

TITLE 33
EDUCATION

CHAPTER 38
STATE INSTITUTIONS OF HIGHER EDUCATION BOND ACT

33-3801. SHORT TITLE. This act may be cited as "The Educational Institutions Act of 1935."

[33-3801, added 1935 (1st E.S.), ch. 55, sec. 1, p. 145.]

33-3802. DEFINITIONS. The following terms, wherever used or referred to in this act, shall have the following meaning unless a different meaning clearly appears from the context:

(a) The term "institution" shall mean any institution named in section 2 [3, section [33-3803](#), Idaho Code];

(b) The term "board" shall mean the state board of education, board of regents, board of trustees or other governing body, by whatever name known, of an institution;

(c) The term "bonds" shall mean any bonds of an institution issued pursuant to this act;

(d) The term "project" shall mean and include buildings, structures, improvements, and equipment of every kind, nature and description, which may be required by or convenient for the purposes of an institution, including, without limiting the generality of the foregoing, administration, dining, exhibition, lecture, recreational and teaching halls, or parts thereof, or additions thereto; heat, light, sewer and water works plants or systems, or parts thereof, or extensions thereto; commons, dining halls, dormitories, auditoriums, libraries, infirmaries, laundries, laboratories, metallurgical plants, museums, swimming pools, water-towers, fire prevention and fire fighting systems, gymnasias, stadia, dwellings, green houses, farm buildings, and stables, or parts thereof, or additions thereto; or any one, or more than one, or all of the foregoing, or any combination thereof;

(e) The term "to acquire" shall include to purchase, to erect, to build, to construct, to reconstruct, to repair, to replace, to extend, to better, to equip, to develop, to improve, and to embellish a project;

(f) The term "Recovery Act" shall mean the act of the Congress of the United States of America, approved June 16, 1933, entitled: "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works and for other purposes," and Acts amendatory thereof and acts supplemental thereto, and revisions thereof, and any further Acts or joint resolutions of the Congress of the United States to encourage public works or to reduce unemployment or for work relief;

(g) The term "federal agency" shall mean the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works, or such other agency or agencies as may be designated or created to make loans or grants.

[33-3802, added 1935 (1st E.S.), ch. 55, sec. 2, p. 145.]

33-3803. STATE EDUCATIONAL INSTITUTIONS AS BODIES POLITIC AND CORPORATE -- POWERS OF BOARDS. Each of the following institutions is hereby constituted and confirmed a body politic and corporate and a separate and in-

dependent legal entity and is hereby further constituted and confirmed as a governmental instrumentality for the dissemination of knowledge and learning: "The Regents of the University of Idaho," "Lewis-Clark State College," "Idaho State University," and "Boise State University." A corporate purpose of every institution, in addition to any other purposes thereof, shall be to acquire any project. The powers of every institution delegated to it by this act shall be vested in and exercised by a majority of all the members of its board, and a majority of all the members of such board shall be a quorum for the transaction of any business authorized by this act, but a lesser number may adjourn and compel the attendance of absent members.

[33-3803, added 1935 (1st E.S.), ch. 55, sec. 3, p. 145; am. 1969, ch. 94, sec. 1, p. 324.]

33-3804. POWERS AND DUTIES OF STATE INSTITUTIONS. Every institution shall have power in its proper name as aforesaid:

