

IDAHO SOIL CONSERVATION DISTRICT SUPERVISOR HANDBOOK



Idaho Conservation District Supervisor Handbook

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Introduction: Purpose of the Supervisor Handbook

This handbook was developed to provide conservation district supervisors with information, materials, and guidance to better understand their role as public officials and local conservation leaders. It is intended that this handbook be used as a learning tool for conservation district supervisors. It may also be used as a reference for supervisors and employees as questions arise during the course of conducting district business. Although this handbook is not intended to be a comprehensive manual containing *everything* a supervisor should know, it will hopefully become a valuable resource for Idaho's conservation districts and supervisors.

As a conservation district supervisor you have been elected to fulfill the roles and responsibilities inherent to the position. To succeed you must first be fully aware of your statutory powers, duties, and authorities. Conservation districts in Idaho are unique governmental entities with unique opportunities. We hope this handbook will clarify that each of the 50 districts in Idaho possesses the potential to achieve tremendous conservation accomplishments together with private landowners to positively impact their local communities.

Among other responsibilities, you have been entrusted with the power to administer local conservation programs, receive and spend public funds, and educate the public on natural resource conservation issues. You are not alone in this endeavor. Statewide there are over 270 conservation district supervisors, and nationwide there are more than 17,000 supervisors serving as local leaders for over 3,000 conservation districts.

We hope this handbook provides you with an understanding of the "big picture" and of your responsibilities as a public official representing your local conservation district.

HISTORY OF THE
CONSERVATION MOVEMENT
AND
CREATION OF
CONSERVATION DISTRICTS



History of the Conservation Movement and Creation of Conservation Districts

This brief summary is intended to provide an historical understanding of the circumstances, factors, and events that led to the creation of soil conservation districts. For a comprehensive history, including a summary of each of Idaho's conservation district's history, please refer to the publication entitled *Serving People and the Land: A History of Idaho's Soil Conservation Movement*, immediately following this section of the handbook.

National Background

In the early 1930s, along with the greatest depression this nation ever experienced, came an equally unparalleled ecological disaster known as the Dust Bowl. Following a severe and sustained drought in the Great Plains, the region's soil began to erode and blow away, creating huge black dust storms that blotted out the sun. Growing agricultural crops proved impossible and thousands of "dust refugees" left the black fog to seek better lives.

These dust storms persisted until they stretched across the nation, eventually reaching as far south as Texas and all the way east to New York. Ultimately, dust from this disaster even sifted into the White House and onto the desk of President Franklin D. Roosevelt.

In the years leading up to this occurrence, a United States Department of Agriculture (USDA) soil scientist by the name of Hugh Hammond Bennett had been witnessing first-hand the negative effects of soil erosion during the course of his duties as a soil surveyor in the southern states. Bennett was an active advocate for soil conservation and had emphasized in a 1928 bulletin entitled *Soil Erosion, A National Menace*, that every aspect of life in the United States could be affected if erosion continued.

Years later as the effects of the Dust Bowl crippled the nation, Bennett was on Capitol Hill testifying about the national soil erosion problem. During his testimony he threw back the curtains to reveal a sky blackened by dust. After Bennett's testimony, Congress unanimously passed legislation declaring soil and water conservation a national priority. The resulting action was signing of the Soil and Water Conservation Act on April 27, 1935 by President Roosevelt and the creation of the Soil Conservation Service (SCS), now known as the Natural Resources Conservation Service (NRCS) within the USDA. Hugh Hammond Bennett was selected as the first Chief of the new agency. His simply stated philosophy, "If we take care of the land, it will take care of us" continues to guide the work of NRCS today.

Since nearly three-fourths of the continental United States is privately owned, USDA officials and Congress eventually realized that only active, voluntary support from landowners could enable the success of conservation work on private land. It was determined that leadership for

soil conservation should be implemented from the ground up through local units of government, rather than top down from the federal government. As a result, President Roosevelt eventually wrote all state governors on February 27, 1937 urging them to adopt legislation allowing for the creation of soil conservation districts within their state. Included with each letter was a carefully drafted model state law, the “Standard State Soil Conservation Districts Law” to be used as a template for the states.

State Background

In Idaho, it wasn't until 1939 at the urging of SCS State Coordinator R. Neil Irving that Arthur Snow, a Latah County legislator, was persuaded to introduce the “Standard State Soil Conservation Districts Law” as a bill to the legislature. Several members of the legislature suggested revisions. In addition to allowing for the creation of soil conservation districts, the new bill included provisions for the creation of a state soil conservation commission to help organize and coordinate the districts. The bill was then successfully passed as Idaho's Soil Conservation District Law by the 25th Legislature on March 1, 1939. It was signed into law by Governor C.A. Bottolfsen on March 9, 1939.

Conservation district organization progressed rapidly in Idaho after passage of the soil conservation district law. In fact, just over one year later on May 1, 1940, the Latah Soil and Water Conservation District (SWCD) and the Bear Lake SWCD became the first two conservation districts to be formally organized in Idaho. Less than three weeks later the Portneuf SWCD joined them, and by the end of 1940 two more conservation districts (Squaw Creek SCD and Elmore [originally Mayfield] SCD) were officially organized. Collectively, these became the first five conservation districts in Idaho.

By 1944 the number of conservation districts in Idaho had reached 11 and the supervisors of the districts recognized a need for an association that could represent and speak for districts at the statewide and national level. On March 25, 1944, the Latah district organized a meeting in Boise of all districts that led to the creation of a non-profit organization called the Idaho Association of Soil Conservation Districts (IASCD). This organization continues to represent Idaho's conservation districts.

By the end of 1947, 22 districts had organized and ten years later that number reached 48 conservation districts. The number of districts in Idaho reached an all-time high of 55 in 1962, but through consolidations that number was eventually reduced to 51 conservation districts in Idaho in 1974. Over thirty-five years later, in 2010, that number has been reduced by one more through consolidation to give us our current total of 50 conservation districts in Idaho.

Idaho's 50 Conservation Districts

Today, Idaho's 50 conservation districts are locally led by over 270 publicly elected officials recognized as conservation district supervisors. Individual districts are governed collectively by a board of either 5 or 7 supervisors. Each conservation district is unique according to geographic boundaries, but all districts are unified in their effort to provide non-regulatory, incentive-based assistance to private landowners and land users in the conservation, sustainment, improvement and enhancement of Idaho's natural resources. This effort is successfully executed through the dedicated work of conservation district supervisors, district staff, and partnerships at the local, regional, state, and federal level.

Future Conservation Leadership Roles for Idaho Conservation Districts

Traditionally, conservation districts have engaged primarily in conservation activities with private landowners in the agricultural sector such as farmers and ranchers. While this partnership with agricultural producers is essential to the function of conservation districts and remains intact, additional conservation opportunities in Idaho are presenting themselves.

As more people discover the quality of life in Idaho, increases in population occur and a subsequent change in the landscape inevitably follows. What once was a farm or ranch may soon become a neighborhood, an organic farm, a park, or a ranchette/hobby farm. The local conservation districts have the authority to work with these new landowners and land users for the purposes of natural resource conservation. What may be considered a new challenge can also present new opportunities. However, it is up to each conservation district and the governing supervisors to determine priorities and plan appropriately to address local conservation issues.

The roles and responsibilities that conservation districts may have regarding urban conservation and land-use planning are also being discussed at the national level by the National Association of Conservation Districts (NACD). Representing over 3,000 conservation districts nationwide, the NACD network may be a good resource for supervisors looking to lead their district into these newly emerging roles.



SOIL CONSERVATION DISTRICT LAW

Idaho Statutes
Title 22, Chapter 27



Districts are Public Bodies and Supervisors are Public Officials

As defined in soil conservation district law (chapter 27, title 22, Idaho Code), a conservation district is a governmental subdivision of the state and a public body corporate and politic. The law also states that each conservation district must be composed of a governing body (commonly referred to as a “district board”) consisting of either five (5) or seven (7) supervisors. District supervisors are not simply interested residents, farmers, and ranchers forming a social group. District supervisors are locally elected public officials that constitute the governing body of a conservation district.

Whether you are a newly elected supervisor, a supervisor with decades of district board service, or an individual interested in serving on your local conservation district board, it is essential for you to understand 1) the powers, authorities, and responsibilities of conservation districts as governmental subdivisions of the state (i.e. public bodies), and 2) the powers, authorities, and responsibilities of district supervisors (i.e. elected public officials).

It is the duty of each individual supervisor to comply with the statutes and rules governing public officials and to understand and properly execute the authorities of conservation districts. It is important to know that conservation districts and supervisors must comply with much more than simply the statutes defined in soil conservation district law. Districts and supervisors must also comply with state and federal laws relating to elections, ethics, open meetings, public records, public officers, and public funds.

Authorities of Districts and Supervisors

Although soil conservation district law (chapter 27, title 22, Idaho Code) has undergone various revisions since its origination, the core elements and intent of district law remain unchanged. Namely, conservation districts in Idaho are important and relevant to the State and they are recognized as possessing real authorities and responsibilities as defined in law. In turn, conservation district supervisors are important, relevant, and possess real authorities and responsibilities as elected public officials.

Section 22-2716, Idaho Code, among other sections of state statute, declares the importance of conservation districts and supervisors to the State of Idaho. To summarize this portion of Idaho Code:

It is the determination of the state of Idaho that:

- Forest lands, rangelands and agricultural lands maintained in a healthy condition are a legitimate land use contributing to the economic, social and environmental well-being of the state and its citizens
- It is essential that conservation improvements be implemented on a broader scale on both public and private lands

It is in the best interest of the state of Idaho:

- To emphasize non-regulatory, science-based technical assistance, incentive-based financial programs and informational and educational programs at the local level
- That soil conservation districts and the state soil and water conservation commission are the primary entities to provide assistance to private landowners and land users in the conservation, sustainment, improvement and enhancement of Idaho's natural resources
- That soil conservation districts and the state soil and water conservation commission lead nonregulatory efforts to conserve, sustain, improve and enhance Idaho's private and state lands

It is the policy of the state of Idaho:

- That all conservation programs shall deliver services fairly and equitably and strengthen the conservation district delivery system

As a conservation district supervisor or potential supervisor you have been tasked not simply with *participating* as a board member at monthly meetings; you have been tasked by law, to *lead* one of the *primary entities* in the state in *nonregulatory* efforts to *conserve, sustain, improve, and enhance Idaho's natural resources*. Your challenge is great.

Powers of Districts and Supervisors

The following summary includes excerpted text from soil conservation district law section 22-2722, Idaho Code, entitled "Powers of Districts and Supervisors." Since these are simply highlights and paraphrases from statute, it is recommended that all current supervisors and potential supervisors review and understand soil conservation district law in its entirety and section 22-2722, Idaho Code, in particular. To effectively carry out the duties of a district supervisor you must have a clear understanding of your responsibilities and of the programs you represent. By becoming an active and involved supervisor you can make an important difference in your community. As the saying goes, "With great power comes great responsibility."

Soil conservation districts and supervisors have the following powers:

- To conduct surveys, investigations, and research relating to soil erosion, floodwater and sediment damages
- To publish the results of surveys, investigations, or research
- To conduct demonstrational projects for soil erosion and flood prevention, and soil and water conservation
- To carry out preventive measures for flood prevention or the conservation, development, utilization, and disposal of water

- To enter into agreements to provide financial or other aid to agencies, governmental or otherwise, or any landowners within the district to carry out erosion control, flood prevention, and water conservation operations
- To acquire property or rights or interests therein
- To receive income from properties
- To sell, lease, or otherwise dispose of any of its property or interests therein to carry out authorized activities and provisions in soil conservation district law
- To make agricultural and engineering equipment available to landowners within the district for the conservation of soil resources and for flood prevention or the conservation, development, utilization, and disposal of water
- To construct, improve, operate and maintain structures necessary for the performance of soil and water conservation activities and operations
- To develop detailed, district-wide comprehensive plans for the conservation of soil and water resources
- To publish comprehensive plans and information and bring them to the attention of landowners and operators within the district
- To take over, administer, or manage any soil conservation, flood prevention, erosion control, or erosion prevention project undertaken by the United States or any of its agencies, or by the state of Idaho or any of its agencies
- To accept contributions in money, services, materials, or otherwise from state or federal agencies, and use or expend such moneys, services, materials, or other contributions in carrying on district operations
- To receive tax-deductible charitable contributions, donations, or gifts from private individuals and organizations for exclusively public purposes
- To sue and be sued in the name of the district
- To make and execute contracts to carry out district duties and powers
- To make, amend, and repeal rules to carry into effect the purposes and powers set forth in soil conservation district law
- To require and accept contributions (moneys, services, materials, or otherwise) for conservation services provided to landowners on lands within a conservation district

Conservation districts and supervisors also have the ability to execute other powers including, but not limited to: initiating the consolidation of two or more existing districts, hiring and employing staff, and requesting funding to use for any purpose authorized by law. In addition, conservation districts may contract for legal services with the office of the attorney general or with other counsel.

Who can be a Conservation District Supervisor?

Simply stated from section 22-2721(1), Idaho Code, “All supervisors shall be landowners or farmers of the district where they are elected or appointed and shall be registered to vote in the state of Idaho.”

Election Process

The full process for electing conservation district supervisors is set forth in section 22-2721, Idaho Code, and in Uniform District Election Law (chapter 14, title 34, Idaho Code). Conservation district supervisors are also subject to the statutes governing Recall Elections as stated in chapter 17, title 34 Idaho Code. If you are unsure of the election requirements and unfamiliar with the terms of the supervisor elections process including declaration of intent or candidacy, nominating petition, qualified candidate, qualified electors, or notice of election, please refer to these statutes (included in this handbook) for further guidance.

Conservation district elections for supervisors shall be held on the first Tuesday after the first Monday in November of each even-numbered year. Nominating petitions for prospective supervisors are available from your county clerk or from your local conservation district office. The county clerk or county clerks of the county or counties in which the district is located shall perform all necessary duties of the election including, but not limited to, notice of filing deadline, notice of the election, and preparation of the election calendar.

Section 22-2721(4), Idaho Code provides straightforward guidance for a situation that sometimes occurs during elections for district supervisor positions. It states:

“In any election for supervisor, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated is equal to the number of supervisors to be elected, it shall not be necessary for the candidates to stand for election, and the board of supervisors shall declare such candidates elected as supervisors, and the state soil and water conservation commission shall immediately make and deliver to such persons certificates of election.”

