TITLE 40
HIGHWAYS AND BRIDGES

CHAPTER 6
COUNTY COMMISSIONERS AND HIGHWAY OFFICERS

40-601. DISTRICTS ESTABLISHED BY COMMISSIONERS. Whenever the commissioners of any county shall have caused to be described by an order made and entered upon its records any defined portion of contiguous territory, located wholly within the county, for the construction, improvement or repair of highways pursuant to the provisions of law, each defined portion of contiguous territory is recognized as a legal taxing district and body politic of this state and as a highway district for highway purposes.

[40-601, added 1985, ch. 253, sec. 2, p. 615.]

40-602. BOUNDARIES. The boundaries of each highway district shall be the same as are described by metes and bounds or other legal description upon the minutes or records of the commissioners of the respective county and upon copies of those records duly certified.

[40-602, added 1985, ch. 253, sec. 2, p. 616.]

40-603. COUNTY HIGHWAYS RECOMMENDED BY COMMISSIONERS -- APPROVED BY BOARD. The commissioners of each county shall recommend highways for the county highway system to the board at least once a year and in a manner and form to be prescribed by the board. All recommendations shall clearly show which highways are improved highways and which are unimproved. All recommendations must be approved by the board before they shall constitute the official highway system of the county. The board may require commissioners to submit financial and operating data as it may deem necessary to assist it in determining what highways should properly be included in the respective county highway systems.

[40-603, added 1985, ch. 253, sec. 2, p. 616; am. 1986, ch. 328, sec. 6, p. 805.]

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 all highways and public rights-of-way within their highway system.

(4) Have authority to abandon and vacate any highway 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) 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.

(8) 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 (1) or more highway districts the commissioners shall not make any levy for general highway purposes.

(9) Audit and draw warrants on the county highway fund required for payment for rights-of-way improvement.

(10) Rename any highway within the county, excepting those situated within the territorial limits of incorporated cities, when the renaming will eradicate confusion.

(11) Cause guide posts properly inscribed to be erected and maintained on designated highways.

(12) Exercise other powers as may be prescribed by law.

(14) By July 1, 2000, and every five (5) years thereafter, the commissioners shall have published in map form and made readily available the location of all public rights-of-way under their jurisdiction. The commissioners of a district may be granted an extension of time with approval of the legislature by adoption of a concurrent resolution.

[40-604, added 1985, ch. 253, sec. 2, p. 616; am. 1986, ch. 328, sec. 7, p. 805; am. 1988, ch. 117, sec. 1, p. 216; am. 1993, ch. 412, sec. 7, p. 1511; am. 1998, ch. 154, sec. 1, p. 528; am. 1998, ch. 184, sec. 2, p. 674.]

40-605. LAYING OUT OF HIGHWAYS -- WIDENING OR STRAIGHTENING NEW AND EXISTING HIGHWAYS FOR THE PRIMARY BENEFIT OF MOTOR VEHICLES. (1) Commissioners may improve existing highways or lay out new highways within the county as they determine necessary to reduce traffic congestion or motorist travel time and for the primary benefit of motor vehicles.

(2) The right-of-way of any highway shall not be less than fifty (50) feet wide, except to comply with applicable law or in other exceptional cases.

(3) Existing or new pedestrian and bicycle facilities may only be improved:

(a) As a secondary or collateral benefit to any highway project;

(b) When receiving federal funds or grants for such purposes; or

(c) As necessary to improve the safety of pedestrian and bicycle facilities near schools, parks, or other designated pedestrian or bicycle areas.

(4) For a highway functioning as a non-residential collector or arterial highway, commissioners may only increase the width, straighten, or relocate the highway, except as required by federal law. Commissioners shall

not decrease the width of any non-residential collector or arterial highway, unless required by federal law.

(5) If, in the laying out, widening, or straightening of any highway it becomes necessary to take private property, the commissioners or their director of highways shall cause a survey of the proposed highway to be made, together with an accurate description of the lands required. The commissioners shall endeavor to agree with each owner for the purchase of a right-of-way over the owner's land included within the description. If they are able to agree with the owner, the commissioners may purchase the land out of the county highway fund under their control, and the land shall then be conveyed to the county for the use and purpose of highways.

[40-605, added 2025, ch. 243, sec. 2, p. 1094; am. 2026, ch. 299, sec. 3, p. 1232.]

40-606. CONDEMNATION OF RIGHTS-OF-WAY. (1) Whenever the commissioners or their director of highways shall be unable to agree with any person for a parcel of land, or the person shall be unknown or a nonresident of the county, or a minor, or an insane or incompetent person, the commissioners or director of highways shall have the right, subject in case of the director of highways on the order of the commissioners, to begin action in the name of the county in the district court 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 commissioners, entered upon their 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.

(2) Any lands classified as omitted lands under federal legislation shall be governed by the provisions of section 7-704A, Idaho Code.

[40-606, added 1985, ch. 253, sec. 2, p. 617.]

