

TITLE 59
PUBLIC OFFICERS IN GENERAL

CHAPTER 8
BONDS OF OFFICERS AND PUBLIC EMPLOYEES

59-801. SHORT TITLE. This act may be cited as the "Surety Bond Act."

[59-801, added 1971, ch. 136, sec. 56, p. 522.]

59-802. DEFINITIONS. (1) "Administrator" means the administrator of the division of insurance management in the department of administration, as provided by section [67-5760](#), Idaho Code.

(2) "Agency" means each department, institution, board, bureau, commission or committee of the government of the state, including state educational institutions, the supreme court and district courts, but does not include any political subdivisions of the state.

(3) "Blanket surety bond" means a schedule or blanket corporate surety covering all or any group of public officials or employees of the state or of an individual political subdivision. Any blanket or schedule bond provided, issued in lieu of individual surety bonds, shall contain all terms and conditions required for an individual surety bond as herein provided.

(4) "Crime insurance" means insurance which indemnifies the assured public entity against losses from employee dishonesty, losses inside and outside the premises, losses from money orders and counterfeit paper currency, losses from depositors' forgery, and/or generally assures the fidelity and faithful performance of public officials or employees holding positions of public trust. Any crime insurance issued to the state or any of its political subdivisions, in order to be considered equivalent to the requirements contained in this chapter for surety bonds, must include stipulation by the insurer that such crime insurance coverage is deemed to provide coverage for the terms and responsibilities of public officials and employees as outlined in [chapter 8, title 59](#), Idaho Code.

(5) "Political subdivision" means any county, city, municipal corporation, health district, school district, irrigation district, special improvement or taxing district, or any other political subdivision or public corporation, or as currently defined in section [6-902\(2\)](#), Idaho Code. As used in this chapter, the terms "county" and "city" also mean state licensed hospitals and attached nursing homes established by counties pursuant to [chapter 36, title 31](#), Idaho Code, or jointly by cities and counties pursuant to [chapter 37, title 31](#), Idaho Code.

(6) "Public official or employee" means each elected or appointed officer of the state or a political subdivision of the state and each officer and employee of an agency or a political subdivision.

(7) "Surety bond" means a bond or surety issued by a corporate surety company authorized to do business in this state in an amount fixed by the administrator or governing body of a political subdivision to an individual public official or employee, which shall be payable to the state or a political subdivision, and whenever possible, conditioned on honesty and the faithful performance of his duties during the employment or term of office and until his successor is elected or appointed and is qualified, and that he will properly account for all money and property received in his official capacity as a public official or as an employee. The bond may contain other terms and conditions deemed appropriate by the administrator or governing

body of the political subdivision to protect the state or political subdivision from loss.

[59-802, added 1971, ch. 136, sec. 57, p. 522; am. 1974, ch. 34, sec. 12, p. 988; am. 1974, ch. 252, sec. 12, p. 1647; am. 1980, ch. 106, sec. 6, p. 233; am. 1991, ch. 281, sec. 1, p. 724.]

59-803. SURETY BOND REQUIRED. (1) With the advice of the head of each agency, and taking into consideration employee duties and responsibilities, the administrator shall designate individually or by class the employees required to give official bond to the state and the amount of the bond required for each individual or class.

(2) If some other law sets forth an amount in which an employee is to be bonded, the administrator shall procure a bond in at least the amount set forth in such law, but may require a bond in a greater amount than as set forth in such law if he determines, in accordance with the procedures set forth in subsection (1) above, that it would be in the best interest of the state to require a bond in a greater amount.

(3) The premium on the official surety bonds procured by the administrator in accordance with subsections (1) and (2) above shall be paid from funds appropriated or available for the employer or agency in the manner prescribed in section [41-3503](#), Idaho Code.

(4) The administrator shall procure all official bonds for employees, and shall, by negotiations or otherwise, endeavor to purchase the best coverage which can be obtained for the least cost.

[59-803, added 1971, ch. 136, sec. 58, p. 522; am. 1974, ch. 34, sec. 13, p. 988; am. 1974, ch. 252, sec. 13, p. 1647; am. 1980, ch. 106, sec. 7, p. 233.]