Compensation

District supervisors are volunteers elected to serve as public officials. Section 27-2721(8), Idaho Code, clearly states, “A supervisor shall receive no compensation from regular district funds, county funds..., or state funds...” The same section of law additionally states, however, that soil conservation district supervisors “... shall be entitled to expenses, including travel expense, necessarily incurred in the discharge of duties.”

Special district projects provide the only exception under which supervisors may be compensated for performance of conservation district duties. Still, the compensation may not be provided from district, county, or state funds. To clarify, section 22-2721(9), Idaho Code, reads, "In the event the district has a special project, approved by the state soil and water conservation commission, making project funds available from federal or other sources, a supervisor may receive compensation not to exceed thirty-five dollars (\$35.00) per day plus actual and necessary expenses from project funds for services directly related to the project."

Conservation District Board Administrative Structure

Conservation district supervisors are required to designate a chairperson and may also designate other such officers to serve various board positions. Here are some examples of the duties generally associated with these positions.

Chair

The chairperson provides leadership for developing agendas, conducting and presiding over regularly scheduled meetings, and fulfilling the duties of the conservation district. Additional duties may include appointing committees, assigning responsibilities and tasks to board members and/or staff, and orienting new supervisors. The chair is the face of the district to outside partners, agencies, and organizations and therefore, the Chair's conduct and leadership on behalf of the conservation district is critically important to the district's success.

Vice-Chair

The vice-chair fills the duties of the chair in his or her absence and is responsible for advising the chair on programs, policies, and committee designations.

Treasurer

Conservation district finances are often managed by paid staff such as an administrative assistant. Management duties include maintenance of financial records, preparation of checks as authorized by the board, and presentation of monthly financial reports. It is typically the responsibility of the treasurer to oversee the financial records and accounts of the district.

Secretary/Clerk/Administrative Assistant

Often, the role of attending meetings and keeping an accurate record of the proceedings in the form of meeting minutes is designated by the supervisors to a paid district employee, such as a clerk or administrative assistant. In lieu of a paid district employee, the supervisors must designate a supervisor as secretary or designate a note taker to compose meeting minutes that comply with Idaho Open Meeting Law, section 67-2344, Idaho Code.

Associates

Associate supervisors are optional and informal positions whereby interested members from the community serve as advisors and representatives to the board. Associates are not allowed to vote on board decisions but they can augment the knowledge and experience of the supervisors and assist, as requested, with district programs. It is important to consider orienting associates just as you would supervisors and encourage their involvement in meaningful activities and projects. The associate position is often a stepping stone to board supervisor.

Conservation District Board Meetings

Regularly scheduled meetings are fundamental to conducting conservation district business. Monthly board meetings serve several purposes including scoping, planning, determining board policy, identifying conservation needs, monitoring program and project implementation, and reviewing and approving district expenditures. These meetings are critical to fulfilling legal responsibilities, communicating conservation needs within the district, and taking district action in the community.

As a governing body of a public agency, a conservation district Board of Supervisors is required to comply with the Idaho Open Meeting Law (67-2340 through 67-2347, Idaho Code). As stated by the Office of the Attorney General, “The Open Meeting Law codifies a simple, but fundamental, Idaho value: The public’s business ought to be done in public.”

The Attorney General’s Open Meeting Law Manual is included in this supervisor handbook. As a district supervisor you are expected to understand the requirements and comply with state statutes regarding open meetings. Included here for your benefit are some of the critical elements of open meetings that apply to conservation district board meetings:

- All meetings shall be open to the public
- Meetings must not be held in a location where discrimination on the basis of race, creed, color, sex, age, or national origin is practiced
- Notice of meetings must be given no less than 5 calendar days in advance
- Agendas for meetings shall be required and must be posted at least 48 hours in advance
- Special meetings require at least 24 hours meeting and agenda notice unless an emergency exists
- Written minutes must be recorded for all meetings and be made available to the public
- Meeting minutes shall include at least the following:
 - Members of the governing body present
 - All motions, resolutions, orders, or ordinances proposed and their disposition
 - The results of all votes
- Any member who conducts or participates in a meeting which violates open meeting law shall be subject to a civil penalty not to exceed fifty dollars (\$50)

- Any member who knowingly violates open meeting law provisions shall be subject to a civil penalty not to exceed five hundred dollars (\$500)

Since most conservation districts hold regularly scheduled monthly board meetings on the same day and the same time every month (e.g., the first Thursday of every month at 7:00 p.m.), the following provision in section 67-2343(1), Idaho Code, is important to understand:

“Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. The notice requirements for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.”

The Idaho Public Records Law (Idaho Code sections 9-337 through 9-350) governs the documents and minutes associated with board meetings as well as district records. The intent of the law is that all records maintained by public agencies are open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law. Public record, as defined in section 9-227(13), is an extremely broad concept. It “...includes, but is not limited to, any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.” Unless exempted by state or federal law, it should be assumed that all records pertaining to district business, including draft documents, emails, and handwritten notes, are available for public inspection upon request. With respect to federal law, it is important to note that section 1619 of the 2008 Farm Bill prohibits the release of certain categories of information gathered by the U.S. Department of Agriculture (USDA) and certain information gathered by cooperators from producers and landowners in the delivery of technical and financial assistance for USDA programs. As a result, this information is also exempt from disclosure under the Public Records Law. However, districts should consult with legal counsel regarding the federal statute’s specific requirements.

Parliamentary Procedure

It can often be challenging to conduct an efficient and effective conservation district board meeting. To do so the chairman must be organized and disciplined while running the meeting. To ensure discussions during the meeting occur in an orderly and fair fashion, most conservation district boards follow parliamentary procedure. This brief summary of parliamentary procedure that follows was adapted from the National Association of Conservation Districts’ (NACD) quick reference guide for conservation district supervisors and other NACD resources.

Although not required by law, the rules of parliamentary procedure originated from court decisions concerning the proper way to conduct business. Parliamentary procedure assures all sides of an issue are treated fairly, and allows all supervisors the opportunity to voice an opinion

and to vote. Parliamentary procedure protects individuals and groups in their exercise of free speech, free assembly, and freedom to unite in groups and organizations. The guidance included here is not intended to cover all principles of parliamentary procedure, but can be used as a basic guide for conducting conservation district board meetings.

Basic Principles of Parliamentary Procedure:

- 1) Only one subject may be dealt with at a time
- 2) Extend courtesy to everyone
 - a. Each person in the meeting should be treated respectfully and should be given an equal opportunity to speak and present ideas
- 3) Observe the rule of the majority
 - a. When items of business are voted on, the resulting decision will be based on the will of the majority
- 4) Ensure the rights of the minority
 - a. Even those with opinions different from that of the majority shall have an equal opportunity to express their ideas
- 5) According to parliamentary procedure, proceedings (and motions in particular) must be carried out in the correct order (referred to as “precedence of motions”)

Basic Terms and Definitions of Parliamentary Procedure:

- **Abstain:** to give up one’s vote when a vote has been called
- **Amend a motion:** to add, insert, substitute wording, or delete wording from the original motion; or to substitute an entire motion for the original motion
- **Assembly:** the group of members at a meeting
- **Aye:** used in a voice vote to vote in the affirmative (i.e., “All those in favor of the motion, say ‘aye’.”)
- **Call the question:** to attempt to stop debate of a motion; an immediate stop to debate requires a second *and* a two-thirds vote
- **Chair, Chairman, Chairperson:** the person in charge of conducting the meeting
- **Consideration:** to discuss and decide on an item of business in a meeting
- **Commit:** to refer a motion to a committee
- **Committee:** a small group of people within an organization who have a specific task or project to complete
- **Delegate:** to give someone a task or job to be completed
- **Discussion:** debate that occurs after the presiding officer (typically the chair) restates the motion, and prior to a vote on the motion
- **Floor:** to have the “floor” is to have been recognized by the chairperson and have to right to speak
- **Germane:** to be relevant and to relate to the pending motion or to the business at hand

- **Maker of the motion:** a person who makes a motion during a meeting
- **Motion:** a proposal that the group take a particular action or stand; for a motion to proceed it must have a second, and once it is seconded it can be followed by discussion and, finally, a vote
- **Nay:** used in a voice vote to vote in the negative (i.e., “All those opposed to the motion, say ‘nay’.”); Robert’s Rules of Order alternatively suggests using the word “no.”
- **Pending:** the current motion or business before the assembly
- **Point of Order:** if a member feels the rules are not being followed, he or she can use this motion which requires the chair to make a ruling and enforce the rules
- **Question:** another way of saying “the vote”, as in “Are you ready for the question?” or “Call the question.”
- **Quorum:** the number of voting members who must be present in order that business can be legally transacted
- **Second:** to announce “second” once a motion is made in a meeting is to indicate that you also support bringing the motion before the assembly for discussion; a motion must receive a sustained second in order to be discussed, or it dies
- **Sustain:** to support and uphold a ruling
- **Recognized:** to be given the right to speak by the chairperson
- **Yield the floor:** when a member finishes speaking, he or she “yields the floor,” or gives the floor back to the chairperson

Parliamentary Procedure Precedence of Motions

The motions in this table are ranked in order of precedence from the top row to the bottom row and indicate the order in which specific motions should be processed. This is called the Precedence of Motions. When a motion is immediately pending, any motion above it is in order and any motion below it is out of order.

YOU WANT TO:	YOU SAY:	INTERRUPT?	2 nd ?	DEBATE?	AMEND?	VOTE?
Close meeting	I move that we adjourn.	No	Yes	No	Yes	Majority
Take break	I move to recess for...	No	Yes	Yes	Yes	Majority
Register complaint	I rise to a question of privilege.	Yes	No	No	No	None
Lay aside temporarily	I move that the main motion be postponed temporarily.	No	Yes	No	No	Varies

Close debate and vote immediately	I move to close debate <i>or</i> call the question.	No	Yes	No	Yes	2/3
Limit or extend debate	I move to limit debate to...	No	Yes	Yes	Yes	2/3
YOU WANT TO:	YOU SAY:	INTERRUPT?	2nd?	DEBATE?	AMEND?	VOTE?
Postpone to certain time	I move to postpone the motion until...	No	Yes	Yes	Yes	Majority
Refer to committee	I move to refer the motion to...	No	Yes	Yes	Yes	Majority
Modify wording of motion	I move to amend the motion by...	No	Yes	Yes	Yes	Majority
Bring business before assembly (a main motion)	I move that...	No	Yes	Yes	Yes	Majority

TITLE 22 AGRICULTURE AND HORTICULTURE

CHAPTER 27 SOIL CONSERVATION DISTRICTS

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**TITLE 22
AGRICULTURE AND HORTICULTURE
CHAPTER 27
SOIL CONSERVATION DISTRICTS**

22-2714. PAYMENTS OF FEDERAL AID TO VARIOUS COUNTIES BY STATE CONTROLLER.

The state controller is hereby authorized and directed to draw his warrant in favor of the counties to whom payment should be made pursuant to the Act of Congress of July 24, 1946 (60 Stat. 642, 33 U.S.C.A. 701-C-3) and forward the same to the treasurer of the county to which such funds are allocated under the terms of the aforementioned federal statute, to be by the treasurer of said county deposited in the public school fund of said county.

22-2715. SHORT TITLE.

This act may be known and cited as the soil conservation district law.

22-2716. LEGISLATIVE DETERMINATION AND DECLARATION OF POLICY.

- (1) It is the determination of the state of Idaho that:
 - (a) Forest lands, rangelands and agricultural lands maintained in a healthy condition are a legitimate land use contributing to the economic, social and environmental well-being of the state and its citizens;
 - (b) It is essential to the general welfare of all citizens of this state that multiple use conservation improvements be implemented on a broader scale on both public and private lands;
 - (c) Due to numerous economic and practical issues relating to the improvements of individual tracts of land, both public and private resource conservation improvements, projects and programs of the nature contemplated by this chapter would enhance the economic productivity and environmental quality of the state; and
 - (d) It is sound public policy for the state of Idaho to provide for accounts to finance loans, grants, cost-share funding and tax incentives to the end that forest lands, rangelands and agricultural lands within the state can provide the greatest benefit to all concerned.
- (2) It is the intent of the state of Idaho to provide a means by which funds, including federal, state, private and other moneys, can be obtained and utilized for the accelerated

development of water quality programs, multiple use forest land, rangeland, and agricultural land conservation improvements in the state, and to provide that these improvements, projects and programs be locally planned, coordinated and implemented through statutory provisions pertaining to soil conservation districts, the state soil and water conservation commission, appropriate state and federal agencies and the owners and operators of privately owned lands.

- (3) It is in the best interest of the state of Idaho:
- (a) To emphasize nonregulatory, science-based technical assistance, incentive-based financial programs and informational and educational programs at the local level;
 - (b) To maintain, preserve, conserve and rehabilitate forest lands, rangelands and agricultural lands to assure the protection and productivity of the state's natural resources;
 - (c) That soil conservation districts, as governmental subdivisions, and the state soil and water conservation commission, as a state agency, are the primary entities to provide assistance to private landowners and land users in the conservation, sustainment, improvement and enhancement of Idaho's natural resources;
 - (d) To establish policies for cooperative working relationships between local soil conservation districts, the state soil and water conservation commission, local, state and federal agencies and public and private groups to plan, develop and implement conservation goals and initiatives with local landowners and land users;
 - (e) That soil conservation districts and the state soil and water conservation commission lead nonregulatory efforts to conserve, sustain, improve and enhance Idaho's private and state lands and to provide assistance to private landowners and land users to plan, develop and implement conservation plans addressing soil, water, air, plant and animal resources. Technical, financial and educational assistance to landowners and land users is vital to that effort; and
 - (f) That the state soil and water conservation commission provide support to soil conservation districts in the wise use and enhancement of soil, water and related resources.
- (4) It is the policy of the state of Idaho:
- (a) To provide appropriate tax policies and program mechanisms that provide incentives for private landowners and land users to voluntarily manage forest lands, rangelands and agricultural lands in a manner that promotes conservation;
 - (b) That the health, safety and general welfare of the people of this state can be greatly enhanced by providing nonregulatory opportunities to landowners and land users in

order to increase the ability of such landowners and land users to readily understand and plan for local, state and federal natural resource requirements and opportunities through technological innovation and processes;

- (c) To enhance natural resource productivity in order to promote a strong natural resource sector, reduce unintended adverse effects of resource development and use, protect individual and community health and safety and encourage stewardship;
- (d) That conservation plan implementation shall include best management practices implemented according to the standards and specifications developed by the United States department of agriculture natural resources conservation service (NRCS) as designated by the agricultural pollution abatement plan. Those practices shall include, but not be limited to: irrigation water management systems; prescribed grazing; forest stand improvement; establishment of grass, trees and shrubs to reduce wind and water erosion; promotion of sound community development; protection of water and air resources from agricultural nonpoint sources of impairment; maintenance, restoration or enhancement of wetlands and fish and wildlife habitat; protection of upstream watersheds from flood risk; and protection of watersheds from the effects of chronic water shortages and risks; and
- (e) That all conservation programs authorized pursuant to this chapter shall deliver services fairly and equitably, strengthen the conservation district delivery system, provide timely science-based information and provide conservation information and educational programs and experiences to youth and adults.