- (a) To have a corporate seal and alter the same at pleasure;
- (b) To sue and be sued;
- (c) To acquire by purchase, gift or the exercise of the right of eminent domain and hold and dispose of real or personal property or rights or interests therein and water rights;
- (d) To make contracts and to execute all instruments necessary or convenient;
- (e) To acquire any project or projects, and to own, operate, and maintain such project;
- (f) To accept grants of money or materials or property of any kind from a federal agency, upon such terms and conditions as such federal agency may impose;
- (g) To borrow money, with or without the issuance of bonds and to provide for the payment of the same and for the rights of the holders of such bonds and/or of any other instrument of such indebtedness, including the power to fix the maximum rate of interest to be paid thereon and to warrant and indemnify the validity and tax exempt character;
- (h) To perform all acts and do all things necessary or convenient to carry out the powers herein granted, to obtain loans or grants or both from any federal agency, and to accomplish the purposes of sections [33-3801](#)--[33-3813](#), Idaho Code, and secure the benefits of the Recovery Act;
- (i) To issue refunding bonds, for the purpose of paying, redeeming, or refunding any outstanding bonds theretofore issued under authority of this chapter. Refunding bonds so issued shall have such details, shall bear such rate or rates of interest and shall be otherwise issued and secured as provided by the board authorizing the issuance of such bonds and as otherwise provided in this chapter, provided, however, that such changes in the security and revenues pledged to the payment thereof may be made by such board as may be provided by it in the proceedings authorizing such bonds, but in no event shall such refunding bonds ever be secured by revenues not authorized by this chapter to be pledged to the payment of bonds issued for other than refunding purposes. Refunding bonds issued hereunder may be exchanged for a like principal amount of the bonds to be refunded, may be sold in the manner provided in this chapter for the sale of other bonds, or may be exchanged in part and sold in part. If sold, the proceeds of such bonds may be deposited in escrow for the payment of the bonds to be refunded, provided such bonds mature or are callable for redemption under their terms within six (6) months from the date of the delivery of the refunding bonds. No refunding bonds may

be issued hereunder in a principal amount in excess of the principal amount of the bonds to be refunded nor may any bonds not maturing or callable for redemption under their terms as above provided be refunded hereunder without the consent of the holders thereof. Refunding bonds so authorized and issued may in the discretion of the board be combined with other bonds to be authorized and issued under this chapter, and a single issue of bonds may be so authorized in part for improvement and in part for refunding purposes.

(j) In connection with borrowing without the issuance of bonds, to fix fees, rents or other charges for utilization of any facility or project being financed by said borrowing and to pledge the same, together with any other revenue from such project or facility, as collateral for repayment of principal and interest in the same manner and to the same extent as provided in this chapter for securing the payment of bonds issued pursuant to this chapter.

[33-3804, added 1935 (1st E.S.), ch. 55, sec. 4, p. 145; am. 1941, ch. 154, sec. 1, p. 308; am. 1965, ch. 37, sec. 1, p. 59; am. 1975, ch. 118, sec. 1, p. 246.]

33-3805. AUTHORIZATION, ISSUANCE, MATURITY, INTEREST AND SALE OF BONDS. When the board shall find the proposed project or projects to be necessary for the proper operation of the institution and economically feasible and such finding is recorded in its minutes, the bonds therefor shall be authorized by resolution of the board. The bonds may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, not exceeding forty (40) years from the respective dates thereof, may mature in such amount or amounts, may bear interest, at such rate or rates to be determined by the board, may be in such form, either coupon or registered, may carry such registration and such conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds may be sold at a public or private sale at not less than par and accrued interest, in a manner to be provided by the board. The bonds shall be fully negotiable within the meaning and for all purposes of the Uniform Commercial Code.

[33-3805, added 1935 (1st E.S.), ch. 55, sec. 5, p. 145; am. 1953, ch. 90, sec. 1, p. 120; am. 1965, ch. 37, sec. 2, p. 59; am. 1967, ch. 272, sec. 7, p. 745; am. 1970, ch. 28, sec. 1, p. 54; am. 1979, ch. 47, sec. 1, p. 136.]

