

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 46
PRESERVATION OF HISTORIC SITES

67-4601. PURPOSE. Whereas the legislature of this state has determined that the historical, archeological, architectural and cultural heritage of the state is among the most important environmental assets of the state and furthermore that the rapid social and economic development of contemporary society threatens to destroy the remaining vestiges of this heritage, it is hereby declared to be the public policy and in the public interest of this state to engage in a comprehensive program of historic preservation, undertaken at all levels of the government of this state and its political subdivisions, to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of the citizens of this state. It is hereby declared to be the purpose of this act to authorize the local governing bodies of this state to engage in a comprehensive program of historic preservation.

[67-4601, added I.C., sec. 67-4601, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4602. DEFINITIONS. As used in this act:

a. "Historic property" shall mean any building, structure, area or site that is significant in the history, architecture, archeology or culture of this state, its communities or the nation.

b. "Historic preservation" shall mean the research, protection, restoration and rehabilitation of buildings, structures, objects, districts, areas, and sites significant in the history, architecture, archeology or culture of this state, its communities or the nation.

[67-4602, added I.C., sec. 67-4602, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4603. PRESERVATION COMMISSIONS AUTHORIZED -- MEMBERS -- APPOINTMENT -- TERM -- STAFF. The governing body of any county or city is hereby authorized to establish a historic preservation commission hereinafter referred to as "the commission," to preserve, promote, and develop the historical resources of such county or city in accordance with the provisions of this act. The commission shall consist of not less than five (5) and not more than ten (10) members, who shall be appointed by the governing body with due regard to proper representation of such fields as history, architecture, urban planning, archeology and law. All members of the commission shall serve terms not to exceed three (3) years, being eligible for reappointment as shall be specified by the governing body. The commission may employ such qualified staff personnel as it deems necessary.

[67-4603, added I.C., sec. 67-4603, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4604. POWERS AND DUTIES OF COMMISSIONS. Any county or city historic preservation commission established pursuant to this act shall be authorized to:

- a. Conduct a survey of local historic properties.
- b. Acquire fee and lesser interests in historic properties, including adjacent or associated lands, by purchase, bequest or donation, but shall not be authorized to acquire historic properties by condemnation.
- c. Preserve, restore, maintain and operate historic properties under the ownership or control of the commission.
- d. Lease, sell and otherwise transfer or dispose of historic properties subject to rights of public access and other covenants and in a manner that will preserve the property.
- e. Contract, with the approval of the local governing body, with the state or federal government, or any agency of either, or with any other organization.
- f. Cooperate with the federal, state and local governments in the pursuance of the objectives of historic preservation.
- g. Participate in the conduct of land use, urban renewal and other planning processes undertaken by the county or city.
- h. Recommend ordinances and otherwise provide information for the purposes of historic preservation to the county or city governing body.
- i. Promote and conduct an educational and interpretive program on historic properties within its jurisdiction.
- j. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private property, building or structure without the express consent of the owner or occupant thereof.

[67-4604, added I.C., sec. 67-4604, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4605. FUNDING OF OPERATIONS. (1) For the purpose of providing funds for a historic preservation commission the governing body of any city which has established such a commission may:

- (a) Provide funds to the commission from current revenues;
- (b) Receive and expend moneys from any other sources; or
- (c) Use any combination of paragraphs (a) and (b) of this subsection.

(2) For the purpose of providing funds for a historic preservation commission the governing body of any county which has established such a commission may provide funds to the commission from current revenues in accordance with the provisions regarding county historical societies, as found in section [31-864](#), Idaho Code.

(3) Any funds received by a historic preservation commission may be accumulated from year to year and need not be expended during any one (1) fiscal year, provided that the maximum accumulation of funds received from ad valorem taxes shall not exceed twice the amount of money authorized by the levy authorized by subsection (1) or (2) of this section.

[67-4605, added I.C., sec. 67-4605, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4606. ACQUISITION OF PROPERTY. (1) All lands, buildings, structures, sites or areas acquired by funds appropriated by a county or city shall be acquired in the name of the county or city unless otherwise provided by the governing board. So long as owned by the county or city, historic properties may be maintained by or under the supervision and control of the

county or city. However, all lands, buildings or structures acquired by a historic preservation commission from funds other than those appropriated by a county or city may be acquired and held in the name of the historic preservation commission, the county or municipality, or both.

(2) Nothing in this chapter shall be construed to allow the designation, regulation, conditioning, restriction or acquisition of historic buildings, structures, sites or areas, or other properties or facilities owned by the state or any of its political subdivisions, agencies or instrumentalities.