22-2717. DEFINITIONS.

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

- (1) "Administrator" means the administrator for the Idaho state soil and water conservation commission.
- (2) "Agency" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.
- (3) "Agricultural pollution abatement plan" or "ag plan" means the document developed by the state soil and water conservation commission and approved by the commission and the department of environmental quality, that provides appropriate technical, programmatic, informational and educational processes, guidelines and policies for addressing agricultural pollution.

- (4) "Best management practices" or "BMPs" means practices, techniques, or measures developed or identified by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.
- (5) "Commission" or "state soil and water conservation commission" means the agency created in section 22-2718, Idaho Code.
- (6) "Conservation plan" means a description of identified natural resource issues and a specific schedule of implementation of component practices necessary to resolve those specific resource issues as agreed upon by the landowner.
- (7) "Designated agency" is as defined in section 39-3602, Idaho Code.
- (8) "District," "conservation district," "soil conservation district," or "soil and water conservation district" means a governmental subdivision(s) of this state, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the powers and subject to the restrictions hereinafter set forth.
- (9) "Due notice" means notice published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjournment dates.
- (10) "Eligible applicant" means an individual agricultural owner, operator, partnership, corporation, conservation district, irrigation district, canal company or other agricultural or grazing interest.
- (11) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivisions, agency, or instrumentality, corporate or otherwise, of either of them.
- (12) "Idaho OnePlan" means a computer-based system for improving efficiency and effectiveness of natural resource planning by landowners and land users.
- (13) "Landowner" or "owner" includes any person, firm, or corporation who shall hold title to any lands lying within a district organized under the provisions of this chapter. A buyer on contract, who is the occupier of land, shall be construed as landowner.

- (14) "Land user" means any entity with a lease, permit or similar business agreement with a landowner to implement, manage or utilize such land for activities related to use of the land.
- (15) "Natural resources conservation service" or "NRCS" means the agency governed by the provisions of 16 U.S.C. sections 590a through 590d and 590f.
- (16) "Nominating petition" means a petition filed under the provisions of section 22-2721, Idaho Code, to nominate candidates for the office of supervisor of a soil conservation district.
- (17) "Participant" means an individual agricultural owner, operator, partnership, private corporation, conservation district, irrigation district, canal company, or other agricultural or grazing interest approved by the commission or an individual agricultural owner, operator, partnership, or private corporation approved for implementation of conservation improvements, projects, or the water quality program for agriculture.
- (18) "Petition" means a petition filed under the provisions of subsection (1) of section 22-2719, Idaho Code, for the creation of a district.
- (19) "Project sponsor" means a conservation district, irrigation district, canal company, or other agricultural or grazing interest, as determined appropriate by the commission, that enters into a conservation improvement or water quality project agreement with the commission.
- (20) "Qualified elector" means any person who is qualified to vote pursuant to the requirements of section 34-104, Idaho Code.
- (21) "Riparian land" means the beds of streams, the adjacent vegetation communities and the land thereunder, which are predominately influenced by their association with water and are privately owned.
- (22) "Specifications" means the materials, operations and procedures necessary to obtain the desired standards of construction and installation.
- (23) "Standards" means the minimum limits of technical excellence of a component practice for its planning, design and construction.
- (24) "State" means the state of Idaho.
- (25) "Supervisor" means one (1) of the members of the governing body of a district elected or appointed in accordance with the provisions of this chapter.
- (26) "Total maximum daily load" is as defined in section 39-3602, Idaho Code.
- (27) "United States" or "agencies of the United States" includes the United States of America, the natural resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

22-2718. IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION.

- (1) There is hereby established and created in the department of agriculture of the state of Idaho the Idaho state soil and water conservation commission which shall perform all functions conferred upon it by this chapter and shall be a nonregulatory agency. The commission shall consist of five (5) members appointed by the governor. In appointing commission members, the governor shall give consideration to geographic representation. Commission members shall be chosen with due regard to their demonstrated expertise including, but not limited to, knowledge of and interest in water quality and other natural resource issues, production agriculture, banking or other similar financial experience or experience as a county commissioner. The soil and water conservation districts may submit to the governor a list of up to three (3) names for each vacancy on the commission and the governor may, in his discretion, consider any such submission in the appointment of commission members. The term of office of each commission member shall be five (5) years; except that upon July 1, 2010, the governor shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years and one (1) member for a term of five (5) years. From and after the initial appointment the governor shall appoint a member of the commission to serve in office for a term of five (5) years commencing upon July 1 of that year. A vacancy which occurs in an unexpired term shall be filled for its remainder by the governor's appointment. Each vacancy on the commission shall be filled by appointment by the governor. Such appointments shall be confirmed by the senate. Commission members shall serve at the pleasure of the governor. The commission may invite the state conservationist of the United States department of agriculture natural resources conservation service, a representative from a district or districts and the dean of the college of agriculture of the university of Idaho or his designated representative, or any other person or entity as the commission deems appropriate, to serve as nonvoting advisory members of the commission. The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings and promulgate such rules as may be necessary for the execution of its functions under this chapter.
- (2) The state soil and water conservation commission shall appoint the administrator of the state soil and water conservation commission. The state soil and water conservation commission may employ such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The commission may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one (1) or more of its members, or to one (1) or more agents or employees, such powers and duties as it may deem proper. The commission may establish offices,

incur expenses, enter into contracts and acquire services and personal property as may be reasonable for the proper administration and enforcement of this chapter. Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning, shall insofar as may be possible under available appropriation, and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys or studies as the commission may request.

- (3) The commission shall designate its chairman, and may from time to time, change such designation. A majority of the commission shall constitute a quorum and the concurrency of a majority in any matter within their duties shall be required for its determination. The chairman and members of the commission shall be compensated as provided by section 59-509(h), Idaho Code. The commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.
- (4) In addition to the duties and powers hereinafter conferred upon the state soil and water conservation commission, it shall have the following responsibilities:
 - (a) To offer such assistance as may be appropriate to the supervisors of soil conservation districts in the carrying out of any of their powers and programs.
 - (b) To keep the supervisors of each of the several soil conservation districts informed of the activities and experience of all other soil conservation districts and to facilitate an interchange of advice and experience between such districts and cooperation between them.
 - (c) To coordinate the progress of the several soil conservation districts so far as this may be done by advice and consultation.
 - (d) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.
 - (e) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts in areas where their organization is desirable.
 - (f) To provide for the establishment and encouragement of the "Idaho OnePlan" as a primary computer-based conservation planning process for all natural resource concerns. Establishment and encouragement will be accomplished through an

executive group and steering committee both containing private, state and federal representation. The information provided by those using the "Idaho OnePlan" shall be deemed to be trade secrets, production records or other proprietary information and shall be kept confidential and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

- (5) In addition to other powers, functions and duties of soil conservation districts and the state soil and water conservation commission provided in this chapter, the commission shall have the following additional powers, functions and duties:
- (a) The commission shall conduct, in cooperation with appropriate federal and state agencies and the owners and operators of privately owned forest lands, rangelands and agricultural lands in this state, conservation improvements on or in respect to these lands for the purposes of implementing conservation systems to conserve and improve natural resource conditions;
 - (b) The commission shall assist and advise soil conservation districts and other entities in implementing the conservation improvements, projects and the water quality program for agriculture. To the extent that there are available general funds, the commission shall provide for grants and cost-share opportunities and, as legislatively designated, utilize the resource conservation and rangeland development fund for loans for conservation improvements. Provided however, that the commission shall determine whether general or resource conservation and rangeland development funds are available before approving any conservation improvements, projects and cost-share opportunities and, after having made such determination, shall enter into the necessary contracts for implementation;
 - (c) The commission shall be the agency responsible for the administration of funds accruing to the resource conservation and rangeland development fund and for all general funds appropriated as a separate and distinct action of the legislature to implement the powers, functions and duties of soil conservation districts and the commission;
 - (d) On or before March 1 of each year, the commission shall report to the senate agricultural affairs committee and the house agricultural affairs committee; and
 - (e) The commission shall promulgate such rules as are necessary to carry out the purposes of this chapter.

22-2719. CREATION OF SOIL CONSERVATION DISTRICTS.

- (1) Any twenty-five (25) owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil and water conservation commission asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

 - (a) The proposed name of said district;
 - (b) That there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory described in the petition;
 - (c) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;
 - (d) A request that the state soil and water conservation commission duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the commission determine that such a district be created.

Where more than one (1) petition is filed covering parts of the same territory, the state soil and water conservation commission may consolidate all of any such petitions.

- (2) Within thirty (30) days after such petition has been filed with the state soil and water conservation commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given the hearing shall be adjourned and the due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the commission shall determine upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such

boundaries, the commission shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to the existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislature determinations set forth in section 22-2716, Idaho Code. The territory to be included within such boundaries need not be contiguous. If the commission determines after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

- (3) After the commission has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. To assist the commission in the determination of such administrative practicability and feasibility, it shall be the duty of the commission, at the next election held after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum, subject to the provisions of section 34-106, Idaho Code, within the proposed district upon the proposition of the creation of the district, and to cause notice of such election to be given as provided in section 34-1406, Idaho Code. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county(ies) of and" and "Against creation of a soil conservation district of the lands below described and lying in the county(ies) of and" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the commission. All qualified electors who own lands or reside within the proposed district shall be eligible to vote in said referendum.

- (4) The commission shall pay all expenses for the issuance of such notice and the conduct of such hearings and election and shall supervise the conduct of such hearings and election. It shall issue appropriate regulations governing the conduct of such hearings and election. No informalities in the conduct of the election or in any matter relating thereto shall invalidate the election or the result thereof if notice thereof shall have been given substantially as herein provided and the election shall have been fairly conducted.
- (5) The commission shall publish the result of the election and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the commission determines that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the commission determines that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the commission shall give due regard and weight to the attitudes of the owners of lands lying within the defined boundaries, the number of landowners and qualified electors eligible to vote in the election who shall have voted, the proportion of the votes cast in the election in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probable expense of carrying on erosion control and other conservation operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in section 22-2716, Idaho Code; provided however, the commission shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the election upon the proposition of creation of the district shall have been cast in favor of the creation of such district.
- (6) If the commission determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act, with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:
 - (a) The two (2) appointed supervisors shall present to the secretary of state an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (i) that a petition for the creation of the district was filed with the state soil and water conservation commission pursuant to the provisions of this chapter and that the proceedings specified in this chapter were

taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter; and that the commission has appointed them as supervisors; (ii) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (iii) the term of office of each of the supervisors; (iv) the name which is proposed for the district; and (v) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence.

- (b) The application shall be accompanied by a statement by the state soil and water conservation commission, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued and hearing held as aforesaid; that the commission did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and an election held on the question of the creation of such district, and that the result of the election showed a sixty percent (60%) majority of the votes cast in the election to be in favor of the creation of the district; that thereafter the commission did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the commission.
- (c) The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office.
- (d) If the secretary of state finds that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil and water conservation commission which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name free of such defects, the secretary of state shall record the application and statement with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision

of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors a certificate under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil and water conservation commission as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter except as provided in section 22-2720, Idaho Code.

- (7) After six (6) months shall have expired from the date of entry of a determination by the state soil and water conservation commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.
- (8) Petitions for including additional territory within an existing district may be filed with the state soil and water conservation commission and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. Where the total number of landowners in the area proposed for inclusion is less than twenty-five (25), the petition may be filed when signed by a two-thirds (2/3) majority of the owners of such area, and in such case no election need be held. In elections upon petitions for such inclusion, all owners of land and qualified electors lying within the proposed additional area shall be eligible to vote.
- (9) Incorporated cities, not already included within a district, may be included by presentation of a request of the district approved by the governing body along with a request of the city approved by the mayor and council, to the state soil and water conservation commission. The commission shall consider and act on such joint request at the earliest convenience. If the joint request is denied, the commission shall so notify the district and city in writing and state the reasons for such denial. After six (6) months shall have expired from the date of denial of such joint request, a subsequent joint request may again be made. If the joint request is approved, the commission shall then cause the necessary papers to be filed with the secretary of state. This shall include an amended legal description of the boundaries of the total district.

22-2720. CONSOLIDATION OF OR DELETION FROM AND ADDITION TO NEW OR EXISTING DISTRICTS.

- (1) Petitions for consolidating two (2) or more existing districts or for deleting territory from one (1) or more existing districts and adding the deleted territory to one (1) or more existing districts or incorporating the deleted territory into a new district or districts may be filed with the state soil and water conservation commission on such forms as may be prescribed by the state soil and water conservation commission.
- (2) The petitions provided for in subsection (1) of this section shall be signed by twenty-five (25) landowners in the area proposed to be consolidated or the area proposed to be deleted plus the district or districts to which it is to be added or the territory which is to be included in a new district or districts, as the case may be. Provided however, if two-thirds ($2/3$) of the landowners of all such territory total less than twenty-five (25), then such lesser number of signatures will suffice for the petition.
- (3) Within thirty (30) days after receipt of such a petition, the state soil and water conservation commission shall cause due notice of hearing on the matter to be given in all of the areas concerned.
- (4) At the close of the hearing, the state soil and water conservation commission shall make and record the following determinations:
 - (a) Whether or not, in the opinion of the commission, the proposal set forth by the petition would serve the public health, safety and welfare.
 - (b) Whether or not, in the opinion of the commission, the proposal set forth by the petition is administratively practicable and feasible.
- (5) If either or both of the determinations made under subsection (4) of this section are in the negative, the matter is closed. Provided however, after six (6) months have expired from the date of such determination, a new petition may be filed involving substantially the same proposals.
- (6) If both of the determinations made under subsection (4) of this section are in the affirmative and if the proposal involves the consolidation of two (2) or more existing districts or if the proposal involves the deletion of territory from one (1) or more districts and the addition of that territory to another existing district or districts, then the commission shall proceed to effect the change as per the commission's determinations hereinbefore referred to. The state soil and water conservation commission shall effect

the change by filing with the secretary of state a sworn statement of a member of the commission stating:

- (a) The name of the district or districts which are consolidated, if any;
- (b) The name of the district or districts from which the territory is deleted or added, if any; and
- (c) A description of the boundaries of the consolidated district or of the territory remaining in the district or districts deleted from and the district or districts added to, according to the commission's determination.