59-804. SURETY BONDS -- BLANKET SURETY BOND -- CRIME INSURANCE TERMS AND CONDITIONS. (1) Each official surety bond, blanket surety bond or suitable crime insurance policy of a public official or an employee shall be payable to the state or appropriate political subdivision, and shall be in the appropriate form as defined in section [59-802](#), Idaho Code. The surety bond, blanket surety bond, or suitable crime insurance shall be executed by a corporate surety company authorized to do business in this state in the amount fixed by the administrator, or by the governing body of the political subdivision.

(2) In lieu of individual bonds, the administrator or the governing body of a political subdivision may elect to provide a schedule or blanket corporate surety bond, or suitable crime insurance covering all or any group of public officials or employees whenever the premiums would be less than the aggregate of premiums chargeable under individual coverage. Any blanket or schedule bond or crime insurance provided shall contain all terms and conditions required in subsection (1) of this section or as defined in section [59-802](#), Idaho Code.

(3) All official bonds of employees of the state and its agencies shall be approved by the governor and shall be approved as to form and legal sufficiency by the attorney general and shall be filed with the secretary of state without cost, except that the bond of the secretary of state or a certified copy of any master, blanket or schedule bond including the secretary of state shall be filed with the state controller.

(4) All official surety bonds, blanket surety bonds, or suitable crime insurance coverage of public officials or employees of a political subdivision shall be approved by the governing body of the political subdivision. After the governing body approves the form and legal sufficiency, the bonds or policies shall be filed with the clerk or secretary of the political subdivision.

[59-804, added 1971, ch. 136, sec. 59, p. 522; am. 1974, ch. 34, sec. 14, p. 988; am. 1974, ch. 252, sec. 14, p. 1647; am. 1980, ch. 106, sec. 8, p. 234; am. 1991, ch. 281, sec. 2, p. 725; am. 1994, ch. 180, sec. 132, p. 507.]

59-805. BOND REQUIRED UNDER OTHER LAWS. Whenever a public official or an employee is required by another law to post bond or surety as a prerequisite to entering employment or assuming office, the requirement is met when bond coverage or suitable crime insurance coverage is provided for the office or position under provisions of the Surety Bond Act.

[59-805, added 1971, ch. 136, sec. 60, p. 522; am. 1991, ch. 281, sec. 3, p. 726.]

59-806. BONDS OF COUNTY OFFICERS -- APPROVAL, FILING, AND RECORDING -- INSUFFICIENCY OF SURETIES -- PROCEEDINGS. It shall be the duty of the board of county commissioners of each county to periodically, but not less than twice yearly, review, examine, and inquire into the sufficiency of all of the official bonds given or to be given by any county or precinct officer as required by law, and if it shall appear that any one or more of the sureties, or any of them, has died, moved from the state, become insolvent, or from any other cause has become incompetent or insufficient surety on such bond, the said board of county commissioners shall cause such county or precinct officer to be summoned to appear before the board on a day to be named in said summons, not less than three (3) nor more than ten (10) days after date, to appear and show cause why he should not be required to give a new bond with sufficient security, and if at the appointed time he shall fail to satisfy said board as to the sufficiency of the present security, an order shall be entered of record by said board requiring such county or precinct officer, to file in the office of the county clerk within ten (10) days, a new bond to be approved as required by law, and in the event such bond is found not sufficient, and a new bond is not filed as ordered, the fact shall be certified by the board of county commissioners to the district court of the county, and shall also be certified to the prosecuting attorney of the county and it shall thereupon become the duty of the prosecuting attorney to cause a hearing to be had in said district court for the purpose of adjudicating and declaring a vacancy in such office, in the event the district court determines, after a hearing, that the bond is in fact insufficient, and such officer fails within five (5) days after the district court has so found to file a new bond with sufficient surety as required by law. Upon the entry of such decree of vacancy it shall thereupon become the duty of the appointing power to fill such office in the manner provided by law.