40-607. COUNTY AND HIGHWAY DISTRICT HIGHWAY SYSTEM CONSTRUCTION, MAINTENANCE AND RIGHT-OF-WAY COSTS BORNE BY THE RESPONSIBLE COUNTY OR HIGHWAY DISTRICT -- EXCEPTIONS. The costs of constructing, reconstructing, maintaining and acquiring rights-of-way for highways in a county highway system and a highway district highway system shall be borne by the responsible highway jurisdiction. This section shall not be construed as preventing counties and highway districts from contracting with the state for engineering or other services provided just compensation is paid. If planning or engineering studies show the existence of a need, a county or highway district may purchase, condemn or otherwise acquire new or additional rights-of-way for a new alignment of or improvement of an existing alignment of an extension of a county or highway district rural major collector highway through cities with populations of less than five thousand (5,000), provided the extension does not eliminate access to adjacent property owners. A county or highway district shall have jurisdiction, with the full authority to construct, maintain and control, over an extension of a rural major collector highway eligible for federal highway funds within a city, when the city population is less than five thousand (5,000). Counties and highway districts may enter into any mutual agreement for the transfer of maintenance and control of the rural major collector highway extension to the city. A county or highway district may contract with an adjoining county or highway district for the construction and/or maintenance of any part of its highway system.

[40-607, added 1985, ch. 253, sec. 2, p. 617; am. 1986, ch. 328, sec. 8, p. 806; am. 1993, ch. 127, sec. 1, p. 322.]

40-608. RECORD OF HIGHWAY PROCEEDINGS. The clerk of the commissioners shall keep a book in which must be recorded separately all proceedings of the commissioners relative to each highway division, including orders laying out, altering, and opening highways; and in a separate book a description of each highway division, its deputy directors of highways, its highways, contracts, and all other matters pertaining to them.

[40-608, added 1985, ch. 253, sec. 2, p. 618.]

40-609. CONTRACTS TO USE DAMS AS HIGHWAYS. Commissioners are empowered to make contracts in a form and under conditions deemed proper with the persons or corporations owning or proposing to construct any dam across any river in the state, providing for the use of the dam either in whole or in part, or in a general or limited way as may be agreed upon for a public highway. If the dam and proposed highway is in more than one (1) county, the agreement shall be executed by the commissioners of each county. Contracts for the use as a public highway of any dam to be constructed may be executed prior to construction, and shall, subject to the terms of the contract, be public highways.

[40-609, added 1985, ch. 253, sec. 2, p. 618.]

40-610. REPORT OF CONDITION OF HIGHWAYS -- FILING. On or before the first day of November in each year, the commissioners shall make a report of the condition of the work, construction, maintenance and repair of all the highways within the county, accompanied by a map or maps of them, together with any other facts necessary for establishing generally the situation and condition of highways within the county. The report shall be made in duplicate, one (1) copy to be filed in the office of the board and one (1) with the clerk of the commissioners.

[40-610, added 1985, ch. 253, sec. 2, p. 618.]

40-611. REPORT OF FINANCIAL CONDITION -- PUBLICATION. On or before the first day of November of each year, the commissioners shall make and file in its office a full, true and correct statement of the financial condition of the county in respect to highways as it exists on the first day of the preceding October, and of its expenditures and appropriation for highway purposes during the preceding year. A copy of the statement shall be published in at least one (1) issue of a newspaper published in the county.

[40-611, added 1985, ch. 253, sec. 2, p. 618.]

40-612. COMMISSIONERS -- HIGHWAY CONTRACTS. No commissioner shall have interest directly or indirectly in any contract awarded or to be awarded by the commissioners, or in the benefits to be derived from them. A violation of this provision shall be a misdemeanor, and a conviction shall constitute a forfeiture of office and a fine not exceeding one thousand dollars ($1,000), or by imprisonment not to exceed six (6) months, or by both fine and imprisonment.

[40-612, added 1985, ch. 253, sec. 2, p. 619.]

40-613. JURISDICTION IN ADJOINING COUNTIES. Commissioners of each county are empowered to lay out, build, repair, improve and maintain highways and bridges in any adjoining county whenever it shall appear to the commissioners that the laying out, building, repairing, improving or maintaining of highways and bridges in any adjoining county is or will be in the interest of the particular county or of benefit to the people of it. The expense shall be paid out of the county highway fund of the county whose commissioners order and contract for the work to be done. Any highway or bridge work shall not be done in any adjoining county by a particular county if the work would impair the credit of the adjoining county, injure property, or be detrimental to the interest of its citizens.

[40-613, added 1985, ch. 253, sec. 2, p. 619.]

40-614. SERVICE OF NOTICE ON CHAIRMAN OR CLERK OF COMMISSIONERS OF ADJOINING COUNTY. At least thirty (30) days before the commissioners of a particular county shall proceed to do any work in any adjoining county, it shall cause a notice to be served, in writing, on the chairman or clerk of the commissioners of the adjoining county of its intent to do the work, describing the nature, scope and kind of work to be done, giving the approximate cost of the work, the place where the work is to be performed, the approximate time the work will be commenced and the approximate time that will be required to complete the work.

