Referred toCh.213 - 1148
----------------	--------------------------------

FEDERAL LAWS

Clean Air Act	Referred toCh.275 - 927
Clean Water Act	
Section 112	Referred toCh.275 - 936
Section 309	Referred toCh.139 - 345
Section 405	Referred toCh.139 - 345

FEDERAL LAWS (Continued)

	Chapter - Page
Federal Food, Drug and Cosmetic Act	
Section 406	Referred toCh. 12 - 44
Section 408	Referred toCh. 12 - 45
Section 409	Referred toCh. 12 - 44
Section 512	Referred toCh. 12 - 45
Section 513	Referred toCh.271 - 908
Section 706	Referred toCh. 12 - 45
Fair Debt Practices Act	Referred to.....Ch.165 - 417
Federal Register	
October 9, 1991	Referred toCh.139 - 351
Federal-State Extended Unemployment Compensation	
Act of 1970	Referred toCh. 10 - 36
Higher Education	
Act of 1965	Referred toCh. 57 - 157
Indian Gaming	
Regulatory Act	Referred toCh.249 - 872
Indian Gaming	
Regulatory Act	Referred toCh.367 - 1330
Indian Gaming	
Regulatory Act	Referred toCh.408 - 1500
Internal Revenue Code	
Section 78	Referred toCh. 3 - 8
Section 106	Referred toCh.176 - 438
Section 125	Referred toCh.176 - 438
Section 162	Referred toCh.176 - 438
Section 245	Referred toCh. 3 - 7
Section 246A	Referred toCh. 3 - 7
Section 501	Referred toCh.246 - 858
Section 501	Referred toCh.391 - 1449
Section 509	Referred toCh.220 - 693
Section 921	Referred toCh.284 - 970
Section 936	Referred toCh.284 - 969
Section 1033	Referred toCh. 2 - 4
Section 1274	Referred toCh. 94 - 231
Section 2011	Referred toCh. 6 - 23
Section 2032A	Referred toCh. 6 - 22
Section 4941	Referred toCh.220 - 693
Section 4942	Referred toCh.220 - 693
Section 4943	Referred toCh.220 - 693
Section 4944	Referred toCh.220 - 693
Section 4945	Referred toCh.220 - 693
Public Law 94-142	Referred toCh.121 - 311
Public Law 102-569	Referred toCh.183 - 465
Rehabilitation Act Amendments	
of 1992	Referred toCh.162 - 413
Resource Conservation and	
Recovery Act	Referred toCh.139 - 345
Resource Conservation and	
Recovery Act	Referred toCh.310 - 1144
Risk Retention Act	Referred toCh.194 - 503
Revised Statute 2477	Referred toCh.142 - 376

FEDERAL LAWS (Continued)

	Chapter - Page
Solid Waste	
Disposal Act	Referred toCh.310 - 1144
Superfund Amendments Reauthorization Act of 1986	Referred toCh.194 - 503
United States Department of Health and Human Services Health Insurance Manual	
Volume 15	Referred toCh.351 - 1311
United State Securities Act of 1933	Referred toCh.162 - 413
23 CFR 658	Referred toCh.123 - 314
40 CFR 70	Referred toCh.275 - 928
40 CFR 257	Referred toCh.139 - 352
40 CFR 258	Referred toCh.139 - 343
40 CFR 260	Referred toCh.291 - 1087
40 CFR 268	Referred toCh.291 - 1085
49 CFR 383	Referred toCh.300 - 1106
11 USC 101	Referred toCh.312 - 1152
11 USC, Chapter 7	Referred toCh.312 - 1152
38 USC 101	Referred toCh.233 - 813
42 USC 932	Referred toCh.142 - 376
42 USC 7412	Referred toCh.275 - 937
42 USC 11002	Referred toCh.275 - 937
42 USC 7661A	Referred toCh.275 - 937

IDAHO ACTS

Big Payette Water Quality	EnactedCh.200 - 550
Charitable Solicitations	EnactedCh.246 - 857
Idaho Cash Management Act of 1990	Referred toCh.119 - 303
Idaho Criminal Rules	Referred toCh. 87 - 216
Idaho Rules of Civil Procedure	Referred toCh.291 - 1090
Lease-Purchase Agreement	EnactedCh.232 - 807
Limited Liability Company	EnactedCh.224 - 760
Motor Vehicle Service Contract	EnactedCh.340 - 1272
Nonprofit Corporation	EnactedCh.220 - 685
Sex Offender Registration	EnactedCh.155 - 391
Small Employer Health Insurance Availability	EnactedCh.176 - 435
Uniform Unincorporated Nonprofit Association Act	EnactedCh.282 - 952

NUMERICAL LIST OF SENATE BILLS

that became law with a brief synopsis and the
chapter number of the bill

		Chapter	- Page
S1002	Sex offenders, registration	Ch.155	- 391
S1003	Crop/commercial land, improvement acct ...	Ch. 28	- 96
S1004aa	Land, endowment, certain, leased	Ch.331	- 1229
S1005	Timber sales, published, dollar amount ...	Ch. 29	- 97
S1006	Temporary employees, fire suppression	Ch. 75	- 198
S1007	Geothermal wells, drilling, bond	Ch.289	- 1081
S1011	Wildlife damage, prevention	Ch. 30	- 98
S1012	Inhalants, minors, possession	Ch.154	- 390
S1013aa	Driver training schools, instructors	Ch.180	- 461
S1015aaH	Day care centers, staff training	Ch.416	- 1528
S1016	Unemployment benefits, base period	Ch.181	- 461
S1019aa	Boat operators, drug/alcohol test	Ch.250	- 873
S1020	Public records, disclosure, exemption	Ch. 31	- 101
S1021	Elderly, care homes, zoned residential ...	Ch. 18	- 70
S1022	Victims, sexual offenses, HIV test	Ch. 19	- 71
S1023	Motor carriers, administration fees	Ch.182	- 463
S1024	Recreational vehicles, license fees	Ch.286	- 973
S1027	School districts, open enrollment	Ch. 76	- 202
S1029	School Bd, recall petitions, filing	Ch. 64	- 166
S1030	Weather modification projects	Ch. 32	- 106
S1037	PERSI, disability, retirement	Ch.251	- 875
S1038	Personnel, Correction Dept employees	Ch. 77	- 204
S1039	Health insurance, small employers	Ch.176	- 435
S1044	Boating law, boundary waters, agreement ..	Ch.252	- 877
S1045	Estates, personal property, affidavit	Ch.253	- 878
S1047	Taxidermist/furbuyer, recordkeeping	Ch. 78	- 206
S1048	Antlers/horns, certain, possession	Ch. 79	- 206
S1049	Wolf Environmental Impact Statement	Ch.332	- 1231
S1052	Teachers, misconduct, certificate	Ch.111	- 281
S1053	Firearm, discharge, house/MV	Ch.254	- 879
S1054	Water, appropriation, temporary approval .	Ch.255	- 880
S1056	Interstate Forest Fire Suppression	Ch. 80	- 208
S1060aaH	Winery sales, restriction removed	Ch.333	- 1232
S1065	MV, commercial, definitions, loads	Ch.334	- 1234
S1066aa,aaH	Child support, withholding authorized	Ch.335	- 1244
S1070	Fire systems, certain, fire marshal	Ch.128	- 322
S1071	Insurance, mammography, exceptions	Ch.113	- 288
S1072	Mosquito abatement district, annexation ..	Ch. 81	- 211
S1079aa	Cemetery district, acquisition	Ch.256	- 881