[59-806, added 1971, ch. 136, sec. 61, p. 522.]

59-807. INSUFFICIENCY OF SURETIES -- ADDITIONAL BOND. The additional bond must be in such penalty as directed by the court, judge, board, offi-

cer or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

[59-807, added 1971, ch. 136, sec. 62, p. 522.]

59-808. ORIGINAL BOND NOT DISCHARGED BY ADDITIONAL BOND. In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

[59-808, added 1971, ch. 136, sec. 63, p. 522.]

59-809. RECORD OF OFFICIAL BONDS. Official bonds, after having been approved, must be recorded in a book kept for that purpose, and entitled "Record of Official Bonds."

[59-809, added 1971, ch. 136, sec. 64, p. 522.]

59-810. SURETIES FOR LESS THAN PENAL SUM. When the penal sum of any bond required to be given amounts to more than one thousand dollars (\$1,000), the sureties may become severally liable for portions of not less than five hundred dollars (\$500) thereof, making in the aggregate at least two (2) sureties for the whole penal sum; and if any such bond becomes forfeited, an action may be brought thereon against all or any number of the obligors, and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bonded for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribution to his cosureties in proportion to the amount for which he is liable.

[59-810, added 1971, ch. 136, sec. 65, p. 822.]

59-811. CUSTODY OF OFFICIAL BONDS -- CERTIFIED COPIES GIVEN. Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

[59-811, added 1971, ch. 136, sec. 66, p. 522.]

59-812. FORM OF BOND. All official bonds must be in form joint and several, and made payable to the state of Idaho in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

[59-812, added 1971, ch. 136, sec. 67, p. 522.]

59-813. EXTENT OF SURETIES' LIABILITY. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof commit-

ted during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

[59-813, added 1971, ch. 136, sec. 68, p. 522.]

59-814. EXTENT OF SURETIES' LIABILITY -- DUTIES SUBSEQUENTLY IMPOSED. Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

[59-814, added 1971, ch. 136, sec. 69, p. 522.]

59-815. SUITS BY PERSONS INJURED. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of Idaho, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

[59-815, added 1971, ch. 136, sec. 70, p. 522.]

59-816. SUCCESSIVE SUITS BY PERSONS INJURED. No such bond is void on the first recovery of a judgment thereon; but suit may be afterward brought, from time to time, and judgment recovered thereon by the state of Idaho, or by any person to whom a right of action has accrued, against such officer and his sureties, until the whole penalty of the bond is exhausted.

[59-816, added 1971, ch. 136, sec. 71, p. 522.]

59-817. DEFECTS IN BOND NOT TO AFFECT LIABILITY. Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and his sureties; but they are equitably bound to the state, or a party interested, and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become, and were, included as sureties in such bond.

[59-817, added 1971, ch. 136, sec. 72, p. 522.]

59-818. ACTION ON EITHER BOND. The officer and his sureties are liable to any party injured by the breach of any condition of any official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit.

[59-818, added 1971, ch. 136, sec. 73, p. 522.]

59-819. SEPARATE JUDGMENT ON BOND. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to

have execution issued on such judgments respectively, but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one (1) of the suits, together with the costs of both suits.

[59-819, added 1971, ch. 136, sec. 74, p. 522.]

59-820. CONTRIBUTION BETWEEN SURETIES. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover, in any court of competent jurisdiction, of the sureties on the remaining bond, a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid respectively.

[59-820, added 1971, ch. 136, sec. 75, p. 522.]

59-821. DISCHARGE OF SURETIES BY NEW BOND. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond, with sufficient sureties, in like form, penalty, and conditions, and to be approved and filed, as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the sureties in such new bond is in all respects the same, and may be enforced in like manner as the liability of the sureties in the original bond.

[59-821, added 1971, ch. 136, sec. 76, p. 522.]

59-822. VACANCIES -- BOND OF APPOINTEE. Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

[59-822, added 1971, ch. 136, sec. 77, p. 522.]

59-823. RELEASE OF SURETIES. Any surety on the official bond of a city, district, precinct, county or state officer may be relieved from liabilities thereon afterward accruing by complying with the provisions of the three (3) sections following.