33-3806. PROVISIONS FOR PAYMENT OF BONDS. Any institution in connection with the issuance of the bonds or in order to secure the payment of such bonds and interest thereon, shall have power by resolution of its board:

(a) To fix and maintain (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to be served by any project, (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institutions, and from the public in general, for the facilities afforded by such institution (which shall be uniform to all those similarly situated), (3) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, existing

buildings, stadia, and other structures at any institution which issues bonds hereunder to acquire a project, which fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by such buildings, stadia and other structures shall be the same as those applicable to any project similar in nature and purpose to such existing buildings, stadia, and other structures; provided, however, that as between such project and the existing buildings at the institution there may be allowed reasonable differentials based on the condition, type, location and relative convenience of such project and such existing buildings, but such differentials shall be uniform as to all such students or faculty members and others similarly accommodated;

(b) To provide that bonds issued hereunder shall be secured by a first, exclusive and closed lien on the income and revenue derived from, and shall be payable from, (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures, and (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, and (3) the proceeds of grants of funds and moneys received or to be received from the United States of America, or any agency or instrumentality thereof, pursuant to agreements entered into between the board and the United States of America, or any agency or instrumentality thereof, prior to the issuance of the bonds.

(c) To pledge and assign to, or in trust for the benefit of, the holder or holders of the bonds issued hereunder an amount of the income and revenue derived from (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures, and (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, and (3) the proceeds of grants of funds and moneys received or to be received from the United States of America, or any agency or instrumentality thereof, pursuant to agreements entered into between the board and the United States of America, or any agency or instrumentality thereof, prior to the issuance of the bonds, which shall be sufficient to pay when due the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor;

(d) To covenant with or for the benefit of the holder or holders of bonds issued hereunder to acquire any project that so long as any such bonds shall remain outstanding and unpaid, such institution will fix, maintain and collect in such installments as may be agreed upon (1) an amount of the fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures which, together with (2) an amount of the matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, and (3)

the proceeds of grants of funds and moneys received or to be received from the United States of America, or any agency or instrumentality thereof, pursuant to agreements entered into between the board and the United States of America, or any agency or instrumentality thereof, prior to the issuance of the bonds, shall be sufficient to pay when due the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor, and to pay the costs of operation and maintenance of such project, including, but not limited to, reserves for extraordinary repairs, insurance and maintenance, which costs of operation and maintenance shall be determined by the board in its absolute discretion;

(e) To make and enforce and agree to make and enforce parietal rules that shall insure the use of any project by all students in attendance at such institution to the maximum extent to which such project is capable of serving such students, or if such project is designed for occupancy as living quarters for the faculty members, by as many faculty members as may be served thereby;

(f) To covenant that so long as any of the bonds issued hereunder shall remain outstanding and unpaid, it will not, except upon such terms and conditions as may be determined (1) voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the bonds issued hereunder upon any of the income and revenues derived from fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to be served by, any project and any existing buildings, stadia, and other structures, and from matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, or (2) convey or otherwise alienate the project to acquire which such bonds shall have been issued, or the real estate upon which such project shall be located, except at a price sufficient to pay all the bonds then outstanding issued hereunder to acquire such project and interest accrued thereon, and then only in accordance with any agreements with the holder or holders of such bonds, or (3) mortgage or otherwise voluntarily create or cause to be created any encumbrance on the project to acquire which such bonds shall have been issued or the real estate upon which it shall be located.

(g) To covenant as to the procedure by which the terms of any contract with a holder or holders of such bonds may be amended or rescinded, the amount or percentage of bonds the holder or holders of which must consent thereto, and the manner in which such consent may be given.

(h) To vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued hereunder, and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute events of default and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage of such bonds may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate.

(i) To vest in a trustee or trustees or the holder or holders of any specified amount or percentage of bonds the right to apply to any court of competent jurisdiction for and have granted the appointment of a receiver or receivers of the income and revenue pledged and assigned to or for the benefit of the holder or holders of such bonds, which receiver or receivers may have and be granted such powers and duties as such court may order or decree which powers and duties may include any and all such powers and duties as are usually granted under the laws of the state of Idaho to a receiver or receivers appointed in connection with the foreclosure of a mortgage made by a private corporation.

(j) To make covenants with any federal agency to perform any and all acts and to do any and all such things as may be necessary or convenient or desirable in order to secure its bonds, or as may in the judgment of the board tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated herein, it being the intention hereof to give any institution issuing bonds pursuant to sections [33-3801](#)--[33-3813](#), Idaho Code, power to make all covenants, to perform all acts and to do all things, not inconsistent with the constitution of the state of Idaho, in the issuance of the bonds and for their security, including any and all powers granted to a private corporation under the laws of the state of Idaho.