S1080	Magistrate judge, resign, sit again	Ch. 82 - 212
S1081aa	Court actions, different county, costs ...	Ch. 83 - 213
S1082aaH	Tax Bd decisions, appeals	Ch.290 - 1081
S1083	Juvenile offenders, custody, discharge ...	Ch. 84 - 214
S1084	Bank, criminal offenses, certain deleted .	Ch. 85 - 214
S1085	Probation/imprisonment criteria	Ch. 86 - 215
S1086	Trial, application for new, time	Ch. 87 - 216
S1087	Parent/child relationship, termination ...	Ch. 88 - 216
S1088	Affidavit/summons, district court	Ch. 89 - 217
S1089	Supreme Court, clerk/deputy clerk	Ch. 90 - 218
S1091	Outfitters & Guides Bd, compensation	Ch.257 - 886
S1092	Flood control district, bids required	Ch.258 - 887
S1093	Irrigation districts, contracts	Ch.259 - 890
S1094	Log scaling law, violation, time	Ch. 91 - 218
S1095	Log brands, registration	Ch. 92 - 219
S1096aa	Outfitters & Guides, reciprocity	Ch.260 - 891
S1097	Vocational Rehabilitation Act/Federal	Ch.183 - 464
S1098aa	Firearms, concealed, public schools	Ch.153 - 388
S1100aa	Crimes, additional fines, victims	Ch.278 - 940
S1101	Irrigation dist, create LID, when	Ch.407 - 1475
S1102	Irrigation dist, construct	Ch.261 - 892
S1104	Irrigation dist, lands excluded	Ch.262 - 894
S1108	Rights of way, abandon, validation	Ch.412 - 1505
S1109	Highway funds, local governments, use	Ch.177 - 456
S1111	Secured transactions, code reference	Ch. 33 - 108
S1113	Male rape, punishment	Ch.263 - 895
S1114	Firearm/weapon, crime/sentence	Ch.264 - 896
S1115	Crimes, certain, rights terminated	Ch.184 - 465
S1116aa	Inmate, treatment, claims, time	Ch.265 - 898
S1117	Boats, mufflers required	Ch.146 - 382
S1121	Forested land, private, fire protection ..	Ch. 93 - 221
S1123	Taxpayer's Bill of Rights	Ch. 94 - 224
S1125	State employees, no severance pay	Ch.336 - 1265
S1126aa	Property tax, excess levied, interest	Ch.266 - 898
S1129	County, budget, publication deadline	Ch. 25 - 86
S1130	Taxidermist/furbuyer license required	Ch.129 - 324
S1132	Forest products, assessment increased	Ch.130 - 325
S1137aa	Health insurance, child, mandated	Ch.337 - 1266
S1139aaH	Secretary of State, fees, increased	Ch.338 - 1268
S1140	Firefighters, disability retirement	Ch.178 - 458
S1143	Insurance, life, reinstatement/interest ..	Ch.185 - 466
S1144aaH	Insurance, health, cancelled policy	Ch.339 - 1271
S1147aa	Insurance guaranty assoc, deduction	Ch.279 - 943
S1148aaH	MV, service contract, regulation	Ch.340 - 1272
S1149aa	Libraries, city, recodification	Ch.186 - 467
S1153aa	Medical clinics, county hospital bds	Ch.112 - 283
S1155	Air quality, certain terms defined	Ch.267 - 899
S1157	MV, 30 years or older, tail lamps	Ch. 95 - 244
S1160aaH	Burial expense defined, workers comp	Ch.341 - 1277
S1162	Retirement/optional/Bd of Education	Ch.268 - 902
S1165	Agency rules, effective date	Ch.342 - 1281
S1167	Child sexual abuse, sentence	Ch.152 - 387
S1168	Banks, confidentiality	Ch.187 - 477

S1179	Veteran's Day, school program	Ch.269 -	904
S1185	Property tax/50/50 exempt/new house	Ch.270 -	906
S1186aa	Private schools, records request	Ch.188 -	479
S1187	Food establishment, defined, exclusions ..	Ch.114 -	291
S1188aa	MV, old time, vintage, licensing	Ch. 99 -	248
S1194aa	Plats, black opaque drafting ink	Ch.343 -	1282
S1195	Medicine, practice of, definition	Ch.271 -	907
S1196	State-tribal gaming compacts	Ch.408 -	1500
S1197	Approp, add'l, Emergency Response Comm ...	Ch. 34 -	109
S1198	Approp, add'l, Personnel Comm	Ch. 35 -	110
S1199	Approp, add'l, Financial Management Div ..	Ch. 36 -	110
S1200	Approp, add'l, Self-Governing Agencies ...	Ch. 37 -	111
S1201	Approp, add'l, Blind Commission	Ch. 38 -	111
S1202	Approp, add'l, Labor & Industrial Serv ...	Ch. 39 -	112
S1204aaH	Hazardous waste management	Ch.291 -	1082
S1206aaH	Domestic assault/battery	Ch.344 -	1283
S1210	Campaign contributions, nonbusiness	Ch.189 -	481
S1211	Approp, add'l, Industrial Comm	Ch. 96 -	245
S1215	Research, unpublished, disclosure	Ch.190 -	483
S1220	Public schools, gifted/talented program ..	Ch.409 -	1501
S1221	UCC, lease of personal property	Ch.287 -	977
S1222	UCC, negotiable instruments	Ch.288 -	1019
S1224	Approp, add'l, Correction Dept	Ch. 97 -	246
S1226	DUI, law clarified	Ch.272 -	909
S1230	MV, commercial, weight limits	Ch.371 -	1333
S1231	Commercial vehicles, use fees	Ch.273 -	913
S1232	Approp, amended, Public Works	Ch. 98 -	246
S1233	Aeronautics Advisory Bd, membership	Ch.274 -	926
S1236	Clean Air Act, federal, compliance	Ch.275 -	926
S1241	Approp, Agricultural Research	Ch.131 -	326
S1242	Approp, Lottery Commission	Ch.132 -	327
S1243	Approp, Higher Education	Ch.147 -	383
S1245	Approp, add'l, Agriculture Dept	Ch.148 -	384
S1247aa	Commercial vehicle, load limit	Ch.345 -	1283
S1248	Approp, Endowment Fund Bd	Ch.149 -	385
S1249	Approp, Office on Aging	Ch.191 -	488
S1250	Approp, Insurance Fund	Ch.150 -	386
S1251	Approp, Personnel Commission	Ch.151 -	387
S1252	Approp, Deaf & Blind School	Ch.276 -	938
S1253aaH	Police/fire, dependent scholarships	Ch.346 -	1288
S1254	Approp, Industrial Commission	Ch.277 -	939
S1255	Liquor by drink license, suspended	Ch.347 -	1290
S1257	Approp, Fish & Game Dept	Ch.192 -	488
S1258	Approp, Blind Commission	Ch.193 -	491
S1259	Approp, Board of Education	Ch.292 -	1091
S1260	Approp, Retirement System	Ch.293 -	1091
S1261	Approp, Community Colleges	Ch.294 -	1092
S1262	PERSI requirements, failure to comply	Ch.348 -	1293
S1263	PERSI, false claims, penalty	Ch.349 -	1294
S1264	PERSI, technical changes	Ch.350 -	1295
S1265	ICF/MR, property reimbursement rate	Ch.351 -	1306
S1266	Approp, add'l, Transportation Dept	Ch.352 -	1311
S1267	Approp, Finance Department	Ch.353 -	1312

S1268	Approp, Parks & Recreation Dept.....	Ch.354	- 1312
S1269	Approp, Water Resources Dept	Ch.355	- 1314
S1270	Approp, Ports of Entry,	Ch.356	- 1316
S1271	Approp, Legislative Services	Ch.357	- 1317
S1272	Approp, Special Programs	Ch.358	- 1318
S1274	Approp, Commerce Dept	Ch.410	- 1502
S1275	Approp, Lands Department	Ch.359	- 1319
S1276	Approp, Parks Dept, Oregon Trail	Ch.360	- 1320
S1277	Approp, Vocational Rehabilitation	Ch.361	- 1321
S1278	Fire protection district, indebted	Ch.362	- 1322
S1280	Approp, Lieutenant Governor	Ch.363	- 1325
S1281	Approp, PUC, personnel	Ch.364	- 1326
S1282	Approp, Supreme Court	Ch.365	- 1326
S1283	Approp, Revenue & Taxation Dept.	Ch.366	- 1328
S1284	Indian gaming issues, resolution	Ch.367	- 1330
S1285	Approp, State Auditor	Ch.368	- 1331
S1287	Approp, Insurance Dept/implement S1039 ...	Ch.369	- 1332