From and after the time of filing of such statement with the secretary of state, the changes will be effective. If the name of a district formed by the consolidation of two (2) or more existing districts differs from that of either of the consolidated districts, the secretary of state shall issue and record a new certificate of organization of said district.

- (7) Within ten (10) days after the filing of a statement providing for the formation of a consolidated district as prescribed in subsection (6) of this section, the supervisors of each district involved in the consolidation shall meet and, from their number, shall designate a chairman of the consolidated district. Incumbent supervisors of districts involved in a consolidation may serve until any such supervisor's term expires. Any vacancy on the governing body of a district formed by consolidation shall not be filled until only five (5) supervisors, or seven (7) upon written request pursuant to section 22-2721, Idaho Code, remain on the governing body of such district. Thereafter, vacancies shall be filled consistent with procedures prescribed in section 22-2721, Idaho Code.
- (8) A district formed by the consolidation of two (2) or more districts shall receive a sum not to exceed eight thousand five hundred dollars (\$8,500) for each district involved in the formation of the consolidated district for a period of three (3) years after the formation of such district. The maximum allocation of fifty thousand dollars (\$50,000) per district set forth in section 22-2727, Idaho Code, shall not apply to a district formed by consolidation for a period of three (3) years following the formation of such district. Upon expiration of the three (3) year time period, a district formed by consolidation shall be treated as one (1) district and shall be subject to all provisions of section 22-2727, Idaho Code.
- (9) The office of any district supervisor is hereby declared to be vacant when, after the deletion of territory, such district supervisor is no longer a landowner within the district deleted from.
- (10) If both of the determinations made under subsection (4) of this section are in the affirmative and if the proposal involves the addition of territory deleted from one (1) or

more existing districts to other territory thus forming a new district, a referendum shall be held and other procedures followed as in cases involving the original formation of a district where no existing district is involved. In such a case, due notice shall be given in the area which may comprise the new district.

- (11) If a new district is formed under the procedure prescribed in subsection (10) of this section, part of the area which is composed of an old district, the state soil and water conservation commission shall cause to be filed with the secretary of state a sworn statement of a member of the commission stating:
- (a) The name of the district or districts deleted from; and
 - (b) A description of the boundaries of the territory remaining in the district or districts deleted from.

From and after the time of filing of such statement with the secretary of state, the change in the boundaries of the existing districts shall be effective.

22-2721. ELECTION, APPOINTMENT, QUALIFICATIONS AND TENURE OF SUPERVISORS.

- (1) The governing body of the district shall consist of five (5) supervisors, elected or appointed as provided in this chapter. Elections shall be conducted pursuant to the provisions of this section and the uniform district election law, chapter 14, title 34, Idaho Code. If at any time the supervisors of a district deem it necessary, they may request permission from the state soil and water conservation commission to increase the number of supervisors to seven (7). Upon receipt of such a request in writing, signed by all five (5) supervisors, stating a valid reason for such need, the commission shall grant permission. The additional supervisors shall then be appointed as outlined in subsection (5) of this section until such time as regular district elections for two (2) supervisors in each district. At that time those districts having seven (7) supervisors shall then elect four (4) supervisors for four (4) year terms. The two (2) supervisors appointed by the commission shall be persons who are by training and experience qualified to perform the specialized services which will be required of them in the performance of their duties. All supervisors shall be landowners or farmers of the district where they are elected or appointed and shall be registered to vote in the state of Idaho.
- (2) Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil and water conservation commission to nominate candidates for supervisors of

each district. The county clerk shall conduct the election for the district and shall be the election official for the district. The election official shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the election official unless it shall be subscribed by not less than five (5) persons who are qualified electors owning land or residing within the boundaries of the district. The election official shall give due notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated shall appear upon ballots, with directions to choose three (3) names to indicate the voter's preference. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The commission shall pay all the expenses of such election, which shall be supervised and conducted by the election official.

- (3) All elections in districts shall be conducted by the county clerk. Such election shall be held on the first Tuesday succeeding the first Monday of November in each even-numbered year. Such elections shall be in compliance with the provisions of chapter 14, title 34, Idaho Code, and shall be supervised and conducted by the county clerk. The cost of conducting such elections shall be borne by the county that conducted the election. The county clerk shall certify to the state soil and water conservation commission the names of the elected supervisors. The state soil and water conservation commission shall issue certificates of election to each elected supervisor so certified. The county clerk or county clerks of the county or counties in which the district is located shall conduct the election for the soil conservation district, and the county clerk must provide a ballot for the district election and must provide a process that allows only qualified electors of the district to vote in that district's election.
- (4) In any election for supervisor, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated is equal to the number of supervisors to be elected, it shall not be necessary for the candidates to stand for election, and the board of supervisors shall declare such candidates elected as supervisors, and the state soil and water conservation commission shall immediately make and deliver to such persons certificates of election.
- (5) In any election for supervisors of a soil conservation district, if after the expiration of the date for filing written nominations it appears that only one (1) qualified candidate has been nominated for each position to be filled and no declaration of intent has been filed by a write-in candidate as provided in subsection (6) of this section, it shall not be necessary to hold an election, and the county clerk shall, no later than seven (7) days

before the scheduled date of the election, declare such candidate elected as supervisor, and the state soil and water conservation commission shall immediately make and deliver to such person a certificate of election.

- (6) No write-in vote for supervisor shall be counted unless a declaration of intent has been filed with the county clerk indicating that the person making the declaration desires the office and is legally qualified to assume the duties of supervisor if elected as a write-in candidate. The declaration of intent shall be filed not later than twenty-five (25) days before the day of election.
- (7) The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be four (4) years commencing on the first day of January next following election, except that the two (2) supervisors who are first appointed shall be designated to serve for terms of two (2) years. A supervisor shall hold office until a qualified successor has been elected or appointed. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term shall be made by a vote of the majority of the supervisors duly qualified and acting at the time the vacancy shall arise and the supervisors shall certify the name of the appointed supervisor to the state soil and water conservation commission which shall issue a certificate of such appointment.
- (8) A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall be entitled to expenses, including travel expense, necessarily incurred in the discharge of duties. A supervisor shall receive no compensation for services from regular district funds, county funds authorized in section 22-2726, Idaho Code, or state funds authorized in section 22-2727, Idaho Code.
- (9) In the event the district has a special project, approved by the state soil and water conservation commission, making project funds available from federal or other sources, a supervisor may receive compensation not to exceed thirty-five dollars (\$35.00) per day plus actual and necessary expenses from project funds for services directly related to the project.
- (10) The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff. The supervisors may delegate to their

chairman, to one (1) or more supervisors, or to one (1) or more agents, or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil and water conservation commission, upon request, copies of such ordinances, rules, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning the supervisors' activities as the commission may require in the performance of the commission's duties under this chapter.

- (11) The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; they shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for independent financial audits in accordance with the provisions of section 67-450B, Idaho Code. Supervisors shall be subject to recall in accordance with the provisions of chapter 17, title 34, Idaho Code.
- (12) The supervisors may invite the legislative body of a municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

22-2722. POWERS OF DISTRICTS AND SUPERVISORS.

A soil conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this chapter:

- (1) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, for the conservation, development, utilization, and disposal of water and the prevention and control measures, and works of improvement needed, to publish results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies;
- (2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands or the necessary rights of interests in such lands, in

order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil-blowing and soil-washing may be prevented and controlled; works of improvement for flood prevention and the conservation, development, utilization, and disposal of water may be carried out;

- (3) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the districts including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and other appropriate best management practices, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands or the necessary rights or interests in such lands;
- (4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid, to any agency, governmental or otherwise, or any owner of lands within the district, in carrying on erosion control and prevention operations and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purpose of this chapter;
- (5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein and all such property shall be exempt from taxation for state, county and municipal purposes; to maintain, administer, 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 sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter;
- (6) To make available, on such terms as it shall prescribe, to landowners within the district, agricultural and engineering machinery or equipment, as will assist such landowners to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water;
- (7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

- (8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specifications of engineering operations, method of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land, and to publish such plans and information and bring them to the attention of occupiers of lands within the district;
- (9) To take over, by purchase, lease, or otherwise, and to administer, any soil conservation, flood prevention, erosion control, or erosion prevention project, or combination thereof, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies; or of this state or any of its agencies, any soil conservation, flood prevention, erosion control, or erosion prevention project, or combination thereof, within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, erosion-control, or erosion-prevention project, or combination thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and use or expend such moneys, services, material, or other contributions in carrying on its operations;
- (10) 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 powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers;
- (11) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in moneys, services, materials, or otherwise to any operations conferring such benefits, and may require landowners to enter into and perform such agreements or covenants as to permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;
- (12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

22-2723. COOPERATION BETWEEN DISTRICTS.

The supervisors of any two (2) or more districts may cooperate with one another in the exercise of any or all powers conferred in this chapter.

22-2724. STATE AGENCIES TO COOPERATE.

Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such district shall be given free access to enter and perform work upon such publicly owned lands.

22-2725. DISCONTINUANCE OF DISTRICTS.

- (1) At any time after five (5) years after the organization of a district under the provisions of this chapter, any twenty-five (25) owners of land lying within the boundaries of such district may file a petition with the state soil and water conservation commission requesting that the operations of the district be terminated and the existence of the district discontinued. The commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such petition has been received by the commission, it shall give due notice to the county clerk of the holding of an election, subject to the provisions of section 34-106, Idaho Code, and the county clerk shall supervise the election, and issue appropriate regulations governing such election as are consistent with chapter 14, title 34, Idaho Code, the question to be submitted by ballots upon which the words "For terminating the existence of the (name of the soil conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to mark the ballot as the voter may favor or oppose discontinuance of such district. All qualified electors who reside within the proposed district shall be eligible to vote in said election. No informalities in the conduct of the election or in any matters relating thereto shall invalidate the election or the result thereof if notice thereof shall have been given substantially as herein provided and the election shall have been fairly conducted.
- (2) The commission shall publish the result of the election and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the commission determines that the continued

operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the commission determines that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the commission shall give due regard and weight to the attitudes of the owners of lands lying within the district, the number of residents eligible to vote in the election who shall have voted, the proportion of the votes cast in the election in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the landowners of the district, the probable expense of carrying on such erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 22-2716, Idaho Code, provided however, that the commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the election shall have been cast in favor of the continuance of such district.

- (3) Upon receipt from the state soil and water conservation commission of a certificate that the commission has determined that the continued operation of the district is not administratively practicable and feasible pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil and water conservation commission setting forth the determination of the commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.
- (4) Upon issuance of a certificate of dissolution under the provisions of this section, all contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil and water conservation commission shall be substituted for the district or supervisors as party to such contracts.

- (5) The state soil and water conservation commission shall not entertain petitions for the discontinuance of any district nor conduct elections upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five (5) years.

22-2726. FUNDS OR ASSISTANCE PROVIDED BY COUNTY FROM COUNTY GENERAL FUND.

In those counties of Idaho wherein all or a substantial part of the county has been created and is operating as a soil conservation district or districts under the provisions of chapter 27, title 22, section 22-2719, Idaho Code, or any amendment thereto, the board of county commissioners may, from time to time, at their discretion and upon request of the supervisors of such soil conservation districts provide in their budget a sufficient amount of money from the county general fund for allocation to the districts to be used by the districts for any purposes authorized by law, or in lieu of such allocation the county commissioners at their discretion may assign or hire an employee or employees of the county to assist the supervisors in the performance of the work of their office. The duties of such employee or employees shall be under the direct supervision of the supervisors of each soil conservation district.

22-2727. ALLOCATION OF FUNDS TO DISTRICTS.

- (1) A public hearing shall be held by the state soil and water conservation commission on or before June 15 of each year and twenty (20) days' written notice of such hearing shall be given to each soil conservation district and to all other persons requesting notice of such hearing. At the hearing the state soil and water conservation commission shall consider the needs of each soil conservation district and shall base its request for state funds for the soil conservation districts upon the budgets, budget requests, district programs and work plans, and work load analysis of the various soil conservation districts.
- (2) All funds appropriated by the state for the various soil conservation districts shall be appropriated to the Idaho state soil and water conservation commission and shall be allocated by the commission equally to the various soil conservation districts on the basis of the criteria established in subsection (1) of this section.
- (3) Funds appropriated to the state soil and water conservation commission for distribution to soil conservation districts shall be allocated by the commission equally to the various soil conservation districts in a sum not to exceed eight thousand five hundred dollars (\$8,500) per district. All funds appropriated to the state soil and water conservation commission for distribution to soil conservation districts in excess of eight thousand five hundred

dollars (\$8,500) per district shall be allocated by the commission to the various soil conservation districts in a sum not to exceed twice the amount of funds or services allocated to each district by the county commissioners in the previous fiscal year and funds or services allocated to each district by authorized officials or other local units of government or organizations in the previous fiscal year, provided that any such allocation by the commission shall not exceed fifty thousand dollars (\$50,000) to any one (1) district in a fiscal year.

- (4) The state soil and water conservation commission shall adopt rules necessary to carry out the purposes of this section.

**22-2730. RESOURCE CONSERVATION AND RANGELAND DEVELOPMENT FUND
CREATED.**

- (1) There is hereby created in the state treasury a fund to be known as the Idaho resource conservation and rangeland development fund, which shall consist of all moneys which may be appropriated to it by the legislature or made available to it from federal, private or other sources. The state treasurer is directed to invest all unobligated moneys in the fund. All interest and other income accruing from such investments shall accrue to the fund. The state soil and water conservation commission may expend from the fund such sums as it shall deem necessary for any of the conservation improvements, projects and programs provided for under this chapter under such terms and conditions provided for in the commission's rules and the water quality program for agriculture.
- (2) The state soil and water conservation commission shall establish a priority list for conservation improvements, projects and the water quality program for agriculture. The priority list shall be used as the method for allocation of funds loaned under this chapter.

22-2731. ALLOCATION OF FUND.