[33-3806, added 1935 (1st E.S.), ch. 55, sec. 6, p. 145; am. 1970, ch. 28, sec. 2, p. 54.]

33-3807. DEPOSIT OF PROCEEDS OF BONDS. No moneys derived from the sale of bonds of any institution or otherwise borrowed by such institution under the provisions of sections [33-3801](#)--[33-3813](#), shall be required to be paid into the state treasury but shall be deposited by the treasurer or other fiscal officer of the institution, subject to the public depository law. Such money shall be disbursed as may be directed by the board and in accordance with the terms of any agreements with the holder or holders of any bonds. This section shall not be construed as limiting the power of the institution to agree in connection with the issuance of any of its bonds as to the custody and disposition of the moneys received from the sale of such bonds or the income and revenue of the institution pledged and assigned to or in trust for the benefit of the holder or holders thereof.

[33-3807, added 1935 (1st E.S.), ch. 55, sec. 7, p. 145; am. 1969, ch. 255, sec. 2, p. 787.]

33-3808. VALIDITY OF BONDS. The bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the institution issuing the same. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings to acquire the project financed by the bonds or taken in connection therewith.

[33-3808, added 1935 (1st E.S.), ch. 55, sec. 8, p. 145.]

33-3809. OTHER FUNDS NOT AFFECTED. Nothing in sections [33-3801](#)--[33-3813](#) contained shall be construed to authorize any institution to contract a debt on behalf of, or in any way to obligate, the state of Idaho, or to

pledge, assign or encumber in any way, or to permit the pledging, assigning or encumbering in any way of, appropriations made by the legislature, or revenue derived from the investment of the proceeds of the sale, and from the rental of such lands as have been set aside by the Idaho Admission Bill approved July 3, 1890, or other legislative enactments of the United States, for the use and benefit of the respective state educational institutions.

[33-3809, added 1935 (1st E.S.), ch. 55, sec. 9, p. 145.]

33-3810. BONDS AND OTHER DEBT NOT OBLIGATIONS OF STATE -- PAYABLE ONLY FROM PLEDGED REVENUE. All bonds issued and other debt incurred pursuant to this act shall be exclusively obligations of the institution issuing such bonds or incurring such other debt payable only in accordance with the terms thereof and shall not be obligations general, special or otherwise of the state of Idaho. Such bonds or other debt incurred shall not constitute a debt, legal or moral or otherwise of the state of Idaho, shall so recite on their face or on the first page of any evidence of indebtedness, and shall not be enforceable against the state, nor shall payment thereof be enforceable out of any funds of the institution issuing said bonds or incurring such other debt other than the income and revenues, if any, pledged and assigned to, or in trust for the benefit of, the holder or holders of such bonds or other evidence of indebtedness.

[33-3810, added 1935 (1st E.S.), ch. 55, sec. 10, p. 145; am. 1975, ch. 118, sec. 2, p. 246.]

33-3812. SEPARABILITY. If any provision of sections [33-3801](#)--[33-3813](#), or the application thereof to any person, body or circumstances shall be held invalid, the remainder of the act and the application of such provision to persons, bodies, or circumstances other than those as to which it shall have been held invalid shall not be affected thereby.

[33-3812, added 1935 (1st E.S.), ch. 55, sec. 12, p. 145.]

33-3813. CONSTRUCTION OF ACT. The powers conferred by this act shall be in addition to and supplemental to, and the limitations imposed by this act shall not affect the powers conferred by any other law, general or special, and bonds may be issued hereunder notwithstanding the provisions of any other such law and without regard to the procedure required by any other such law. Insofar as the provisions of the act are inconsistent with the provisions of any other law, general or special, the provisions of sections [33-3801](#)--[33-3813](#) shall be controlling.

[33-3813, added 1935 (1st E.S.), ch. 55, sec. 13, p. 145.]