NUMERICAL LIST OF HOUSE BILLS

that became law with a brief synopsis and the
chapter number of the bill

		Chapter - Page
H 3	Real estate licensee, penalty	Ch.116 - 292
H 4	Real estate licensee, insurance	Ch.396 - 1459
H 5	Guardian, Community Bd, conservator	Ch. 24 - 83
H 8	Public works contractors, licensure	Ch.237 - 819
H 18	Bees, diseases, defined	Ch. 11 - 36
H 19	Agriculture, commercial feed law	Ch. 12 - 38
H 20	Livestock, brucellosis control	Ch. 13 - 49
H 21	Livestock, diseased, destroyed	Ch. 14 - 55
H 22	Livestock, tuberculosis testing	Ch. 15 - 56
H 23	Livestock, disease inspection	Ch. 16 - 58
H 24	Indigent TB patients, care payment	Ch. 40 - 113
H 25	Day care, employee, rescue breathing	Ch. 23 - 83
H 26	Counselors, specialty, licensing	Ch. 65 - 166
H 27	Insurance, surplus line, requirements	Ch. 22 - 79
H 29	Agriculture Dept, business lists	Ch.117 - 294
H 32	MV, license plates, national guard	Ch.135 - 330
H 34	Liquor vendors, compensation	Ch.238 - 824
H 35	Income tax, state, IRC adopted	Ch. 1 - 3
H 36	Income tax, investment credits	Ch. 2 - 3
H 37	Income tax, taxable income, defined	Ch. 3 - 5
H 38aa	Insurance Insolvency Administration Acct .	Ch.118 - 295
H 40	Veterans preference, state employment	Ch. 21 - 79
H 41	Income tax, withholding, employers	Ch. 5 - 16
H 42	Estate tax, special use valuation	Ch. 6 - 21
H 43aa	Sales tax, technical corrections	Ch. 26 - 87
H 44	Sales tax, exemptions, clarified	Ch. 7 - 23
H 45	Unemployment benefits, eligibility	Ch. 20 - 73
H 46	Unemployment benefits, eligibility	Ch. 10 - 30
H 47aa	Unemployment insurance, exemptions	Ch.119 - 297
H 61	Fire marshal, state, reports	Ch. 43 - 115
H 63aa	Accountants, law revised	Ch.239 - 824
H 68	Water/sewer district bds, compensation ...	Ch. 44 - 116
H 69	Property tax, circuit breaker exemption ..	Ch. 17 - 66
H 70	Taxes, payment, electronic transfer	Ch. 8 - 25
H 71	Liquor license, reissue	Ch.240 - 845
H 72	Telephone solicitors, registration	Ch.156 - 399
H 74aa	Motorcycles, noise emission limits	Ch.136 - 335
H 75	Optometrist, pharmaceutical agents	Ch.110 - 280
H 76	Taxes, controlled substances	Ch. 9 - 26

H 77	Approp, Employment Dept, federal funds ...	Ch. 4 - 15
H 79aa	PUC, salaries	Ch. 45 - 117
H 80	F&G, license/tag fees, nonresident	Ch. 27 - 93
H 85aaS	Chiropractors, discipline	Ch.157 - 401
H 87	Controlled substance trial, evidence	Ch.158 - 408
H 91	Probation, Bd of Correction, felons	Ch.101 - 254
H 92	Witness, crime/civil action, harass	Ch. 46 - 118
H 93aa	Prisoner, certain, right to sue	Ch.120 - 308
H 94	Tax, income, deficiency, refunds	Ch. 47 - 119
H 95aa	Utilities, certain, tax exempt	Ch.295 - 1092
H 97	Charitable solicitations, deceptive	Ch.246 - 857
H100	County commissioner candidate, residence .	Ch.159 - 409
H101	Ballots, absentee, mailed, when	Ch.100 - 253
H104aa	Insurance companies, examination	Ch.194 - 492
H105aaS	Insurance, credit related, licenses	Ch.195 - 531
H106	Credit life/disability insurance	Ch. 48 - 125
H109	Consumer Protection Act, amendments	Ch.102 - 256
H110aa	Child support guidelines	Ch.160 - 409
H111	Water, point of diversion, temporary	Ch.161 - 410
H115	Pharmacy, practice, definitions	Ch. 49 - 126
H116aa	Public health district, rules comply APA .	Ch.296 - 1094
H117	Ambulances, personnel, definitions	Ch. 50 - 130
H118	MV dealers, license renewal	Ch.297 - 1095
H120	County commissioners, actions, review	Ch.103 - 262
H121	Fees, county, solid waste, collection	Ch. 41 - 113
H123	School districts, trustee elections	Ch. 51 - 132
H124	Banks, Saturday/holiday hours	Ch. 52 - 133
H125	Securities, exempt registration	Ch.162 - 412
H126aa	Loans, certain, in writing	Ch.397 - 1460
H127	Banks, regulate, misc. amendments	Ch. 53 - 137
H128	Credit insurance premiums, refund	Ch. 42 - 114
H129	Underground storage tank upgrade program .	Ch.163 - 413
H130aa	Personnel Commission, biennial review	Ch.104 - 262
H131	Supreme/district courts, fees increased ..	Ch.196 - 535
H134	Judicial district, certain, add'l judges .	Ch.248 - 869
H136	Water Plan, Henry's Fork, approval	Ch. 66 - 167
H137	Disabled, hiring process, Personnel Comm..	Ch. 67 - 177
H139	"School age" redefined	Ch.121 - 310
H144aaS	F&G, land purchase, county approve	Ch.197 - 539
H146aa	Confidentiality, Agriculture Lab test	Ch.198 - 543
H147	Pesticides, licensure, exemptions	Ch. 54 - 142
H148	Agriculture, chemigation license, fee	Ch. 68 - 181
H149	Agriculture, seed certification, agent ...	Ch. 69 - 182
H150	Brand inspection fees, increased	Ch.122 - 311
H151	Seed tapes, etc, seed quantities	Ch. 70 - 184
H152	Mosquito Abatement District, reports	Ch.199 - 548
H153	Big Payette Lake Water Quality Act	Ch.200 - 550
H154aa	Cities, annexation, procedures	Ch. 55 - 150
H155	Mapping system, computerized, fees	Ch.201 - 555
H156	Commercial vehicles, certain, length	Ch.123 - 313
H158	MV, certificate of title, electronic	Ch.298 - 1097
H159aa	MV records, inquiries, contract	Ch.299 - 1100
H161aa	Workers comp premium, tax increase	Ch.202 - 556