The Idaho resource conservation and rangeland development fund shall be allocated for use by the state soil and water conservation commission:

- (1) To eligible applicants for conservation improvements which it deems to be "in the public interest" in such amounts as are necessary for the implementation of conservation measures identified in a conservation plan;

- (2) To eligible applicants for the purpose of conservation improvements on rangelands, agricultural lands and riparian lands, which will provide environmental enhancement to soil, water, wildlife and related resources;
- (3) For the purpose of implementing conservation improvements, projects and the water quality program for agriculture.

22-2732. LOANS FROM FUND -- APPLICATION -- APPROVAL -- REPAYMENT.

- (1) Eligible applicants may file an application with the local soil conservation district or the state soil and water conservation commission for a loan from the fund for the purpose of financing conservation improvement cost. Such application shall be filed in such a manner and shall be in such form, and be accompanied by such information as may be prescribed by the commission. Any such application filed with the district or the commission under the provisions of this chapter shall:
 - (a) Describe the nature and purposes of the improvements or projects;
 - (b) Set forth or be accompanied by a conservation plan approved by the local soil conservation district or the commission that identifies the conservation improvements, or projects, together with such technical and economic feasibility data and estimated costs as may be required by the commission;
 - (c) State whether money other than that for which application is made under this chapter will be used for improvement costs, and whether such money is available or has been sought for this purpose;
 - (d) Show that the applicant holds or can acquire title to all lands or has necessary easements and rights-of-way for the improvements; and
 - (e) Show the proposed project is feasible from a technical standpoint and economically justified.
- (2) The local soil conservation districts and the commission shall keep each other informed of applications received. Within sixty (60) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate, and if it deems necessary, investigate aspects of the proposed improvements. As part of such investigation, the district or the commission shall determine whether the plan for development of the conservation improvements is satisfactory. If the district or the commission determines the plan is unsatisfactory, it shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan satisfactory. If the district or the commission determines the plan and application are satisfactory, it shall be considered for funding.

- (3) The commission may approve a loan for conservation improvements if after review, evaluation and investigation if necessary, it finds that:
 - (a) The applicant is qualified and responsible;
 - (b) There is reasonable assurance that the borrower can repay the loan; and
 - (c) That money in the resource conservation and rangeland development fund is available for the loan.
- (4) If the commission approves a loan, the applicant shall execute a promissory note for repayment to the account of money loaned therefrom, together with interest not to exceed six percent (6%) annually as determined by the commission. The note shall further provide that repayment of the loan, together with interest thereon, shall commence not later than two (2) full years from the date the note is signed. Repayment shall be completed within the time period specified by the commission not to exceed fifteen (15) years, except that the commission may extend the time for making repayment in event of emergency or hardship. Such agreement shall also provide for such assurance of, and security for, repayment of the loan as are considered necessary by the commission.
- (5) Upon approval of the loan and securing all necessary documents, the commission will make available, in approved form, project or contract funding.
- (6) If an applicant fails to comply with the repayment contract, the interest in the improvement may be conveyed to a successor upon approval by the commission, which may contract with the qualified successor in interest of the original obligor for repayment of the loan, together with interest thereon, and for succession to its rights and obligation in any contract with the commission.

**22-2733. GRANTS FROM STATE SOIL AND WATER CONSERVATION
COMMISSION GENERAL FUND -- APPLICATION -- APPROVAL -- GRANT
AGREEMENT.**

- (1) Eligible applicants or participants may file an application with the local soil conservation district or the state soil and water conservation commission for a grant from the state soil and water conservation commission general fund for the purpose of financing conservation improvements, projects and implementation of the water quality program for agriculture. Such application shall be filed in such a manner and shall be in such form, and be accompanied by such information as may be prescribed by the commission; provided however, any such application filed with the district or the commission under the provisions of this section shall:

- (a) Describe the nature and purpose of the improvements or conservation plan implementation project;
 - (b) Set forth or be accompanied by an improvement project plan approved by the local soil conservation district or the commission that identifies the practices to be applied, together with such technical and economic feasibility data and estimated costs as may be required by the commission;
 - (c) State whether money other than that for which application is made under this section will be used for improvement project or conservation plan implementation costs, and whether such money is available or has been sought for this purpose; and
 - (d) Show that the applicant or participant holds or can acquire title to all lands or has necessary easements and rights-of-way to implement the project plan.
- (2) The commission and local soil conservation district will keep each other informed of grant applications received. Within thirty (30) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate and, if deemed necessary, investigate all aspects of the proposed improvement, project or conservation plan. As part of such investigation, the district or the commission shall determine whether the project plan is satisfactory. If the district or the commission determines that the plan is unsatisfactory, it shall return the application to the applicant or participant and the district or the commission may make such recommendations to the applicant or participant as are considered necessary to make the plan satisfactory. If the commission determines either the plan or a plan revised pursuant to recommendation of the district or commission is satisfactory, it shall be considered for funding.
- (3) The commission may approve a grant if after review, evaluation and investigation if necessary, it finds that:
 - (a) The applicant or participant is qualified and responsible;
 - (b) The improvement, project or conservation plan demonstrates public benefits; and
 - (c) That money in the state soil and water conservation commission general fund is available for the grant.
- (4) If the commission approves a grant, the applicant or participant shall enter into an agreement covering the grant offer and acceptance of the grant for implementing the improvement, project or conservation plan. The agreement shall be improvement, project or conservation plan specific. The terms and conditions shall be those specified by the commission.

- (5) Upon approval of the grant and securing all necessary documents, the commission will make available, in the approved form, project or contract funding.

22-2734. COST-SHARE FROM STATE SOIL AND WATER CONSERVATION COMMISSION GENERAL FUND -- APPLICATION -- APPROVAL.

- (1) Eligible applicants or participants may file an application with the local soil conservation district or the state soil and water conservation commission for a cost-share contract or project from the state soil and water conservation commission general fund for the purpose of financing agricultural, grazing or other conservation improvements, projects or implementation of the water quality program for agriculture. Such application shall be filed in such a manner and shall be in such form and be accompanied by such information as may be prescribed by the commission; provided however, any such application filed with the district or the commission under the provisions of this section shall:
- (a) Describe the nature and purposes of the improvements and projects requiring cost-sharing;
 - (b) Set forth or be accompanied by a plan that identifies the conservation improvements or projects, together with such technical and economic feasibility data and estimated costs as may be required by the commission;
 - (c) State whether money other than that for which application is made under this section will be used for costs, and whether such money is available or has been sought for this purpose; and
 - (d) Show the proposed project is feasible from a technical standpoint and is economically justified.
- (2) The commission and the local soil conservation district will keep each other informed of cost-share applications received. Within thirty (30) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate and, if deemed necessary, investigate all aspects of the proposed contract or project. As part of such investigation, the district or the commission shall determine whether the plan for development of the conservation improvements or projects is satisfactory. If the district or the commission determines the plan is unsatisfactory, it shall return the application to the applicant or participant and the district or the commission may make such recommendations to the applicant or participant as are considered necessary to make the application satisfactory. When the commission determines either the application or an application revised pursuant to recommendation of the district or commission is satisfactory, it shall be considered for funding.

- (3) The commission may approve a cost-share contract to an applicant or participant for conservation projects and improvements if, after review, evaluation and investigation, it finds that:
 - (a) The applicant or participant is qualified and responsible;
 - (b) The conservation improvement or project demonstrates public benefit;
 - (c) There is reasonable assurance that the applicant or participant will adhere to contract terms; and
 - (d) Money is available in the state soil and water conservation commission general fund for cost-share.
- (4) Upon approval of the cost-share contract or cost-share grant, and securing of all necessary documents, the commission will make funding available.

22-2735. PAYMENTS BY THE STATE SOIL AND WATER CONSERVATION COMMISSION -- RULES -- APPROVAL OF ATTORNEY GENERAL -- AUDIT OF PAYMENTS.

- (1) The commission may make payments not to exceed the estimated reasonable cost of an eligible improvement, project or plan.
- (2) The commission may, in the name of the state of Idaho, enter into contracts with approved applicants, and any such approved applicants may enter into a contract with the commission concerning eligible improvements, projects or plans. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:
 - (a) An estimate of the reasonable cost of the improvements, projects or plans as determined by the commission;
 - (b) The terms under which the commission may unilaterally terminate the contract and/or seek repayment from the applicant of sums already paid pursuant to the contract for noncompliance by the applicant with the terms and conditions of the contract and the provisions of this chapter;
 - (c) An agreement by the applicant binding for the life of the eligible improvements, projects or plans:
 - (i) To develop water quality plans for landowners and provide payments to landowners for installation of best management practices;

- (ii) To determine payment rates in conjunction with the commission for best management practices;
 - (iii) To establish a method for administration and provisions for technical assistance to landowners in conjunction with the commission;
 - (iv) To allow the state to make payments up to the estimated reasonable cost for best management practices installation, technical assistance and project administration of an eligible project;
 - (v) To develop and to secure the approval of the commission of plans for operation of the eligible project;
 - (vi) To ensure that the local matching share of the cost is provided as applicable;
 - (vii) To assure an adequate level of landowner participation and application of best management practices to ensure water quality goals are met.
- (3) The commission may enter into contracts to provide technical assistance to applicants that have entered agreements pursuant to this chapter. Any such contract may include such provisions agreed upon by the parties thereto and shall include, in substance, the following provisions:
 - (a) An estimate of the reasonable cost of technical assistance;
 - (b) The terms under which the commission may unilaterally terminate the contract, and/or seek repayment of sums paid pursuant to the contract, for noncompliance by the applicants with the terms and conditions of the contract, the provisions of this chapter, or rules adopted pursuant thereto.
- (4) The commission may enter into contracts and establish procedures to be followed in applying for eligible improvements, projects and plans herein authorized as shall be necessary for the effective administration of the water quality program for agriculture.
- (5) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the chairman and the administrator of the commission.
- (6) All grant agreements and contracts previously entered into with the state board of health and welfare, soil conservation districts and the commission pursuant to section 39-3627, Idaho Code, for payments and administration are now to be administered and payments implemented solely by the commission.

STATUTES REFERENCED IN SOIL CONSERVATION DISTRICT LAW

The following are sections of Idaho Code referenced in soil conservation district law:

9-340D, Idaho Code 34-104, Idaho Code 34-106, Idaho Code 39-3602, Idaho Code
39-3627, Idaho Code 59-509(h), Idaho Code 67-2008, Idaho Code 67-450B, Idaho Code

These sections are provided here with a summary explanation of the context in which they appear in chapter 27, title 22, Idaho Code.



Reference: 9-340D, Idaho Code

Section 22-2718, Idaho Code, setting forth some of the Commission's duties and authorities, includes a reference to section 9-340D, Idaho Code. This statutory reference is made in regard to the proprietary information provided by users of the "Idaho OnePlan" computer-based conservation planning process, and provides that such information "pursuant to section 9-340D, Idaho Code" is confidential and exempt from disclosure. Here is the full text of the statute:

**TITLE 9
EVIDENCE
CHAPTER 3
PUBLIC WRITINGS**

**9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS,
PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY
INFORMATION.**

The following records are exempt from disclosure:

- (1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research 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.
- (2) Production records, housing production, rental and financing 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 or submitted to or otherwise obtained by an independent public body corporate and politic. 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.
- (3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

- (4) Any estimate prepared by a public agency or independent public body corporate and politic 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.
- (5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic 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.
- (6) 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.
- (7) 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.
- (8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.
- (9) 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, nor shall this exemption apply to information regarding specific property locations subject to an open burning of crop residue pursuant to section 39-114, Idaho Code, names of persons responsible for the open burn, acreage and crop type to be burned, and time frames for burning.
- (10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed commission and pertaining to the individual production records of oilseed growers.

- (11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency or independent public body corporate and politic.
- (12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.
- (13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.
- (14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.
- (15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic 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.
- (16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase

and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 9-335, Idaho Code. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

- (17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

 - (a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and
 - (b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.
- (18) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Code, or rules promulgated thereunder.
- (19) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, Idaho Code.
- (20) Records, data, information and materials collected, developed, generated, ascertained or discovered during the course of academic research at public institutions of higher education if the disclosure of such could reasonably affect the conduct or outcome of the research, or the ability of the public institution of higher education to patent or copyright the research or protect intellectual property.
- (21) Records, data, information and materials collected or utilized during the course of academic research at public institutions of higher education provided by any person or entity other than the public institution of higher education or a public agency.
- (22) The exemptions from disclosure provided in subsections (20) and (21) of this section shall apply only until the academic research is publicly released, copyrighted or patented, or until the academic research is completed or terminated. At such time, the records, data, information, and materials shall be subject to public disclosure unless: (a) another exemption in this chapter applies; (b) such information was provided to the institution subject to a written agreement of confidentiality; or (c) public disclosure would pose a danger to persons or property.
- (23) The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research project that is otherwise subject

to public disclosure, such as the nature of the academic research, the name of the researcher, and the amount and source of the funding provided for the project.

- (24) Records of a county assessor containing information showing the income and expenses of a taxpayer, which information was provided to the assessor by the taxpayer to permit the assessor to determine the value of property of the taxpayer.
- (25) Results of laboratory tests which have no known adverse impacts to human health conducted by the Idaho state department of agriculture animal health laboratory, related to diagnosis of animal diseases of individual animals or herds, on samples submitted by veterinarians or animal owners unless:
 - (a) The laboratory test results indicate the presence of a state or federally reportable or regulated disease in animals;
 - (b) The release of the test results is required by state or federal law; or
 - (c) The test result is identified as representing a threat to animal or human health or to the livestock industry by the Idaho state department of agriculture or the United States department of agriculture. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding, or the duty of any person to report contagious or infectious diseases as required by state or federal law.
- (26) Results of laboratory tests conducted by the Idaho state department of agriculture seed laboratory on samples submitted by seed producers or seed companies. Nothing in this subsection shall limit the use which can be made, or availability of such information pursuant to the provisions of subsections (9) and (10) of section 22-418, Idaho Code.
- (27) For policies that are owned by private persons, and not by a public agency of the state of Idaho, records of policies, endorsements, affidavits and any records that discuss policies, endorsements and affidavits that may be required to be filed with or by a surplus line association pursuant to chapter 12, title 41, Idaho Code.
- (28) Individual financial statements of a postsecondary educational institution or a proprietary school submitted to the state board of education, its director or a representative thereof, for the purpose of registering the postsecondary educational institution or proprietary school pursuant to section 33-2402 or 33-2403, Idaho Code, or provided pursuant to an administrative rule of the board adopted pursuant to such sections.