[67-4606, added I.C., sec. 67-4606, as added by 1975, ch. 142, sec. 2, p. 324; am. 2001, ch. 259, sec. 1, p. 932.]

67-4607. HISTORIC DISTRICTS. A county or city may establish by ordinance one (1) or more historic districts within the area of its jurisdiction. No historic district or districts shall be designated until the following requirements are met:

a. The local historic preservation commission appointed by the governing body of the county or city shall make an investigation of the historical, architectural, archeological and cultural significance of the buildings, structures, features, sites or surroundings included in any such proposed historic district. The commission shall report its findings to the local planning board for their consideration and recommendation.

b. Sixty (60) days after such transmittal the commission shall hold a public hearing thereon after due notice, which shall include written notice, postage prepaid, to the owners of all properties to be included in such district.

c. The commission shall submit a final report with its recommendations and a draft of a proposed ordinance to the county or city governing body. Any such ordinance may, from time to time, be amended in the same manner.

d. Nothing in this chapter shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the state of Idaho.

[67-4607, as added by 1975, ch. 142, sec. 2, p. 324; am. 2001, ch. 259, sec. 2, p. 933.]

67-4608. CERTIFICATE OF APPROPRIATENESS. Except as provided in section [67-4607](#) d., Idaho Code, after the designation of a historic district, no exterior portion of any building or other structure (including walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor aboveground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the historic preservation commission. The county or city shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for purposes of constructing or altering structures. A certificate of appropriateness shall be required whether or not a building permit is required. For purposes of this chapter, "exterior features" shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material and type and style of all windows, doors, light fixtures, signs, other appurtenant fixtures and natural

features such as trees and shrubbery. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size and location of all such signs. The commission shall not consider interior arrangement and shall take no action under this section except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs or natural features in the historic district which would be incongruous with the historical, architectural, archeological or cultural aspects of the district.

[67-4608, added I.C., sec. 67-4608, as added by 1975, ch. 142, sec. 2, p. 324; am. 2001, ch. 259, sec. 3, p. 933.]

67-4609. CHANGE IN USE. No change in the use of any structure of property within a designated historic district shall be permitted until after an application for a certificate of appropriateness has been submitted to and approved by the historic preservation commission. The county or city shall require such a certificate to be issued by the commission prior to the approval of any change of zoning classification within the historic district.

[67-4609, added I.C., sec. 67-4609, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4610. NOTICE TO OWNER -- APPEAL. Prior to issuance or denial of a certificate of appropriateness the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. If the commission determines that the proposed construction, reconstruction, alteration, moving or demolition is appropriate, it shall forthwith approve such application and shall issue to the applicant a certificate of appropriateness. If the commission determines that a certificate of appropriateness should not be issued, it shall place upon its records the reasons for such determination and shall forthwith notify the applicant of such determination, furnishing him an attested copy of its reasons therefor and its recommendations, if any, as appearing in the records of said commission. The commission may approve such application in any case where the owner would suffer extreme hardship, unless the certificate of appropriateness were issued forthwith. Any applicant aggrieved by a determination of the commission may appeal to the appropriate governing body. An appeal from the appropriate governing body may be taken to the district court for the county in which the land concerned is situated.

[67-4610, added I.C., sec. 67-4610, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4611. ORDINARY REPAIRS -- SAFETY. Nothing in this act shall be construed to prevent the ordinary maintenance or repair of any exterior feature in a historic district which does not involve a change in design, material, color or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition.

[67-4611, added I.C., sec. 67-4611, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4612. SPECIAL RESTRICTIONS. In addition to any power or authority of a county or city to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing body of any county or municipality is empowered to provide by ordinances, special conditions or restrictions for the protection, enhancement and preservation of historic properties; provided however, that nothing in this chapter shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the state of Idaho.

[67-4612, added I.C., sec. 67-4612, as added by 1975, ch. 142, sec. 2, p. 324; am. 2001, ch. 259, sec. 4, p. 934.]

67-4613. HISTORIC EASEMENTS. Any county or city may acquire, by purchase, or donation, historic easements in any area within their respective jurisdictions wherever and to the extent that the governing body of the county or city determines that the acquisition will be in the public interest. For the purpose of this section, "historic easement" means any easement, restriction, covenant or condition running with the land, designated to preserve, maintain or enhance all or part of the existing state of places of historical, architectural, archeological or cultural significance.