H165	Campaign finance, report required	Ch.203 -	557
H169	Landscape Architect Bd, terms, fees	Ch.204 -	560
H170	Counselors, code of ethics	Ch.205 -	563
H173	Land survey, corner perpetuation	Ch.206 -	564
H175aaS	School dist, retiree, add'l benefit	Ch.398 -	1461
H179aa,aa	Agriculture, pure seed law, violations ...	Ch.207 -	568
H180	Veterinary Medicine Bd, discipline	Ch. 71 -	188
H181	Veterinarians, license, inactive	Ch. 72 -	189
H183aa,aa	Motor vehicle, certain, use fee	Ch.399 -	1463
H184	Driver license, seasonal, established	Ch.300 -	1105
H185	Fuel tax, distribution, Park&Rec Account .	Ch.301 -	1116
H186	MV, window tinting, medical reasons	Ch.400 -	1465
H188aa	Records, certain, exempt disclosure	Ch.302 -	1118
H189	Fire code, variances granted, when	Ch.401 -	1467
H192	Schools/public, bus drivers, physical	Ch. 56 -	153
H193	Mobile/Manufactured home, installation ...	Ch.372 -	1339
H196	Telephone corporation, tariff, PUC	Ch.208 -	569
H198	Irrigation District, lands reinstated	Ch.209 -	570
H201	Racketeering	Ch.105 -	266
H202	Police officer, fleeing, defined	Ch.164 -	416
H203	Collection agencies, regulation	Ch.165 -	416
H204	Inmate, controlled substance/weapons	Ch.166 -	423
H205	Vulnerable adult, abandonment	Ch.179 -	460
H213	Library district, election procedure	Ch.303 -	1124
H214	Students, blind, Braille offered	Ch.134 -	330
H218	Board & Care Act, application	Ch.373 -	1345
H219aa	Residential care facilities, elderly	Ch.374 -	1353
H221aa	Idaho Horse Bd, refund request	Ch.133 -	328
H223	County fair bd, advisory bd, when	Ch.210 -	571
H224aa	MV salesmen, license, exempt	Ch.230 -	803
H226aa,aaS	Recreation dist levy, exempt property	Ch.285 -	973
H227	Insurance premium taxes, surcharge	Ch.124 -	315
H229	ID card/application/social security no. ..	Ch.304 -	1126
H230aa,aa	Health insurance, adopted children	Ch.305 -	1129
H233	Hotelkeepers, evict guests, when	Ch.125 -	316
H235aa	Insurance, commercial, cancellation	Ch.231 -	803
H236	Receivers, real property, trust deed	Ch.280 -	948
H237	Foreclosure proceeds, clarified	Ch.281 -	949
H238	Lease-purchase transaction, regulation ...	Ch.232 -	807
H239aa	Bids, state/local govt, Idaho bidder	Ch.306 -	1135
H241	Veteran defined, Personnel System	Ch.233 -	811
H247	Paroles, early, medical reasons	Ch.106 -	271
H248	Nonprofit Associations, Uniform Act	Ch.282 -	952
H251	Arson laws, revision	Ch.107 -	273
H252	DUI, license suspension, reinstate	Ch.413 -	1515
H254aa	F&G violations, statute of limitation	Ch.307 -	1137
H255aa	Mining, placer/dredge, bond	Ch.308 -	1137
H257	Archery permit, education required	Ch.414 -	1524
H258	F&G tag/depredation hunt/nonresident	Ch.309 -	1140
H259	Water plan, Boise River Basin, approval ..	Ch.415 -	1525
H260	Canal companies, assessment, certain	Ch.108 -	276
H261	Underground storage tank, finance	Ch.310 -	1143
H264	PUC, intervenors, award for costs	Ch.234 -	816

H265	State agency dept head, authority	Ch.235 -	817
H267	Health professional, peer assistance	Ch. 73 -	194
H268	Sales tax exemption, health entities	Ch.402 -	1468
H272	Hospital dist, annexation/consolidation ..	Ch.137 -	337
H273	Crimes, violent, fine offset	Ch.236 -	818
H275aa,aaS	Waste tire disposal	Ch.375 -	1372
H277	Potato Commission, subpoena power	Ch.211 -	572
H278aa	Noxious weeds, control	Ch.247 -	859
H280	Irrigation dist, indebtedness contract ...	Ch.212 -	574
H282	Inmates, county jails, classification	Ch.213 -	578
H285	Highway distribution acct, allocation	Ch.126 -	319
H286	Highway construction, highway district ...	Ch.127 -	322
H289aaS	MV, commercial, variable load axle	Ch.376 -	1377
H290aa	Vehicles, voluntary fire dept	Ch.377 -	1385
H291aa	MV, certain, mileage fees, audited	Ch.138 -	341
H293	Solid waste management, technical amens ..	Ch.139 -	342
H294	MV, lien, notarizing requirement	Ch.283 -	957
H295	Highway district commission compensation .	Ch.109 -	278
H300aa	Property tax, exemption, approval	Ch.214 -	580
H305	Real property, mechanics lien, file	Ch.378 -	1386
H311	Schools, proprietary, operation	Ch. 57 -	154
H313	Manufactured home, real property	Ch.167 -	424
H317aaS	Grizzly bears, oversight committee	Ch.403 -	1469
H319	Housing authorities, additional powers ...	Ch.215 -	581
H324	Administrative rules, publication	Ch.245 -	853
H326	F&G violations, money to Search/Rescue ...	Ch.311 -	1146
H327aa	Beer distributors, suppliers	Ch.312 -	1148
H328aa	State agencies, performance plan	Ch.168 -	425
H330aaS	Elections, city, 4 per year	Ch.379 -	1392
H331	Administrative Procedure Act	Ch.216 -	587
H334	Records, county, classification	Ch.140 -	371
H336	Judges, salaries	Ch.217 -	680
H341	Electric corporation/energy conservation .	Ch.218 -	682
H345aaS	Education Bd, split, higher ed/schools ...	Ch.404 -	1470
H350aa	Idaho Telephone Assistance Program	Ch.219 -	683
H352	Elections, initiative/referendum/recall ..	Ch.313 -	1157
H353	Approp, add'l, Parks & Recreation	Ch. 58 -	162
H354aaS	Nonprofit Corporation Act	Ch.220 -	685
H355aa	Administration Dept, reorganization	Ch.221 -	747
H356aa	Inmates/correction employees, contact	Ch.222 -	759
H358	Approp, add'l, Human Rights Comm	Ch. 59 -	163
H359	Approp, add'l, Arts Commission	Ch. 60 -	164
H360	Health professionals, loan repay	Ch.141 -	373
H365	Podiatrist, unprofessional practices	Ch.314 -	1165
H366	Approp, add'l, Hispanic Comm.	Ch. 61 -	164
H367	Approp, add'l, Displaced Homemaker Prog ..	Ch. 62 -	165
H370	Approp, add'l, Vocational Rehabilitation .	Ch. 63 -	165
H373	Approp, add'l, Lands Dept	Ch. 74 -	197
H375	Workers comp, deductible, contract	Ch.223 -	759
H376	Indian gaming, Lottery Comm monitor	Ch.249 -	871
H379	Fire protect dist, fund carryover	Ch.329 -	1228
H381	Limited Liability Companies Act	Ch.224 -	760
H382	Adoption records, confidentiality	Ch.315 -	1166

H384	School-community library, fiscal year	Ch.316 - 1171
H386	Approp, add'l, State Auditor	Ch.115 - 292
H387	Mobile homes, landlord/tenant	Ch.380 - 1394
H388	Rights of way, federal land, preserved ...	Ch.142 - 375
H389aaS	Property tax, subdivision lots	Ch.405 - 1473
H392	F&G lands, fee in lieu of taxes	Ch.317 - 1172
H394	Approp, Public Utilities Comm	Ch.225 - 791
H395	State employees, pay schedule	Ch.226 - 792
H396	State employees, nonclass, bonus	Ch.318 - 1173
H399	Print shop, publications review	Ch.330 - 1228
H401	Approp, health education programs	Ch.169 - 428
H402	Sales tax, production exemption	Ch.319 - 1175
H403	Approp, Labor & Industrial Services	Ch.170 - 429
H404	Income tax, corporate, unitary group	Ch.284 - 958
H406aa	Approp, Liquor Dispensary	Ch.370 - 1333
H407	Approp, Education Department.....	Ch.143 - 377
H408	Approp, Administration Dept.	Ch.144 - 378
H409	Approp, Transportation Dept	Ch.145 - 380
H411aa	Real estate appraiser license, exemption .	Ch.320 - 1178
H412aa	MV, commercial, temporary permit, when ...	Ch.321 - 1179
H414	Approp, Historical Society	Ch.171 - 431
H415	Approp, Human Rights Comm	Ch.172 - 432
H416	Approp, Public Broadcasting	Ch.173 - 432
H417	Approp, Library Board	Ch.174 - 433
H418	Approp, Attorney General	Ch.175 - 433
H419	Consumer credit, delinquent charges	Ch.227 - 797
H420	Approp, Self-governing Agencies	Ch.228 - 799
H421	Approp, add'l, H&W Dept, medical asst	Ch.229 - 801
H423	Approp, Law Enforcement	Ch.241 - 849
H426	General Fund, money transferred, when	Ch.242 - 851
H427	Approp, Women's Programs Comm	Ch.243 - 852
H428	Approp, Military Division	Ch.244 - 852
H429	Approp, Insurance Dept	Ch.322 - 1181
H432	Approp, Vocational Education	Ch.323 - 1182
H433	Approp, Public Health Districts	Ch.324 - 1183
H434	Approp, Correction Dept.	Ch.325 - 1183
H436	Approp, Governor's Emergency Fund	Ch.326 - 1186
H437	Approp, State Treasurer	Ch.381 - 1399
H439	Legislative Oversight Committee	Ch.327 - 1186
H441	Approp, Secretary of State	Ch.406 - 1474
H442	Approp, Permanent Building Fund	Ch.382 - 1400
H443	Approp, Agriculture Department	Ch.383 - 1403
H445	Approp, Health & Welfare Dept	Ch.384 - 1406
H447	Approp, Financial Management Division	Ch.385 - 1416
H448	Approp, Office of Governor	Ch.328 - 1226
H449	Approp, Parks & Rec, park development	Ch.386 - 1417
H452	Audit requirements, local governments	Ch.387 - 1417
H453aaS	State auditor, post audit duties	Ch.388 - 1435
H454	Idaho Code, copyright	Ch.389 - 1444
H455	Taxing dist, budget increase, notice	Ch.390 - 1445
H460	Bingo/raffles, regulation	Ch.391 - 1448
H461	Approp, General Fund from Liquor Fund	Ch.392 - 1456
H462	Legislative Account, moneys reduced	Ch.393 - 1456