References: 34-104 and 34-106, Idaho Code

Section 22-1717(20) defines “qualified elector” to mean “any person who is qualified to vote pursuant to the requirements of section 34-104, Idaho Code.” The term “qualified elector” appears several times in soil conservation district law, (as does section 34-106, Idaho Code) in

reference to district related elections, including the election of supervisors. Additionally, the term "qualified elector" and section 34-106, Idaho Code appear in section 22-2719 (Creation of Soil Conservation Districts), section 22-2721 (Election, Appointment, Qualifications and Tenure of Supervisors), and section 22-2725 (Discontinuance of Districts). Here is the full text of the statute defining the term "qualified elector," and section 34-106, Idaho Code, which sets forth certain limitations on elections:

**TITLE 34
ELECTIONS
CHAPTER 1
DEFINITIONS**

34-104. "QUALIFIED ELECTOR" DEFINED.

"Qualified elector" means any person who is eighteen (18) years of age, is a United States citizen and who has resided in this state and in the county at least thirty (30) days next preceding the election at which he desires to vote, and who is registered as required by law.

34-106. LIMITATION UPON ELECTIONS.

On and after January 1, 2011, notwithstanding any other provisions of the law to the contrary, there shall be no more than two (2) 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 third Tuesday in May of each year; and
 - (b) The Tuesday following the first Monday in November of each year.
 - (c) In addition to the elections specified in paragraphs (a) and (b) of this subsection (1), 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, such 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 May 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, 2011, 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 or interpretations for the conduct of election authorized under the provisions of this section.
- (6) Water districts governed by chapter 6, title 42, Idaho Code, are exempt from the provisions of this section.
- (7) Community colleges governed by chapter 21, title 33, Idaho Code, and school districts are subject to the limitations specified in subsection (1) of this section, except that school districts may also hold an election on the second Tuesday in March of each year and on the last Tuesday in August of each year on bonded indebtedness and property tax levy questions.
- (8) Initiative, referendum, recall, bond, levy and any other ballot question elections conducted by any political subdivision shall be held on the nearest date authorized in subsections (1) and (7) of this section which falls more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held, unless otherwise provided by law.
- (9) Recall elections may be held on a different date as authorized in subsections (1) and (7), and on the second Tuesday of March and the last Tuesday of August, as determined by the county clerk after receipt of necessary petitions.
- (10) Irrigation districts governed by title 43, Idaho Code, are subject to the limitations specified in subsection (1) of this section, except that irrigation districts may also hold an election on the first Tuesday in February of each year and on the first Tuesday in August of each year on questions required to be voted upon by title 43, Idaho Code.

Reference: 39-3602, Idaho Code

Sections 22-2717(7) and -2717(26) Idaho Code reference the definition of “designated agency” and “TMDLs” (Total Maximum Daily Loads) set forth in section 39-3602, Idaho Code. These terms do not actually appear anywhere else in soil conservation district law; however, both terms are mentioned throughout chapter 36, title 39, Idaho Code relating to water quality. Essentially, the purpose of these references is to confirm that the SWC is the designated state agency for agriculture and grazing activities as they pertain to the TMDL process for achieving water quality standards.

Also of note in a separate portion of title 39 (section 39-3601, Idaho Code) is the following paraphrased excerpt, “It is hereby declared to be the policy of the state of Idaho...to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution.” Here is the portion of text from the statute defining the terms “designated agency” and “total maximum daily load:”

TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3602. DEFINITIONS.

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

- (7) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil and water conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of environmental quality for all other activities.
- (30) "Total maximum daily load (TMDL)" means a plan for a water body not fully supporting designated beneficial uses and includes the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, and natural background levels of the pollutant impacting the water body. Pollutant allocations established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations and a margin of safety to account for uncertainty concerning the relationship between the pollutant loading and water quality standards.

Reference: 39-3627, Idaho Code

Section 22-2735, Idaho Code references section 39-3627, Idaho Code. This section clarifies the role of the SWC as the responsible state agency for payments and administration of previous grant agreements under section 39-3627, Idaho Code. Here is the full text of the statute:

**TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY**

**39-3627. PAYMENTS BY STATE BOARD OF ENVIRONMENTAL QUALITY --
CONTRACTS WITH MUNICIPALITIES AND COMMUNITY AND
NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS -- RULES --
APPROVAL OF ATTORNEY GENERAL -- AUDIT OF PAYMENTS.**

- (1) The Idaho board of environmental quality may make payments not to exceed ninety percent (90%) of the estimated reasonable cost of an eligible construction project funded by a grant. Payments may be made which are equal to one hundred percent (100%) of the estimated reasonable cost of an eligible construction project funded by a loan.
- (2) The Idaho board of environmental quality may, in the name of the state of Idaho, enter into contracts with municipalities and community and nonprofit noncommunity public water systems and any such municipality and community and nonprofit noncommunity public water system may enter into a contract with the Idaho board of environmental quality, concerning eligible construction projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:
 - (a) An estimate of the reasonable cost of the project as determined by the Idaho board of environmental quality.
 - (b) An agreement by the municipality or community and nonprofit noncommunity public drinking water system, binding for the actual service life of the sewage treatment works or the actual service life of the community and nonprofit noncommunity public drinking water system:
 - (i) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 39-118, Idaho Code.
 - (ii) To commence operation of the sewage treatment works or community and nonprofit noncommunity public drinking water system on completion of the project, and not to discontinue operation or dispose of the sewage treatment works or community and nonprofit noncommunity public drinking water system without the approval of the board of environmental quality.

(iii) To operate and maintain the sewage treatment works or community and nonprofit noncommunity public drinking water system in accordance with applicable provisions and rules of the board.

(iv) To make available on an equitable basis the services of the sewage treatment works or community and nonprofit noncommunity public drinking water system to the residents and commercial and industrial establishments of areas it was designed to serve.

(v) To provide for the payment of the municipality's share or the community and nonprofit noncommunity public drinking water system's share of the cost of the project when the project is built using grant funds.

(vi) To develop and to secure the approval of the department of plans for the operation and maintenance of the sewage treatment works or community and nonprofit noncommunity public drinking water system; and of plans and programs for the recovery of the capital costs and operating expenses of the works or system.

(vii) To allow the board to make loans of up to one hundred percent (100%) and supplemental grants based upon financial capability to a municipality for the estimated reasonable cost of an eligible project, which may include treatment of nondomestic wastewater.

(viii) To provide for the accumulation of funds through the use of taxing powers, through charges made for services, through revenue bonds, or otherwise, for the purposes of: (1) capital replacement, (2) future improvement, betterment, and extension of such works occasioned by increased wastewater loadings on the works, and (3) establishing a fund dedicated solely to repayment of principal and interest of loans made subsequent to this chapter.

(ix) To commence annual principal and interest payments not later than one (1) year from the date construction is completed and to provide for full amortization of loans not later than twenty (20) years from the date project construction is completed.

- (c) The terms under which the Idaho board of environmental quality may unilaterally terminate the contract and/or seek repayment from the municipality or community and nonprofit noncommunity public drinking water system of sums already paid pursuant to the contract for noncompliance by the municipality with the terms and conditions of the contract and the provisions of this chapter.
- (3) The board of environmental quality may, in the name of the state of Idaho, enter into loan contracts with applicants for the implementation of nonpoint source pollution control programs. To be eligible for a loan the project proposed by an applicant must be consistent with the state nonpoint source management plan. Up to twenty percent (20%)

of the total state revolving loan fund may be used for nonpoint source pollution control projects which demonstrate a benefit/nexus to a municipality.

- (4) The board may adopt rules necessary for the making and enforcing of contracts hereunder and establishing procedures to be followed in applying for state construction grants or loans or training grants herein authorized as shall be necessary for the effective administration of the grants and loans program.
- (5) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.

Reference: 59-509(h), Idaho Code

Section 22-2718, Idaho Code references section 59-509(h), Idaho Code, which establishes the allowable compensation for the chairman and members of the SWC, and provides reference to a separate state statute (67-2008, Idaho Code) regarding expense allowances. Although the allowable compensation provided in 59-509(h), Idaho Code does not pertain to district supervisors, soil conservation district law clearly states that supervisors "...shall be entitled to expenses, including travel expense, necessarily incurred in the discharge of duties." Here is the text from 59-509(h), Idaho Code and the full text from section 67-2008, Idaho Code.

**TITLE 59
PUBLIC OFFICERS IN GENERAL
CHAPTER 5
SALARIES OF OFFICERS**

**59-509. HONORARIUMS OR COMPENSATION FOR MEMBERS OF BOARDS,
COMMISSIONS AND COUNCILS.**

The members of part-time boards, commissions or councils shall receive for each day spent in the actual performance of duties, an honorarium, compensation, or expenses, as provided in the following schedule:

- h)** Members shall receive the sum of fifty dollars (\$50.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

TITLE 67

STATE GOVERNMENT AND STATE AFFAIRS
CHAPTER 20
STATE BOARD OF EXAMINERS

67-2008. DETERMINATION OF RATE OF ALLOWANCE.

- (1) At its first meeting after the effective date of this act, and thereafter as it shall deem appropriate, the board of examiners shall by regulation fix a rate of allowance for per diem subsistence for officers, agents and all other employees of the state who are absent from their post of duty on official business, which shall be effective for the year in which such allowance is fixed, and shall fix a rate of allowance for mileage for official travel executed by privately owned means of conveyance, which rate of allowance shall be effective for the year in which it is fixed; provided, however, that the board shall fix no rate of per diem allowance which is higher than:
 - (a) Actual lodgings (maximum to be set by board of examiners) and meal allowance which is no higher than allowed under the Internal Revenue Code for travel within the state; and
 - (b) Actual lodgings (maximum to be set by board of examiners) and meal allowance which is no higher than allowed under the Internal Revenue Code without the state; and
 - (c) A rate of mileage allowance which is no higher than the standard mileage rate for the business use of an automobile allowed under the Internal Revenue Code for income tax purposes; and
 - (d) The mileage allowance for private aircraft travel shall be set by the board and shall be no higher than that allowed for automobile travel, calculated as if the travel had been by highway route.
- (2) In fixing rates of allowance under this act, the board shall consider the prevailing cost of executing such travel, generally prevailing economic conditions, and the rates of allowance made applicable to similar travel by the federal government and private employers within the state.
- (3) For a period where employees are to be absent from their post on official business for less than twenty-four (24) hours the board's regulations shall provide for partial days' subsistence rates.

Reference: 67-450B, Idaho Code

The reference to section 67-450B, Idaho Code is found in soil conservation district law, section 22-2721(11), Idaho Code. Section 67-450B, Idaho Code sets forth the minimum state requirements related to independent financial audits of soil conservation districts. Here is the full text of the statute:

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS
CHAPTER 4
LEGISLATURE

**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 governmental 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 one (1) copy of each completed audit report with the legislative services office within nine (9) months after the end of the audit period.

- (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 expenditures (from all sources) exceed 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 expenditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do 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 annual expenditures do 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 expenditures (from all sources) do not exceed one hundred thousand dollars (\$100,000) has no minimum audit requirements under this section.
- (d) Federal audit requirements applicable because of expenditure of federal assistance supersede the minimum audit requirements provided in this section.

ROLES AND
RESPONSIBILITIES
OF
CONSERVATION DISTRICTS
AND
SUPERVISORS



Conservation District Supervisor Recruitment Guide

Effective conservation district programs are built and sustained by qualified, knowledgeable, and committed board members. A district board whose members exhibit a diverse combination of skills will be more responsive to the needs of the community and better able to gain support for local conservation efforts.

The Need for Recruitment

Turnover of board members presents challenges as well as opportunities for districts. On the one hand, districts may have a difficult time finding a replacement with the same skills, knowledge, and commitment as a departing board member. On the other hand, turnover provides an opportunity to re-evaluate the district's needs and develop a strategy to meet those needs through strategic recruitment of new board members.

Recruitment begins with identification of the qualities desired in current and prospective district board members. An important first step is evaluating the current make-up of the district board and defining roles and expectations for all board members. This process helps determine the skills and talents of current board members and identify additional skills and talents that will enhance the board's ability to achieve the district's goals and objectives. District boards can then use a variety of recruitment strategies to help identify potential members who possess the desired skills and interests that are compatible with the district. Once found, these "new recruits" can not only be integrated into district programs and activities as elected or appointed board members, but can also become involved as associates or volunteers.

Although the recruitment process can appear time consuming and intimidating, a well developed recruitment plan can be rewarding. A district can gain committed and responsible district board members. Ultimately, strong boards are those that strive for the diversity of experience, ideas, and backgrounds needed to achieve successful program development and implementation.

The Importance of Community Outreach

Community outreach is at the heart of building a responsive district that can provide the best possible customer service to the people in your community. An effective district board will reflect the ideas and culture of the entire community which allows all individuals to share ideas and feel comfortable coming to the conservation district for assistance. Implementing an inclusive community outreach process is an important step for engaging the interest of potential board member recruits and partners for the district. Although it requires time and energy to initiate a community outreach process, this guide is intended to help you develop a plan and strategy for effective recruitment.

Board Member Recruitment and Diversity

Recruiting people of different skills, backgrounds, and ethnicity is also a positive method of enhancing creativity on your board and promoting ideas that will appeal to a wide audience. Ethnically and culturally diverse boards with a variety of experiences, perspectives, and expertise can produce comprehensive and powerful solutions to community problems. Before you begin your recruitment efforts you might consider assessing the demographics of your board to see if it is representative of your community. Answering the following questions can help guide your recruitment efforts:

- Who in your community is affected by your conservation district's actions?
- Does the representation of your district board mirror the diversity in your community?
- Is there an adequate community cross-section and expertise among your board members?
- Can your conservation district do more to help deliver conservation programs and services to a broader group of customers in your community?