[67-4613, added I.C., sec. 67-4613, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4614. DESIGNATION AS HISTORIC PROPERTY. The local governing body of any county or city may adopt an ordinance designating one (1) or more historic properties on the following criteria: historical, architectural, archeological and cultural significance; suitability for preservation or restoration; educational value; cost of acquisition, restoration, maintenance, operation or repair; possibilities for adaptive or alternative use of the property; appraised value; and the administrative and financial responsibility of any person or organization willing to underwrite all or a portion of such costs. In order for any historic property to be designated in the ordinance, it must in addition meet the criteria established for inclusion of the property in the national register of historic places. For each designated historic property, the ordinance shall require that the waiting period set forth in section [67-4615](#), Idaho Code, be observed prior to its demolition, material alteration, remodeling or removal. The ordinance shall also provide for a suitable sign or marker on or near the property indicating that the property has been so designated; provided however, that nothing in this chapter shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the state of Idaho.

[67-4614, added I.C., sec. 67-4614, as added by 1975, ch. 142, sec. 2, p. 324; am. 2001, ch. 259, sec. 5, p. 934.]

67-4615. PROCEDURE FOR DESIGNATION. No ordinance designating a historic property pursuant to section [67-4614](#), Idaho Code, may be adopted until the following procedural steps have been taken:

a. The local historic preservation commission shall make an investigation and report on the historical, architectural, archeological or cultural significance of the property in question.

b. The local governing body shall hold a public hearing on the proposed ordinance, after giving sufficient written notice to the owners and occupants of the property and posting public notice in its normal manner.

c. Following such public hearing, the local governing body may act on the ordinance.

d. Upon adoption of the ordinance, the owners and occupants of each designated historic property shall be given written notification of such designation by the local governing body. One (1) copy of the ordinance shall be filed by the local historic preservation commission in the office of the county recorder for the county in which the property is located.

e. The local historic preservation commission shall give notice of such designation to the tax assessor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax assessor in appraising it for tax purposes.

[67-4615, added I.C., sec. 67-4615, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4616. CHANGE IN USE OF HISTORIC PROPERTY. (1) A historic property designated by ordinance as herein provided may be demolished, materially altered, remodeled, relocated or put to a different use only after one hundred eighty (180) days' written notice of the owner's proposed action has been given to the local historic preservation commission. During this period, the commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the property. During this period, or at any time prior thereto following notice of designation to the owner as provided in section [67-4615](#) d., Idaho Code, and where such action is reasonably necessary or appropriate for the continued preservation of the property, the commission may enter into negotiations with the owner for the acquisition by gift, purchase, or exchange of the property or any interest therein. The commission may reduce the waiting period required by this section in any case where the owner would suffer extreme hardship, unless a reduction in the required period were allowed. The commission shall have the discretionary authority to waive all or any portion of the required waiting period, provided that the alteration, remodeling, relocation or change of use is undertaken subject to conditions agreed to by the commission insuring the continued maintenance of the historical, architectural, archeological or cultural integrity and character of the property.

(2) Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior feature in or on a historic property that does not involve a change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when a building inspector or similar official certifies to the commission that such action is required for the public safety because of an unsafe or dangerous condition.

(3) Nothing in this act shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the state of Idaho.

[67-4616, added I.C., sec. 67-4616, as added by 1975, ch. 142, sec. 2, p. 324; am. 2001, ch. 259, sec. 6, p. 934.]

67-4617. PENALTIES. The governing body of any county or city may enact an ordinance to prevent the deterioration by willful neglect of any designated historic property or any property within an established historic district. Any property owner violating an ordinance established pursuant to this section shall be guilty of a misdemeanor punishable by a fine not exceeding three hundred dollars (\$300). Each day that a violation continues to exist shall constitute a separate offense.

[67-4617, added I.C., sec. 67-4617, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4618. EXEMPTION FROM HEALTH OR BUILDING CODES. The governing body of any county or city, in order to promote the preservation and restoration of historic properties within its jurisdiction, may exempt a historic property from the application of such standards contained in the county or city health or building codes, or both, as the governing body, upon recommendation of the local historic preservation commission, shall determine would otherwise prevent or seriously hinder the preservation or restoration of said historic property.

[67-4618, added I.C., sec. 67-4618, as added by 1975, ch. 142, sec. 2, p. 324.]

67-4619. TRANSFER OF DEVELOPMENT RIGHTS. Any county or city governing body may establish procedures authorizing owners of designated historic properties to transfer development rights in such amounts and subject to such conditions as the governing body shall determine. For the purposes of this section, "development rights" are the rights granted under applicable local law respecting the permissible bulk and size of improvements erected thereon.

[67-4619, added I.C., sec. 67-4619, as added by 1975, ch. 142, sec. 2, p. 324.]