[40-614, added 1985, ch. 253, sec. 2, p. 619.]

40-615. COUNTY AND DISTRICT BOARDS -- COOPERATION WITH STATE. Commissioners of any county, or the board of commissioners of any highway district, are empowered to cooperate with the state in the construction of highways or bridges, with aid from the United States or the state. The boards of commissioners are authorized to deposit with the treasurer of the state, to be placed in the state highway account, the amount of funds to be contributed by the county or highway district on any project for the improvement or construction of highways or bridges, which may be agreed upon in writing between the boards of commissioners and the board. The boards of commissioners are empowered to make deposits in advance of construction and at the time the agreement between the boards and the board is entered into. In the event the project for the improvement or construction of highways or bridges is not proceeded with, or in the event that all of the funds deposited by any board of commissioners for use on any project are not used in the completion of the project, the board shall repay any unused balances to the boards of commissioners having deposited these funds, and the state controller shall draw his warrant for the payment of those moneys out of the state highway account against claims duly approved by the board and the state board of examiners.

[40-615, added 1985, ch. 253, sec. 2, p. 619; am. 1994, ch. 180, sec. 76, p. 477.]

40-616. SIDEWALKS OR SIDE PATHS. Commissioners and boards of commissioners of any highway district are empowered to set apart on and along any public highway outside the boundaries of incorporated cities a strip of land not exceeding eight (8) feet in width for a sidewalk or side path and

to make an order designating the width of the path and to cause the line separating the path from the highway proper to be located and marked with stakes, posts, grade, or other marker, unless the governing board makes a written finding supporting the public necessity for a sidewalk or side path of greater width. After the sidewalks and paths have been set apart and the line separating them from the highway has been located and marked, the use shall be restricted to pedestrians, riders of bicycles, and riders of electric-assisted bicycles, if not otherwise prohibited by local ordinance or by signage posted by the public agency with jurisdiction after notice by inclusion on a governing board agenda.

[40-616, added 1985, ch. 253, sec. 2, p. 620; am. 2019, ch. 84, sec. 1, p. 201; am. 2021, ch. 192, sec. 1, p. 521.]

40-617. CONTRACTS FOR REPAIR OF HIGHWAYS. Commissioners shall, at least three (3) weeks prior to their regular meeting in October or March, or at other times as may become necessary, cause notice to be published in a newspaper, published in the county, for sealed bids to be received by the commissioners for the repair and improvement of the highways in the county highway system. Each proposal or bid submitted to the commissioners, shall be accompanied by a bond conditioned for the faithful performance of the duties of the contract, which may be entered into by and between the party making the proposal, or bid, and the commissioners.

[40-617, added 1985, ch. 253, sec. 2, p. 620.]

40-618. APPOINTMENT OF COUNTY DIRECTOR OF HIGHWAYS. The commissioners of each county may appoint and employ a county director of highways, who shall be a person qualified in highway administration, construction and maintenance, to handle the technical and administrative phases of county highway construction, maintenance and improvement. The salary and compensation of the county director of highways shall be fixed by the commissioners and shall be paid from the county highway fund. The county engineer may be appointed as the director of highways if the commissioners so determine; and in that event, his compensation as director of highways shall be distinct from, and in addition to, his compensation as county engineer.

[40-618, added 1985, ch. 253, sec. 2, p. 620.]

40-619. DUTIES AND POWERS OF COUNTY DIRECTOR OF HIGHWAYS. The county director of highways shall:

(1) Prepare and submit each year for the approval of the commissioners a tentative highway budget covering all proposed expenditures for the ensuing year.

(2) Divide the county into a suitable and convenient number of highway divisions, which shall exist only for the purpose of facilitating highway construction and maintenance activities. The geographical boundaries and arrangements of the divisions may, with the approval of the commissioners, be altered at any time at the discretion of the director of highways.

(3) Employ assistants and employees as may be necessary for county highway purposes, subject to the approval of the commissioners as to salaries or other compensation to be paid.

(4) Purchase or lease equipment necessary for county highway purposes and sell or replace obsolete equipment, subject to the approval of the commissioners as to the price, rental or cost of replacement.

(5) Cause to be erected and maintained on county highways, whenever necessary for public safety and convenience, suitable signs, markers, signals and other devices to control, guide and warn pedestrian and vehicular traffic.

(6) Cause surveys, maps, plans, specifications and estimates to be made for the construction, reconstruction and maintenance of county highways.

(7) Forbid, restrict or limit the erection of unauthorized signs, billboards or structures on the right-of-way of any county highway, and remove and destroy any unauthorized signs.

(8) Perform other acts as may be authorized by the commissioners for the improvement and maintenance of county highways.

[40-619, added 1985, ch. 253, sec. 2, p. 620.]