IDAHO SESSION LAWS

H463	Approp, Public school support	Ch.411 - 1503
H464	Approp, Budget Reserve Fund	Ch.394 - 1458
H465	Approp, Permanent Bldg Fund Adv Council ..	Ch.395 - 1458

NUMERICAL LIST OF SENATE JOINT RESOLUTIONS SENATE AND HOUSE JOINT MEMORIALS AND SENATE AND HOUSE CONCURRENT RESOLUTIONS

SENATE JOINT RESOLUTIONS

SJR105 Reapportionment Commission, created 1530

SENATE JOINT MEMORIALS

SJM101 Balanced budget/line item veto 1533
 SJM102 American flag protection 1534
 SJM103 Biodiesel, incentives urged 1535
 SJM104 Forest Health bill, Congress, support requested ... 1536
 SJM106 Delaney Clause/carcinogenic substances 1537
 SJM107 INEL, Integral Fast Reactor, promotion 1538

HOUSE JOINT MEMORIALS

HJM 1 Federal mandates, states' rights 1540
 HJM 2 Endangered Species Act/economic impact 1541
 HJM 3 Bruneau Hot Springs Snail 1542
 HJM 4 Hells Canyon, national park opposed 1543
 HJM 5 Insurers, regulation, federal law 1544
 HJM 6 Public land, right-of-way preserved 1545

SENATE CONCURRENT RESOLUTIONS

SCR101 Joseph Albertson, recognition 1547
 SCR104 Transportation Dept, rules, amended 1548
 SCR105 Water, minimum flow, Crystal Springs 1549
 SCR108 H&W rule, adoptions, investigation, amended 1550
 SCR110 Warsaw Ghetto uprising, commemorate 1551
 SCR112 Transportation Dept, rules amended 1552
 SCR114 Child custody/visitation, study 1553
 SCR117 Parks & Recreation building, financing 1553

HOUSE CONCURRENT RESOLUTIONS

HCR 1 State Address to Legislature 1555
 HCR 2 Budget Address to Legislature 1555
 HCR 3 Workplace Productivity/Literacy Year 1556

HCR 5	Legislative bills, printing contract	1557
HCR 7	Volunteers/Overseas Cooperative Assistance	1559
HCR 8	Legislative Journal, printing contract	1559
HCR 11	Harold Reid, recognized	1562
HCR 14	Justice Robert Bakes, honored	1563
HCR 15	Session Laws, printing contract	1564
HCR 16	Criminal code, recodification, study	1566
HCR 19	Water Quality Institute, duties	1567
HCR 20	State employees, pay policy	1568
HCR 21aa	State employees, certain, bonus	1569
HCR 23	Telecommunications plan adopted	1570
HCR 26	Aquifer recharge, study	1571
HCR 27	Local government, service consolidation	1572
HCR 28	Taxation, Legislative study comm	1573
HCR 32	Public Lands Week declared	1574
HCR 33	Driver license suspension/federal mandate	1574
HCR 34	American Indians, legislative study	1576
HCR 36	Tax Comm rules, amended	1577
HCR 39	Dr. Leon Doane, recognized	1582
HCR 40	Uninsured motorists, study	1583

APPENDIX



IDAHO SESSION LAWS

IDAHO STATE OFFICIAL DIRECTORY



ELECTED OFFICIALS

CONGRESSIONAL

UNITED STATES SENATORS

Senator Larry E. Craig (R)

Senator Dirk Kempthorne (R)

REPRESENTATIVES IN CONGRESS

Larry LaRocco (D), First District

Mike Crapo (R), Second District

Mailing Address: 304 N. 8th
Boise, Idaho 83702

STATE ELECTED OFFICIALS

GOVERNOR Cecil D. Andrus (D)

LT. GOVERNOR C. L. "Butch" Otter (R)

SECRETARY OF STATE Pete T. Cennarrusa (R)

STATE AUDITOR J. D. Williams (D)

STATE TREASURER Lydia Justice-Edwards (R)

ATTORNEY GENERAL Larry Echohawk (D)

SUPERINTENDENT OF PUBLIC INSTRUCTION Jerry L. Evans (R)

Mailing Address: State Capitol Mall
Boise, Idaho 83720

LEGISLATORS BY DISTRICT

1-BONNER & BOUNDARY COUNTIES

Tim Tucker (D), Senate
(Served 3 1/2 terms House, 1983-89)
HCR 80, Box 227 Porthill 83853
Home 287-2977 Bus. 287-5198
Farmer Wife-Ellen
Agricultural Affairs, Education
Local Government/Taxation

Monice Beaudoin (D), House Seat A
802 Lakeview Blvd., Sandpoint 83884
Home 283-2593 Bus. 263-3034
Teacher Husband-Kenneth
Education, Environmental Affairs
Judiciary, Rules/Administration

Jim Stoicheff (D), House Seat B
815 Lakeview, Sandpoint 83864
Home 263-2375 Retired Teacher Wife-Jerry
MINORITY LEADER
Local Government, Resources/Conservation
State Affairs, Ways/Means

2-BONNER & KOOTENAI COUNTIES

Barbara Chamberlain (D), Senate
(Served 1 term House, 1990-92)
E. 4555 Ohio Match Ave., Post Falls 83854
Businesswoman Home 773-9304 Husband-Oean
Commerce, Human Resources
Health/Welfare, Judiciary/Rules

Hide Kellogg (R), House Seat A
(Served 4 terms House, 1983-91)
P.O. Box 1479, Post Falls 83854
Phone 773-5412 Businesswoman/realtor/consultant
Business, Revenue/Taxation
Transportation/Defense

Wally Wright (D), House Seat B
P.O. Box 388, Bayview 83803
Home: 683-2775 Bus 683-2243
Retired Navy Aviator/Businessman
Human Resources, Revenue/Taxation
Transportation/Defense

3-KOOTENAI COUNTY

Dennis M. Davis (D), Senate
816 Sherman Ave., Coeur d'Alene 83814
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Attorney Wife-Kathy Canfield-Oavis
ASSISTANT MINORITY LEADER
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State Affairs
Resources/Environment

Louia J. Horvath, Jr. (D), House Seat A
Box 888, Pinahurat 83850
Home 682-2587
Retired Educator/HS Wife-Joyce
Health/Welfare, Revenue/Taxation
Human Resources