Recruitment Tips

- Conduct an analysis of the current demographic composition of the area you serve so that you are able to develop appropriate recruitment goals
- Identify recruitment barriers and ways of overcoming those barriers
- Ask your local partners, neighbors, friends, and associates whom they would recommend to serve with your organization
- Include articles on diversity in your publications and presentations to communicate the message that your board is open and accessible to all
- Ask recruits to attend meetings and accompany board members on project site visits.
- Share with potential recruits the benefits, tasks, and responsibilities associated with being a board member
- Share diversity recruitment and retention achievements with other conservation districts

You may want to establish a process to continually cultivate potential new supervisors. For example, asking individuals to serve in an associate supervisor position provides an opportunity to prepare prospective board members. Or, you may want to invite someone from the community to advise the board on specific issues as a way to identify potential board members and as a strategy to expand your customer base. For example, if your conservation district does not have a strong conservation education program, your board might recruit someone with a strong educational background as an associate or consultant on a specific educational project. If your board is interested in branching out into the urban or suburban conservation community, you might recruit an appropriate representative from the urban sector. These recruitment activities also provide an opportunity to evaluate the interpersonal and leadership skills of

potential board members. The ability to work productively in a group is an important attribute for successful board functioning.

Analyzing the Needs of Your District

Before you begin your search for a qualified person to serve as a district board member, your current board should first identify the needs of your district. This is an opportunity for your board to determine existing needs as well as identify trends or changes within the district. It will also help to identify the types of individuals that can help your district adapt to change so that you may be able to expand on your current projects, programs, and partnerships.

- 1. What are the main programs and activities of your district?**
- 2. What are the strengths and weaknesses of your district?**
- 3. List programs and activities you have not been able to implement due to a lack of resources (human or otherwise).**

4. Identify the types of people with the knowledge, experience, abilities, or skills that can help you meet your program and activity goals.

5. List the knowledge, experience, abilities, and skills provided by each current board member.

6. Who does your district serve? List your clients/partners.

7. What new types of board members could help diversify your board, accomplish your mission, and better serve your clients or partners?

Recruitment Strategies and Materials

Board member recruitment of qualified and talented individuals requires looking beyond just your current circle of friends, neighbors, relatives, and business associates. It can be helpful to begin with a list of groups, organizations, and individuals to contact when recruiting a new member or soliciting input regarding qualified or interested prospects.

Some examples to consider include:

- Community groups that represent minority cultures and women
- Conservation and environmental special interest groups
- Commodity or grower groups
- Irrigation districts or companies
- Agricultural or natural resource lobbyists
- Board members of key funding organizations (i.e. banks, charities, etc.)
- Advertising agencies and marketing firms
- Teachers and college professors
- Researchers and writers
- Accountants, bankers, and investment managers
- Timber harvesting contractors and professional foresters
- Horticulturists, nursery operators and tree farmers
- Farmers and ranchers
- Hobby and part time farmers
- Organic farmers
- Former legislators and public servants (e.g. county commissioners, city officials, etc.)
- Retired local, state, or federal employees
- Public relations professionals
- Geologists and engineers
- Professional fund-raisers
- Agronomists and soil scientists
- Economists and social scientists
- Urban interest groups

A recruitment prospectus (detailed in the next section) could be provided by your conservation district to each of the groups, organizations, and individuals on your list to help inform them of your organizational needs and objectives.

Identifying Qualities and Qualifications of a District Board Member

Effective conservation district board members will typically have a strong conservation ethic and knowledge of key natural resource issues in your community. Often, just as important are management skills, meeting participation, and leadership abilities. Regardless of the qualities your district is looking for, board members should not simply be recruited using the criteria, “Who is available that we know?”

Desirable qualities for district board members may include:

- Open minded
- Good listener
- Organized
- Strong leadership skills
- Innovative
- Professional
- Understands conservation issues
- Effective speaker
- Progressive thinker
- Willing to learn
- Fundraising abilities
- Personnel management skills
- Legislative experience/understanding
- Well respected in the community
- Leadership network in the community

In addition to the listed qualities, other considerations may include:

- Whether the potential board member can devote an adequate amount of time to meeting attendance and other duties
- Whether the potential board member has effective communication skills and is willing and able to get along well with other district board members, staff, and agency personnel
- Whether the potential board member can work on behalf of the entire community in addition to his or her constituents

List any additional qualities you want your district board members to have.

Recruitment Prospectus

In order to encourage individuals and potential board members to become involved with your conservation district, they need to know what the district does and the programs and services it offers. One way to provide this information to prospective members is through the development of a recruitment prospectus that may include:

- Mission and vision statements
- Your district's primary goals and objectives
- Legal authority
- Major issues
- Major programs and activities
- Funding sources
- Expectations of district board members
- Benefits of being a district board member

Included on the next several pages is a template that can be used and revised as needed to help create a recruitment booklet for your conservation district.

Recruitment Booklet Template

Becoming a Board Member of the _____ Conservation District
(name)

Concerned citizens in _____ County can help conserve natural resources by
(name)
serving on the _____ Conservation District Board.
(name)

If the issues and programs stated in this document interest you, please call _____
(name)
at _____.
(number)

Mission:

(insert your district's mission statement)

Vision:

(insert your district's vision statement)

Goals and Objectives (examples):

- Establish soil and water conservation policy for the district
- Assess natural resource needs
- Develop strategies to address resource needs
- Provide quality conservation education to school children within the district
- Provide land users with technical and educational resource assistance
- Develop programs to address local natural resource problems
- Serve as focal point for addressing natural resource issues and coordinating various programs to address identified concerns

Legal Authority:

Soil Conservation District Law (chapter 27, title 22, Idaho Code) defines a conservation district as a political subdivision of the state of Idaho and establishes the powers of districts and supervisors.

Current Major Conservation Issues (examples):

- Water quality
- Water quantity/conservation
- Open space and farmland preservation
- Wildlife habitat fragmentation
- Failing septic systems
- Irrigation induced cropland erosion
- Invasive species/noxious weeds
- Erosion from construction sites
- Feedlot and dairy management
- Land users needing technical assistance regarding natural resource conservation

Current Major Programs and Activities (examples):

- Agricultural cost-share program
- Water quality program for agriculture
- Water conservation education
- Conservation easement management
- Conservation equipment program
- Tree seedling sales
- Quarterly newsletter
- Conservation plan approval
- Review of county planning proposals
- Educational programs for schools, youth, adults, and civic groups
- Review and development of erosion and sediment control plans

Funding Sources (examples):

- Local governments (county, city, special districts)
- State government (Idaho Soil & Water Conservation Commission)
- Grants (special projects and district fund raising activities)
- Federal (programs, grants, agreements)
- Educational seminars, programs, forums

Expectations of Conservation District Supervisors (examples):

- Take advantage of training opportunities to develop abilities
- Regularly attend board and committee meetings
- Participate in district programs and activities
- Serve as chair of one committee
- Take responsibility for district program direction
- Develop policies and programs
- Promote soil and water conservation in the community
- Help manage staff
- Represent district in public
- Help secure financial resources
- Promote activities of the district

Benefits of Being a Conservation District Supervisor (examples):

- Being a voice for the citizens and natural resources in your community
- Gaining satisfaction by providing your time to improve the environment
- Being actively involved with assistance and educational programs
- Providing leadership in community resource conservation
- Developing leadership skills
- Contributing to the health and welfare of your district

Recruitment Strategies and Materials

Once you have identified your district's needs, determined the qualities of effective district board members, and developed a recruitment prospectus and position description, it is time to develop your recruitment strategy. The following sample strategies are just a few of the many recruitment strategies a district may find helpful. Choose the strategies that best suit your needs and be aware that continual recruitment requires a variety of strategies to increase the pool of potential nominees.

Assemble a Board Development Team: An important first strategy may be to form a board development team charged with examining board needs including recruitment, orientation, and training. The team could include representatives from underserved communities to help identify potential candidates in those communities. The board development team should have objectives broader than a simple nominating committee.

District Board Members Information Form: Develop a nomination form describing supervisor qualifications the district board has identified and distribute it to organizations in the community.

Letters to Organizations: Direct correspondence to organizations, including those representing women and minorities, about potential nominees for district board member positions is an effective way to attract qualified individuals. The letter should include qualifications the board is looking for in potential nominees.

Public Service Announcements: Radio and television stations run free public service announcements for community organizations.

News Releases: Another method of reaching a wide audience is through news releases in newspaper, radio, television, and other media.

Newspaper Advertisements: Well written and attractive advertisements in newspapers that target underserved populations may help create interest in a district board member position.

District Recruitment Brochure: An effective way of informing potential candidates about district programs and activities, and about the powers and authorities of a district board member is through a well developed, clearly written informational brochure.

Recommendations from Staff and Cooperating Agencies: District staff and partnership staff can be a good source of ideas for potential candidates that possess the qualifications being sought by a district board. Staff members often have contacts throughout the community that may be different from the current board members' contacts.

Recruitment at Annual/Special Meetings: Make a special point to advertise your annual and special meetings in the media. Keep an attendance list at events to save the names and addresses of people who attend and participate.

Position Description and Recruitment Prospectus Distribution: Distribute your District Board Member Recruitment Booklet and Conservation District Supervisor Position Description to organizations within the community.

Personal Contacts: Personal contacts with a variety of community and organization leaders by district board members can be an effective method to create a pool of candidates different from that of a current circle of friends, neighbors, and relatives. Efforts to personally contact organizations that represent women and minorities could pay off through the development of joint projects between your district and those organizations.

Sample District Board Member Information Form

Name: _____

Address: _____

Home Phone: _____ Work Phone: _____

Resident of the county of: _____

a. Explain your interest in soil and water conservation and becoming a district board member.

b. Briefly describe what contributions and skills you will bring to the district.

c. How much time are you able or willing to commit to district activities?

d. What is your professional and/or educational background?

e. List other organizations, clubs, and affiliations (including dates of offices held and honors received):

f. Please provide a brief biography of yourself.

Sample District Board Member Self-Nomination Form

If you are unable to answer any of the questions listed below, please call the district chair at

_____ for more information.
(phone #)

1. Do you understand and are you committed to the mission of the conservation district?

2. Can you devote the time, resources, and energy required of a district board member?

3. Do you understand the roles and responsibilities of the district?

4. Are you willing to attend meetings regularly for the duration of your term?

5. Are you willing to participate in necessary training, education, and development activities?

6. Will you actively serve on district committees as assigned?

*Return completed form to: _____

Sample Public Service Announcement #1

_____ Conservation District

(insert address)

Public Service Announcement #1

Length: 30 seconds

For broadcast at will

Soil and Water Conservation District Board Member Contact:

(insert name & phone #)

AUDIO

“You may think that soil and water conservation affects only farmers and ranchers, but our soil and water quality affects the water you drink and the food you eat. If you’re concerned about these issues and want to have a voice in decisions affecting Idaho’s natural resources, consider becoming a board member of the (insert name) Conservation District. The (insert name) Conservation District includes the county/counties of (insert name(s)). As a conservation district board member you would help set conservation priorities and policy for your county. If you would like more information on this exciting opportunity to serve your community, please contact your district office today at (insert phone#) or look us up on the web at (insert web address).”

Sample Public Service Announcement #2

_____ Conservation District

(insert address)

Public Service Announcement #2

Length: 30 seconds

For broadcast at will

Soil and Water Conservation District Board Member Contact:

(insert name & phone #)

AUDIO

“You don’t have to choose between prosperous farms and a healthy environment --- you can have both. If you want to help landowners in your county maintain their farmland while also protecting soil and water resources, you should consider becoming a board member of the (insert name) Conservation District. As a board member you will help make important decisions about conservation in your county. Get involved....help make Idaho a better place for you and your family and for the next generation of Idahoans. For more information, contact the (insert name) Conservation District today at (insert phone#) or look us up on the web at (insert web address).”

Sample Public Service Announcement #3

_____ Conservation District

(insert address)

Public Service Announcement #3

Length: 15 seconds

For broadcast at will

Soil and Water Conservation District Board Member Contact:

(insert name & phone #)

AUDIO

"If you are interested in natural resources and want a voice in conservation decisions in your county, think about becoming a board member for the (insert name) Conservation District. For more information contact the district office today at (insert phone#) or look us up on the web at (insert web address). Isn't it time you made a difference in your community?"

Sample District Board Member News Release

News Release-For Immediate Release:

(insert date)

For further information contact: _____
(insert name & phone #)

Conservation district filings open until _____
(insert date)

Are you concerned about the water quality in our rivers, lakes, and streams? Do you have an interest in natural resources and conservation? Have you ever wondered what you can do to make a difference in your community? If you answered yes to any of these questions, you might consider submitting your name as a candidate for supervisor on the (insert name) Conservation District board by (insert filing date) for the upcoming election.

As (Insert chair name), chair of the (insert name) Conservation District, recently shared, "Conservation district supervisors have a direct, local influence in many important natural resource issues including water quality, wildlife habitat, and farmland preservation. Running for a district supervisor position is an excellent way to make a positive impact on our natural resources."

Conservation districts lead non-regulatory efforts to conserve, sustain, improve, and enhance Idaho's private and state lands by providing technical, financial, and educational assistance to private landowners and land users. The (insert name) Conservation District is governed by a (insert number) member board of supervisors that manages public funds and oversees a staff of (insert number). Supervisors are not paid but may receive compensation for expenses, including travel expenses, related to the supervisor's duties. If the position of supervisor doesn't appeal to you, you can always consider becoming an associate member.

For further information, contact the (insert name) Conservation District at (insert phone#) or look us up on the web at (insert web address).

CONSERVATION DISTRICT
SUPERVISOR
RECRUITMENT GUIDE



Conservation District Supervisor Recruitment Guide

Effective conservation district programs are built and sustained by qualified, knowledgeable, and committed board members. A district board whose members exhibit a diverse combination of skills will be more responsive to the needs of the community and better able to gain support for local conservation efforts.

The Need for Recruitment

Turnover of board members presents challenges as well as opportunities for districts. On the one hand, districts may have a difficult time finding a replacement with the same skills, knowledge, and commitment as a departing board member. On the other hand, turnover provides an opportunity to re-evaluate the district's needs and develop a strategy to meet those needs through strategic recruitment of new board members.

Recruitment begins with identification of the qualities desired in current and prospective district board members. An important first step is evaluating the current make-up of the district board and defining roles and expectations for all board members. This process helps determine the skills and talents of current board members and identify additional skills and talents that will enhance the board's ability to achieve the district's goals and objectives. District boards can then use a variety of recruitment strategies to help identify potential members who possess the desired skills and interests that are compatible with the district. Once found, these "new recruits" can not only be integrated into district programs and activities as elected or appointed board members, but can also become involved as associates or volunteers.

Although the recruitment process can appear time consuming and intimidating, a well developed recruitment plan can be rewarding. A district can gain committed and responsible district board members. Ultimately, strong boards are those that strive for the diversity of experience, ideas, and backgrounds needed to achieve successful program development and implementation.