[59-823, added 1971, ch. 136, sec. 78, p. 522.]

59-824. RELEASE OF SURETIES -- APPLICATION FOR RELEASE. Such surety must file with the judge, court, board, officer or other person authorized by law to approve such official bond, a statement in writing setting forth the desire of the surety to be relieved from all liabilities thereon afterward arising, and the reasons therefor, which statement must be subscribed and verified by the affidavit of the party filing the same.

[59-824, added 1971, ch. 136, sec. 79, p. 522.]

59-825. RELEASE OF SURETIES -- SERVICE OF STATEMENT. A copy of the statement must be served on the officer named in such official bond and due return or affidavit of service made thereon as in other cases.

[59-825, added 1971, ch. 136, sec. 80, p. 522.]

59-826. RELEASE OF SURETIES -- OFFICE DECLARED VACANT. In twenty (20) days after the service of such notice the judge, court, board, officer, or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law, as in other cases of vacancy of such office, unless such officer has, before that time, given good and ample surety for the discharge of all his official duties as required originally.

[59-826, added 1971, ch. 136, sec. 81, p. 522.]

59-827. RELEASE OF SURETIES -- REMAINING SURETIES LIABLE. The release, discharge, voluntary withdrawal, or incompetency, of a surety on any official bond, does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

[59-827, added 1971, ch. 136, sec. 82, p. 522.]

59-828. RELEASE OF SURETIES -- ACCRUED LIABILITIES UNAFFECTED. No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before the making of the order releasing him from liability, but such legal proceedings may be had therefor in all respects as though no such order had been made.

[59-828, added 1971, ch. 136, sec. 83, p. 522.]

59-829. ACTION ON BONDS -- LIS PENDENS. When an action is commenced in any court in this state for the benefit of the state, to enforce the penalty of, or to recover money upon, an official bond or obligation, or any bond or obligation executed in favor of the state of Idaho, or of the people of this state, the attorney or other person prosecuting the action may file with the court in which the action is commenced an affidavit, stating either positively or on information and belief that such bond or obligation was executed by the defendant or one or more of the defendants (designating whom), and made payable to the people of this state, or to the state of Idaho, and that the defendant or defendants have real estate or interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the state; and thereupon the clerk receiving such affidavit must certify, to the recorder of the county in which such real estate is situated, the names of the parties to the action, the name of the court in which the action is pending and the amount claimed in the complaint, with the date of the commencement of the suit.

[59-829, added 1971, ch. 136, sec. 84, p. 522.]

59-830. LIS PENDENS -- FILING AND RECORDING -- EFFECT -- CLERK'S FEES. Upon receiving such certificate, the county recorder must indorse upon it the time of its reception, and such certificate must be filed and recorded in the same manner as notices of the pendency of an action affecting real estate; and any judgment recovered in such action is a lien upon all real estate belonging to the defendant or to one or more of the defendants,

situated in any county in which such certificate is so filed, for the amount that the owner thereof is or may be liable upon the judgment, from the filing of the certificate; and the fees due the clerk and recorder for the services required are a charge against the county where the suit is brought, to be recovered like other costs.

[59-830, added 1971, ch. 136, sec. 85, p. 522.]

59-831. NOTIFICATION OF EXPIRATION OR FAILURE TO FURNISH OFFICIAL BOND -- COLLECTION AND DEPOSIT OF UNEARNED PREMIUMS. In addition to the other duties prescribed by law, it shall be the duty of the secretary of state, in the case of official bonds of state officers or employees, and the county recorder in the case of official bonds of county officers or employees, to notify the governor or the board of county commissioners, as the case may be, at the expiration of any official bond or of the failure of any person to furnish the official bond required by law. It shall be the duty of such officers, within their respective jurisdictions, to collect any unearned premiums that may accrue for any reason and cause the same to be deposited in the state or county treasury, as the case may be, to the credit of the fund out of which the same was originally paid.

[59-831, added 1971, ch. 136, sec. 86, p. 522.]