Gino L. White (D), House Seat B
P.O. Box 237, Plummer 83851
Phone 886-0188 Wife-Sandra "Sam"
Appropriations, Resources/Conservation
Local Government

5-LATAH COUNTY

Gary J. Schroeder (R), Senate
1289 Highland, Moscow 83843
Bus 882-0601 Home 882-9092 Wife-Sharon
Business owner/Outdoor writer
VICE-CHAIRMAN--Agricultural Affairs
Education, Transportation

James R. "Doc" Lucas, DVM (R), House Seat A
4231 Highway 95 South, Moscow 83843
veterinarian - Retired 882-7374 Wife-Vt
Appropriations (JFAC), Environmental Affairs
Resources/Conservation

Waynard W. Miller (R), House Seat B
514 E. First Street, Moscow 83843
Bus 885-6192 Home 882-1237 Wife-Joan
University professor/administrator, U of Idaho
Education, Environmental Affairs

6-HEZ PERCE COUNTY

Bruce L. Sweeney (D), Senate
(Served 2 terms House, 1970-74)
Box 804, Lewiston 83501
Home 743-9148 Bus. 743-2534
Land Development/Construction Wife-Marilyn
Health/Welfare, Transportation

Paul C. Keeton (D), House Seat A
(Served 3 terms House, 1980-1988)
902 Cedar, Lewiston 83501
Attorney Bus 743-2569 Home 743-7120
Judiciary, Rules/Administration
Local Government

Dan Wader (R), House Seat B
387 Reservoir Drive, Lewiston 83501
Farmer Bus 285-1294 Home 748-4029 Wife-Cindi
Resources/Conservation
Revenue/Taxation

LEGISLATORS BY DISTRICT (continued)

7-BENEWAH, CLEARWATER, IDAHO, LATAH LEWIS & NEZ PERCE COUNTIES

Marguerite McLaughlin (D), Senate
(Served 2 terms House, 1979-82)
704 Floyd Ave., Orofino 83544
Hubband-G. Bruce 478-4136
Finance (JFAC), Resources/Environment
Commerce/Human Resources

Charles D. Cuddy (D), House Seat A
12840 Hartford Ave., Orofino 83544
Home 478-3729 Bus. 478-4843 Wife-Judy
Surveying/Engineering Consultant
Revenue/Taxation, Transportation/Defense
Resources/Conservation

June E. Judd (D), House Seat B
2105 College, St. Maries 83881
Retired Educator Home 245-2818
Agricultural Affairs, Business
State Affairs

8-ADAMS, BOISE, GEM IDAHO & VALLEY COUNTIES

Terry A. Haun (D), Senate
819 Hazel Ave., Emmett 83617 Wife-Lyn
Teacher Bus. 385-2921 Home 385-8581
Education, Transportation
Local Government/Taxation

Gayle Ann Wilde (R), House Seat A
P.O. Box 984, McCall 83838 834-5878
Former Petroleum Marketer/Teacher
Hubband-Ralph
VICE-CHAIRMAN--Human Resources
Education, Environmental Affairs

Judith Danielson (R), House Seat B
P.O. Box 724, Council 83612 Hubband-John
Retired nurse/Former commissioner 253-4850
VICE-CHAIRMAN--Local Government
Judiciary, Rules/Administration
State Affairs

9-GEM, PAYETTE, WASHINGTON COUNTIES

Mary Hartung (R), Senate
(Served 3 years in House, 1987-89)
Box 147, Payette 83861
Home 842-3270 Bus. 452-3543
Insurance Hubband-Morris
ASSISTANT MAJORITY LEADER
Finance (JFAC), State Affairs
Transportation

Gertrude Sutton (R), House Seat A
Route 1, Box 42, Midvale 83645
Home 355-2442 Pres. Family Ranch Corp.
Resources/Conservation
Agricultural Affairs, State Affairs

Donna Jones (R), House Seat B
1811 1st Ave. S, Payette 83861
Home 842-9879 Bus. 842-9433
Realtor Hubband-Donald
CHAIRMAN--Ways/Means
Business, Revenue/Taxation
Transportation/Defense

10-CANYON COUNTY

David E. Kerrick (R), Senate
P.O. Box 44, Caldwell 83806
Home 454-3373 Bus. 459-3859
Attorney Wife-Juneal
MAJORITY CAUCUS CHAIRMAN
VICE-CHAIRMAN--Commerce/Human Resources
Judiciary/Rules, State Affairs

Ron Crene (R), House Seat A
1907 Alder, Caldwell 83805
Businessman 459-4990 Wife-Cheryl
CHAIRMAN--Business
State Affairs

Dorothy L. Reynolds (R), House Seat B
(Served 3 terms House, 1974-80)
1920 Howard, Caldwell 83805
Farm Owner/substitute teacher 459-2553
CHAIRMAN--Health/Welfare
Education

11-CANYON COUNTY

Atwell J. Parry (R), Senate
6985 Baseline Road, Malbe 83841 495-2226
Grocer/Meat Cutter-Retired Wife-Elsaine
CHAIRMAN--Finance, Co-Chairman--JFAC
Local Government/Taxation

Robert E. Schaefer (R), House Seat A
P.O. Box 55, Nampa 83853
Home/Bus 488-3838 Wife-Betty
Architect
VICE-CHAIRMAN--Environmental Affairs
Human Resources

W. O. "Bill" Taylor (R), House Seat B
8387 Track Road, Nampa 83888 Home 488-0970
Contractor/Real Estate Investor Wife-Shirley
VICE-CHAIRMAN--Business
Education, Local Government

12-CANYON COUNTY

J. L. "Jerry" Thorne (R), Senate
331 Winther Blvd., Nampa 83851
Home 487-2892 Bus. 468-3882
Printing Wife-Lois
CHAIRMAN--Local Government/Taxation
Finance (JFAC), Transportation

Dolores J. Crow (R), House Seat A
203 11th Ave. S, Extension, Nampa 83868
Home 487-1302 Hubband-Wayne
CHAIRMAN--Environmental Affairs
Revenue/Taxation

William W. Dael (R), House Seat B
312 3rd St. S., Nampa 83851
Home 488-3184 Bus. 488-2485/897-1077
Insurance Wife-Joan
VICE-CHAIRMAN--State Affairs
Local Government, Business

LEGISLATORS BY DISTRICT (continued)

13-ADA COUNTY

Sheila Sorensen (R), Senate
(Served 3 terms House, 1987-92)
P. O. Box 873, Boise 83701
Home 345-8688 Bus. 344-4900 Husband-Dean
Health Care Professional
CHAIRMAN--Health/Welfare
Judiciary/Rules

Pam Ahrens (R), House Seat A
2854 S. Swallowtail Lane, Boise 83708
Home 345-8188 Husband-Steve Ahrens
Bus. 338-5100 Director/Member Services/IHA
CHAIRMAN--State Affairs
Judiciary, Rules/Administration

Jim Hansen (D), House Seat B
2010 Coloma Way, Boise 83712
Home 385-9413
Attorney Wife-Joan Cartan Hansen
Education, Health/Welfare
Judiciary, Rules/Administration

14-ADA COUNTY

Herb Carlson (R), Senate
P. O. Box 1238, Eagle 83818 939-6979
Farmer - Rancher Wife-Lorraine
CHAIRMAN--Agriculture Affairs
VICE-CHAIRMAN--Resources/Environment
Finance (JFAC)

Dave Sivens (R), House Seat A
(Served 8 terms Senate, 1987-74)
2354 Star Lana, Meridian 83842
Home 888-3778
Retired Agri-Bus Wife-Helen
Revenue/Taxation
Transportation/Defense

Alan G. Lance (R), House Seat B
1370 Eggers Place, Meridian 83642
Home 888-1319 Bus. 888-2575
Attorney Wife-Sheryl
MAJORITY CAUCUS CHAIRMAN
Judiciary, Rules/Administration
State Affairs, Ways/Means

15-ADA COUNTY

Phil Childers (R), Senate
(Served 4 terms House, 1985-91)
3440 Quail Plaza, Boise 83704 375-8904
Sales/Marketing Wife-Margaret
VICE-CHAIRMAN--Local Government/Taxation
Education, Judiciary/Rules

Dan Hawley (R), House Seat A
10490 Treeline Street, Boise 83704
Home 378-0218 Bus 322-7427
Attorney Wife-Renee
Education, Local Government
Judiciary, Rules/Administration

Max C. Black (R), House Seat B
3731 Buckingham Drive, Boise 83704
Home 375-2835 Bus 334-7920
Insurance Wife-Clydene
Business, Health/Welfare

18-ADA COUNTY

Cecil D. Ingram (R), Senate
7025 El Ceballos Dr., Boise 83704
Home 375-8876
Retired Wife-Lois Ann
Agricultural Affairs, Health/Welfare
Commerce/Human Resources

Sylvia McKeeth (R), House Seat A
4113 Catalpa Dr, Boise 83703
Retired 343-8150
Education, Health/Welfare

Horace B. "Hod" Pomeroy (R), House Seat B
6822 Kingsdale Dr., Boise 83704
Home 377-1293 Wife-Margarita
Business Consultant
Appropriations (JFAC)
Transportation/Defense

17-ADA COUNTY

Grant R. Ipsen (R), Senate
1010 Houston Road, Boise 83708
Home 342-4470 Bus 345-1010
CPA--Insurance/Investments Wife-Edna (Eddie)
Commerce/Human Resources
Health/Welfare

Jease S. Beratin (R), House Seat A
1725 Gourley St., Boise 83705
Home 344-6098 Wife-Maria Andrea
Retired US Gov employee Bus. 343-6405
Human Resources, State Affairs
Environmental Affairs

Ruby R. Stone (R), House Seat B
6604 Holiday Drive, Boise 83709
Property Management 375-7975
CHAIRMAN--Local Government
State Affairs

18-ADA COUNTY

Roger B. Madson (R), Senate
(Served 1 term Senate, 1988-90)
7842 Desert Ave., Boise 83709
Home 382-0373 Bus 342-0313
Attorney Wife-Leah
VICE-CHAIRMAN--Judiciary/Rules, Education
Commerce/Human Resources

William T. "Bill" Salt (R), House Seat A
795 W Amity, Meridian 83642
Home 888-3185 Wife-Terry
Attorney
VICE-CHAIRMAN--Health/Welfare
Human Resources

Fred D. Tilsam (R), House Seat B
11457 Alejandro, Boise 83709
Business Consultant
Home 322-1133 Wife-Geri
VICE-CHAIRMAN--Education
Business, Local Government

LEGISLATORS BY DISTRICT (continued)

19-ADA COUNTY

Sue Reents (D), Senate
908 N. 18th, Boise 83702
Home/Bus 343-7009
Financial consultant Husband-Henry
Education, Judiciary/Rules
Commerce/Human Resources

Kathleen W. (Kitty) Gurnay (R), House Seat A
1111 W. Highland View Dr., Boise 83702
Home 343-1780 Husband-Vern L.
CHAIRMAN--Appropriations, CO-CHAIRMAN--JFAC
Human Resources

Kenneth L. Robison (D), House Seat B
(Served 1 Term Senate, 1979-80)
1119 N. 12th Street, Boise 83702
Journalist Home 345-3440
Appropriations, Resources/Conservation

20-ELMORE & OWYHEE COUNTIES

R. Clair Wetherall (D), Senate
380 East 15th North, Mountain Home 83847
Title Insurance Home 587-3240 Bus. 587-9091
Agricultural Affairs, Finance (JFAC)

Frances Field (R), House Seat A
HC-85, Box 221, Grand View 83824
Home 834-2488 Husband-Dacar
Homemaker/Retired school dist mgr/farm partner
CHAIRMAN--Agricultural Affairs
Education, Resources/Conservation

Robbi King (R), House Seat B
P.O. Box 28, Glenna Ferry 83823
Home 388-7715 Husband-Kevin
Judiciary, Rules/Administration
State Affairs

21-BLAINE, CAMAS, ELMORE GOODING & LINCOLN COUNTIES

John T. Peavey (D), Senate
P.O. Box 88, Carey 83320
Home 788-2850/summer 728-7588/winter
Rancher Wife-Olana Josephy
Agricultural Affairs, Resources/Environment
Local Government/Taxation

W. Clinton Stennett (D), House Seat A
P.O. Box 475, Ketchum 83340
Home 728-8108 Bus. 728-0113
TV Station Owner
Business, State Affairs

Pattie Mafziger (D), House Seat B
1787 East 3100 South, Wendell 83355
Home 538-2822 Husband-James
Farm Owner/Operator Bus. 538-6878
Agricultural Affairs, Education

22-GOODING & TWIN FALLS COUNTIES

B. Joyce McRoberts (R), Senate
342 Monroe Place, Twin Falls 83301
Home 734-3329 Businesswoman Husband-Darrel
MAJORITY LEADER
Health/Welfare, Judiciary/Rules
State Affairs

Celia R. Gould (R), House Seat A
4408 N. 1400 E., Buhl 83318
Home/Bus. 543-8728
Rancher Husband-Bruce Newcomb
CHAIRMAN--Judiciary, Rules/Administration
Agricultural Affairs, Revenue/Taxation

Douglas R. Jones (R), House Seat B
Route 2, Filer 83328
Home 328-4181 Bus. 733-8458
Farmer Wife-Mary Liz
Education, Resources/Conservation
Agricultural Affairs

23-TWIN FALLS COUNTY

Laird Noh (R), Senate
3442 Addison Ave E., Kimberly 83341
Sheep Producer 733-3617 Wife-Kathleen
CHAIRMAN--Resources/Environment
Agricultural Affairs, Education

Ronald L. Black (R), House Seat A
921 Trotter Dr., Twin Falls 83301 Home 734-9035
Small Business Incubator Manager
Bus 733-9554 4X78 Wife-Gael
CHAIRMAN--Education
Health/Welfare

Merk D. Stubbs (R), House Seat B
1025 Sawtooth Blvd., Twin Falls 83301
Home 733-0049 Bus. 733-7180
Attorney Wife-Jan
VICE-CHAIRMAN--Judiciary Rules/Administration
Environmental Affairs, Revenue/Taxation

24-JEROME & MINIDOKA COUNTIES

Oden L. Cameron (R), Senate
702 4th Street, Rupert 83350
Home 438-5824 Bus. 438-3584 Wife-Linda
Self-employed Insurance Agent
CHAIRMAN--Commerce/Human Resources
Finance, Resources/Environment

Steve Antone (R), House Seat A
1141 Link St., Rupert 83350 438-3927
Farmer Wife-Olana
CHAIRMAN--Revenue/Taxation
Business

Maxine T. Bell (R), House Seat B
194 S. 300 E., Jerome 83338 324-4298
Farmer/Homemaker Husband-H. Jack
VICE-CHAIRMAN--Agricultural Affairs
Appropriations (JFAC), Resources/Conservation

LEGISLATORS BY DISTRICT (continued)

25-CASSIA, MINIDOKA & TWIN FALLS COUNTIES

Denton Darrington (R), Senate
Route 1, Declo 83323
Home 854-2712 Bus. 878-8813
Farmer/Teacher Wife-Virgene
CHAIRMAN--Judiciary/Rules
Health/Welfare, State Affairs

Jim D. Kempton (R), House Seat A
Ster Rt., Box 28, Albion 83311
Rancher 873-6281 Wife-Susan
VICE-CHAIRMAN--Transportation/Defense
Human Resources, Revenue/Taxation

Bruce Newcomb (R), House Seat B
1828 Monroe, Burley 83318 878-3758
Farmer/Rancher Wife-Celia Gould
MAJORITY LEADER
Resources/Conservation
State Affairs, Ways/Means
26-CLARK, CUSTER, JEFFERSON
& LEWIS COUNTIES

Rex L. Furness (R), Senate
3470 E. 300 N., Rigby 83442
Ag/Business 754-8558 Wife-Fern
Agricultural Affairs, Resources/Environment
Local Government/Taxation

JoAn E. Wood (R), House Seat A
3778 E. 500 N., Rigby 83442
Home 745-7948 Husband-Thomas D.
Partner-Ranch/Farm/Trucking Corp.
CHAIRMAN--Transportation/Defense
State Affairs, Resources/Conservation

Lenore Hardy Barrett (R) House Seat B
143 W. Pleasant, Box 347, Challis 83226
Phone 879-2797 Husband-Robert
Mining/Investments
Local Government, Revenue/Taxation

27-FREMONT & MADISON COUNTIES

Merk G. Ricka (R), Senate
3348 S. 1400 W., Rexburg 83440 358-8678
Farmer Wife-Evelyn T.
CHAIRMAN--State Affairs
Finance (JFAC)

Michael T. Johnson (R), House Seat A
472 Linden, Rexburg 83440
Home 358-8890 Bus. 358-3305
Educator/HS Wife-Mary
Education
Judiciary, Rules/Administration

Golden C. Linford (R), House Seat B
2120 West 4200 South, Rexburg 83440
Home 358-7220 Bus. 358-7348
Potato Grower/Processor Wife - Pat
CHAIRMAN--Resources/Conservation
Health/Welfare, Revenue/Taxation

28-BONNEVILLE, FREMONT & TETON COUNTIES

Sten Hawkins (R), Senate
(Served 8 years House 1984-90)
Box 387, Ucon 83454
Home 524-1588 Bus. 523-2880
Agri-Business Wife-Linn
Resources/Environment
Local Government/Taxation, Health/Welfare

Max C. Mortensen (R), House Seat A
120 North 7th East, St. Anthony 83445
Home 824-3379 Wife-Bonnie
Self employed
Agricultural Affairs, Education
Human Resources

S. Lynn Locali (R), House Seat B
3140 E. 1100 W., Ashton 83420
Home/Bus. 852-3312 Wife-Portia
Rancher
Appropriations, Agricultural Affairs
Resources/Conservation

29-BONNEVILLE COUNTY

John D. Hansen (R), Senate
2840 Westmoreland Dr., Idaho Falls 83402
Home 523-5599 Legis. Office 523-1055
Attorney Bus. 523-5171 Wife-Michale
CHAIRMAN--Education
Agricultural Affairs, Resources/Environment

Jack T. Barraclough (R), House Seat A
3018 Westmoreland Circle, Idaho Falls 83402
Home 523-4483 Bus. 528-1887
Hydrologist Wife-Elaime
Education, Environmental Affairs
Resources/Conservation

Con Mahoney (R), House Seat B
333 W. 49th South, Idaho Falls 83402
Industrial Contractor/Manufacturer
Bus. 523-7030 Wife-Maria
VICE-CHAIRMAN--Revenue/Taxation
Local Government, Resources/Conservation

30-BONNEVILLE COUNTY

Melvin M. "Mel" Richardson (R), Senate
(Served 2 terms House, 1989-92)
3725 Brookfield, Idaho Falls 83408
Public Relations Wife-Dixie
Home 522-0772 Bus. 522-2817
Commerce/Human Resources
Education, Resources/Environment

Ralph J. Steele (R), House Seat A
531 South 52nd East, Idaho Falls 83401
Home 523-5424 Bus (mobile) 525-1122
Farmer/Rancher Wife-Lucile
VICE-CHAIRMAN--Resources/Conservation
Appropriations (JFAC)
Transportation/Defense, Resources/Conservation

Thomas F. Loertcher (R), House Seat B
1357 Bone Road, Iona 83427 522-3072
Farmer Wife-Linda
ASSISTANT MAJORITY LEADER
Health/Welfare, State Affairs
Ways/Means

LEGISLATORS BY DISTRICT (continued)

31-BINGHAM & BUTTE COUNTIES

Jerry T. Twigg (R), Senate
 955 West 100 South, Blackfoot 83221
 Farmer 884-4090 Wife-Sandra
 PRESIDENT PRO TEM
 VICE-CHAIRMAN--State Affairs, Transportation

Allan F. Larsen (R), House Seat A
 (Served 8 terms, House 1987-78)
 (Served 1 term, Senate 1991-92)
 848 W. Taber Rd., Blackfoot 83221
 Home/Bus. 884-4911 Wife-Alva Lu
 Farmer
 Human Resources, Revenue/Taxation
 Transportation/Defense

Michael W. Simpson (R), House Seat B
 785 Hoff Drive, Blackfoot 83221
 Home 785-5043 Bus. 785-0310
 Dentist Wife-Kathy
 SPEAKER OF THE HOUSE

32-BANNOCK, BEAR LAKE, CARIBOU FRANKLIN & ONEIDA COUNTIES

Dennie S. Hanaan (R), Senate
 2812 Second Bridge Rd., Soda Springs 83278
 Home 547-4410 Bus. 547-3391
 Accountant Wife-Marianne
 CHAIRMAN--Transportation
 Finance (JFAC)

Robert C. Geddes (R), House Seat A
 7235 N. 2600 West, Preston 83283
 Farmer 852-1378 Wife-Carma
 VICE-CHAIRMAN--Appropriations (JFAC)
 Agricultural Affairs

John H. Tippetts (R), House Seat B
 85 E. Center Bennington, 83254
 Home 847-2878 Wife-Nancy
 Instrumentation Technician
 CHAIRMAN--Human Resources
 State Affairs, Health/Welfare

33-BANNOCK COUNTY

Mary Ellen Lloyd (D), Senate
 (Served 2 terms House 1987-1990)
 162 Hawthorne, Pocatello 83204
 Home 237-8207 Bus. 234-4838
 Restaurant Owner Husband-Bill
 MINORITY CAUCUS CHAIRMAN
 Health/Welfare, State Affairs
 Resources/Environment

John Alexander (D), House Seat A
 3537 Conlin Pocatello 83201
 Home 238-0912 Bus. 526-0750
 Procurement Wife-Lisa
 State Affairs, Human Resources
 Environmental Affairs

Willie L. Flandro (D), House Seat B
 109 Mountain Dr., Pocatello 83204
 Home 232-0723 Bus. 237-1300
 Teacher Husband-Michael
 MINORITY CAUCUS CHAIRMAN
 Business, Health/Welfare
 Ways/Means

34-BANNOCK COUNTY

Evan Frasura (R), Senate
 (Served 1 term House, 1990-92)
 948 Beth, Pocatello 83201
 Home/Bus. 232-5646
 Marketing executive Wife-Analyn
 VICE-CHAIRMAN--Transportation
 Local Government, Resources/Environment

Elaine Hoffman (D), House Seat A
 218 S. 18th Ave., Pocatello 83201
 Home 232-7167 Husband-Cornelius
 Former Educator
 Education, Health/Welfare
 Judiciary, Rules/Administration

Pete Black (D), House Seat D
 2249 Cassia, Pocatello 83201
 Home 237-1779 Bus. 237-2271
 Educator Wife-Ronda
 ASSISTANT MINORITY LEADER
 Appropriations (JFAC)
 Local Government, Ways/Means

35-BANNOCK, BINGHAM & POWER COUNTIES

C. E. "Chick" Bilyeu (D), Senate
 11078 N. Philbin Rd., Pocatello 83202 237-3158
 Educator/Retired Wife-Diane
 Finance (JFAC), Transportation

Albert M. (Al) Johnson (D), House Seat A
 12350 N. Philbin Rd., Pocatello 83202
 Farmer/Rancher 237-2828 Wife-Betty
 Agricultural Affairs, Resources/Conservation
 Revenue/Taxation

Jim Christiansen (D), House Seat B
 (Served 2 terms Senate 1987-1990)
 P.O. Box 458, Aberdeen 83210
 Home 397-4844 Bus 228-5001
 Small business/farmer/rancher Wife-Lou Etta
 Agricultural Affairs, Education