The Importance of Community Outreach

Community outreach is at the heart of building a responsive district that can provide the best possible customer service to the people in your community. An effective district board will reflect the ideas and culture of the entire community which allows all individuals to share ideas and feel comfortable coming to the conservation district for assistance. Implementing an inclusive community outreach process is an important step for engaging the interest of potential board member recruits and partners for the district. Although it requires time and energy to initiate a community outreach process, this guide is intended to help you develop a plan and strategy for effective recruitment.

Board Member Recruitment and Diversity

Recruiting people of different skills, backgrounds, and ethnicity is also a positive method of enhancing creativity on your board and promoting ideas that will appeal to a wide audience. Ethnically and culturally diverse boards with a variety of experiences, perspectives, and expertise can produce comprehensive and powerful solutions to community problems. Before you begin your recruitment efforts you might consider assessing the demographics of your board to see if it is representative of your community. Answering the following questions can help guide your recruitment efforts:

- Who in your community is affected by your conservation district's actions?
- Does the representation of your district board mirror the diversity in your community?
- Is there an adequate community cross-section and expertise among your board members?
- Can your conservation district do more to help deliver conservation programs and services to a broader group of customers in your community?

Recruitment Tips

- Conduct an analysis of the current demographic composition of the area you serve so that you are able to develop appropriate recruitment goals
- Identify recruitment barriers and ways of overcoming those barriers
- Ask your local partners, neighbors, friends, and associates whom they would recommend to serve with your organization
- Include articles on diversity in your publications and presentations to communicate the message that your board is open and accessible to all
- Ask recruits to attend meetings and accompany board members on project site visits.
- Share with potential recruits the benefits, tasks, and responsibilities associated with being a board member
- Share diversity recruitment and retention achievements with other conservation districts

You may want to establish a process to continually cultivate potential new supervisors. For example, asking individuals to serve in an associate supervisor position provides an opportunity to prepare prospective board members. Or, you may want to invite someone from the community to advise the board on specific issues as a way to identify potential board members and as a strategy to expand your customer base. For example, if your conservation district does not have a strong conservation education program, your board might recruit someone with a strong educational background as an associate or consultant on a specific educational project. If your board is interested in branching out into the urban or suburban conservation community, you might recruit an appropriate representative from the urban sector. These recruitment activities also provide an opportunity to evaluate the interpersonal and leadership skills of

4. **Identify the types of people with the knowledge, experience, abilities, or skills that can help you meet your program and activity goals.**

5. **List the knowledge, experience, abilities, and skills provided by each current board member.**

6. **Who does your district serve? List your clients/partners.**

7. **What new types of board members could help diversify your board, accomplish your mission, and better serve your clients or partners?**

Recruitment Strategies and Materials

Board member recruitment of qualified and talented individuals requires looking beyond just your current circle of friends, neighbors, relatives, and business associates. It can be helpful to begin with a list of groups, organizations, and individuals to contact when recruiting a new member or soliciting input regarding qualified or interested prospects.

Some examples to consider include:

- Community groups that represent minority cultures and women
- Conservation and environmental special interest groups
- Commodity or grower groups
- Irrigation districts or companies
- Agricultural or natural resource lobbyists
- Board members of key funding organizations (i.e. banks, charities, etc.)
- Advertising agencies and marketing firms
- Teachers and college professors
- Researchers and writers
- Accountants, bankers, and investment managers
- Timber harvesting contractors and professional foresters
- Horticulturists, nursery operators and tree farmers
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A recruitment prospectus (detailed in the next section) could be provided by your conservation district to each of the groups, organizations, and individuals on your list to help inform them of your organizational needs and objectives.

Identifying Qualities and Qualifications of a District Board Member

Effective conservation district board members will typically have a strong conservation ethic and knowledge of key natural resource issues in your community. Often, just as important are management skills, meeting participation, and leadership abilities. Regardless of the qualities your district is looking for, board members should not simply be recruited using the criteria, “Who is available that we know?”

Desirable qualities for district board members may include:

- Open minded
- Good listener
- Organized
- Strong leadership skills
- Innovative
- Professional
- Understands conservation issues
- Effective speaker
- Progressive thinker
- Willing to learn
- Fundraising abilities
- Personnel management skills
- Legislative experience/understanding
- Well respected in the community
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In addition to the listed qualities, other considerations may include:

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List any additional qualities you want your district board members to have.

Recruitment Prospectus

In order to encourage individuals and potential board members to become involved with your conservation district, they need to know what the district does and the programs and services it offers. One way to provide this information to prospective members is through the development of a recruitment prospectus that may include:

- Mission and vision statements
- Your district's primary goals and objectives
- Legal authority
- Major issues
- Major programs and activities
- Funding sources
- Expectations of district board members
- Benefits of being a district board member

Included on the next several pages is a template that can be used and revised as needed to help create a recruitment booklet for your conservation district.

Recruitment Booklet Template

Becoming a Board Member of the _____ Conservation District
(name)

Concerned citizens in _____ County can help conserve natural resources by
(name)

serving on the _____ Conservation District Board.
(name)

If the issues and programs stated in this document interest you, please call _____
(name)

at _____.
(number)

Mission:

(insert your district's mission statement)

Vision:

(insert your district's vision statement)

Goals and Objectives (examples):

- Establish soil and water conservation policy for the district
- Assess natural resource needs
- Develop strategies to address resource needs
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- Provide land users with technical and educational resource assistance
- Develop programs to address local natural resource problems
- Serve as focal point for addressing natural resource issues and coordinating various programs to address identified concerns

Legal Authority:

Soil Conservation District Law (chapter 27, title 22, Idaho Code) defines a conservation district as a political subdivision of the state of Idaho and establishes the powers of districts and supervisors.

Current Major Conservation Issues (examples):

- Water quality
- Water quantity/conservation
- Open space and farmland preservation
- Wildlife habitat fragmentation
- Failing septic systems
- Irrigation induced cropland erosion
- Invasive species/noxious weeds
- Erosion from construction sites
- Feedlot and dairy management
- Land users needing technical assistance regarding natural resource conservation

Current Major Programs and Activities (examples):

- Agricultural cost-share program
- Water quality program for agriculture
- Water conservation education
- Conservation easement management
- Conservation equipment program
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- Quarterly newsletter
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- Review of county planning proposals
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Funding Sources (examples):

- Local governments (county, city, special districts)
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Expectations of Conservation District Supervisors (examples):

- Take advantage of training opportunities to develop abilities
- Regularly attend board and committee meetings
- Participate in district programs and activities
- Serve as chair of one committee
- Take responsibility for district program direction
- Develop policies and programs
- Promote soil and water conservation in the community
- Help manage staff
- Represent district in public
- Help secure financial resources
- Promote activities of the district

Benefits of Being a Conservation District Supervisor (examples):

- Being a voice for the citizens and natural resources in your community
- Gaining satisfaction by providing your time to improve the environment
- Being actively involved with assistance and educational programs
- Providing leadership in community resource conservation
- Developing leadership skills
- Contributing to the health and welfare of your district

Recruitment Strategies and Materials

Once you have identified your district's needs, determined the qualities of effective district board members, and developed a recruitment prospectus and position description, it is time to develop your recruitment strategy. The following sample strategies are just a few of the many recruitment strategies a district may find helpful. Choose the strategies that best suit your needs and be aware that continual recruitment requires a variety of strategies to increase the pool of potential nominees.

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Public Service Announcements: Radio and television stations run free public service announcements for community organizations.

News Releases: Another method of reaching a wide audience is through news releases in newspaper, radio, television, and other media.

Newspaper Advertisements: Well written and attractive advertisements in newspapers that target underserved populations may help create interest in a district board member position.

District Recruitment Brochure: An effective way of informing potential candidates about district programs and activities, and about the powers and authorities of a district board member is through a well developed, clearly written informational brochure.

Recommendations from Staff and Cooperating Agencies: District staff and partnership staff can be a good source of ideas for potential candidates that possess the qualifications being sought by a district board. Staff members often have contacts throughout the community that may be different from the current board members' contacts.

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Sample District Board Member Information Form

Name: _____

Address: _____

Home Phone: _____ Work Phone: _____

Resident of the county of: _____

a. Explain your interest in soil and water conservation and becoming a district board member.

b. Briefly describe what contributions and skills you will bring to the district.

c. How much time are you able or willing to commit to district activities?

d. What is your professional and/or educational background?

e. List other organizations, clubs, and affiliations (including dates of offices held and honors received):

f. Please provide a brief biography of yourself.

Sample District Board Member Self-Nomination Form

If you are unable to answer any of the questions listed below, please call the district chair at _____ for more information.
(phone #)

1. Do you understand and are you committed to the mission of the conservation district?

2. Can you devote the time, resources, and energy required of a district board member?

3. Do you understand the roles and responsibilities of the district?

4. Are you willing to attend meetings regularly for the duration of your term?

5. Are you willing to participate in necessary training, education, and development activities?

6. Will you actively serve on district committees as assigned?

*Return completed form to: _____

Sample Public Service Announcement #1

_____ Conservation District

(insert address)

Public Service Announcement #1

Length: 30 seconds

For broadcast at will

Soil and Water Conservation District Board Member Contact:

(insert name & phone #)

AUDIO

“You may think that soil and water conservation affects only farmers and ranchers, but our soil and water quality affects the water you drink and the food you eat. If you’re concerned about these issues and want to have a voice in decisions affecting Idaho’s natural resources, consider becoming a board member of the (insert name) Conservation District. The (insert name) Conservation District includes the county/counties of (insert name(s)). As a conservation district board member you would help set conservation priorities and policy for your county. If you would like more information on this exciting opportunity to serve your community, please contact your district office today at (insert phone#) or look us up on the web at (insert web address).”

Sample Public Service Announcement #2

_____ Conservation District

(insert address)

Public Service Announcement #2

Length: 30 seconds

For broadcast at will

Soil and Water Conservation District Board Member Contact:

(insert name & phone #)

AUDIO

“You don’t have to choose between prosperous farms and a healthy environment --- you can have both. If you want to help landowners in your county maintain their farmland while also protecting soil and water resources, you should consider becoming a board member of the (insert name) Conservation District. As a board member you will help make important decisions about conservation in your county. Get involved....help make Idaho a better place for you and your family and for the next generation of Idahoans. For more information, contact the (insert name) Conservation District today at (insert phone#) or look us up on the web at (insert web address).”

Sample Public Service Announcement #3

_____ Conservation District

(insert address)

Public Service Announcement #3

Length: 15 seconds

For broadcast at will

Soil and Water Conservation District Board Member Contact:

(insert name & phone #)

AUDIO

“If you are interested in natural resources and want a voice in conservation decisions in your county, think about becoming a board member for the (insert name) Conservation District. For more information contact the district office today at (insert phone#) or look us up on the web at (insert web address). Isn't it time you made a difference in your community?”

Sample District Board Member News Release

News Release-For Immediate Release:

(insert date)

For further information contact: _____
(insert name & phone #)

Conservation district filings open until _____
(insert date)

Are you concerned about the water quality in our rivers, lakes, and streams? Do you have an interest in natural resources and conservation? Have you ever wondered what you can do to make a difference in your community? If you answered yes to any of these questions, you might consider submitting your name as a candidate for supervisor on the (insert name) Conservation District board by (insert filing date) for the upcoming election.

As (Insert chair name), chair of the (insert name) Conservation District, recently shared, "Conservation district supervisors have a direct, local influence in many important natural resource issues including water quality, wildlife habitat, and farmland preservation. Running for a district supervisor position is an excellent way to make a positive impact on our natural resources."

Conservation districts lead non-regulatory efforts to conserve, sustain, improve, and enhance Idaho's private and state lands by providing technical, financial, and educational assistance to private landowners and land users. The (insert name) Conservation District is governed by a (insert number) member board of supervisors that manages public funds and oversees a staff of (insert number). Supervisors are not paid but may receive compensation for expenses, including travel expenses, related to the supervisor's duties. If the position of supervisor doesn't appeal to you, you can always consider becoming an associate member.

For further information, contact the (insert name) Conservation District at (insert phone#) or look us up on the web at (insert web address).

Conservation District Supervisor Position Description

Conservation Districts

A conservation district in Idaho is a governmental subdivision of the state and a public body corporate and politic organized in accordance with the chapter 27, title 22 Idaho Code. Conservation districts lead non-regulatory efforts to conserve, sustain, improve, and enhance Idaho's private and state lands by providing technical, financial, and educational assistance to private landowners and land users.

Conservation District Supervisors

There are currently fifty conservation districts in Idaho and each district is governed by a locally elected or appointed board consisting of five or seven supervisors. Each supervisor should be willing to represent the interests of landowners within their district and possess the ability to provide effective leadership for local landowner conservation needs.

Qualifications

- Must be a landowner or operator within the district
- Must be a registered voter in the State of Idaho
- Must be willing to comply with all governing state and federal laws, specifically the statutes regarding ethics in government, open meetings, and public records law pertaining to publicly elected officials
- Must support a non-regulatory, incentive-based approach to natural resource conservation
- Should have an interest in the conservation of soil, water, and other natural resources
- Should be willing to be a leader and represent the interests of citizens within the district

Term of Office

The term of office for a conservation district supervisor is four (4) years beginning on the first day of January following an election. A supervisor holds office until a qualified successor has been elected or appointed.

Compensation

Conservation district supervisors serve voluntarily and receive no compensation, but are entitled to reimbursement for expenses, including travel expenses, incurred in the discharge of district duties.

Primary Duties and Responsibilities

- Participate in district policy and program development
 - Help prepare strategic (long range) plan and annual plans of work
 - Establish and implement district policies regarding natural resource conservation issues as well as personnel and office matters
 - Develop and/or implement conservation programs (financial, technical, and educational) to meet the needs of landowners and land users within the district
- Provide financial direction
 - Be accountable for expenditures, management, and reporting requirements related to public funds
 - Review and approve annual budget, financial statements, and treasurer reports
- Participate in personnel management
 - Determine staffing needs and provide guidance and direction to district staff
 - Maintain and implement fair and equitable personnel policies
- Attend and participate in regularly scheduled monthly board meetings
- Participate on district committees and work groups as requested or assigned
- Represent the interests of citizens within the district regarding conservation issues

Time Required

Conservation district supervisors are expected to attend and participate in twelve (12) regularly scheduled (open to the public) district board meetings per year. The average duration of a board meeting is approximately three (3) hours. Supervisors may be required to attend field tours or participate in other training, committee meetings, and special sessions as necessary during the course of the year. Including preparation, review, and follow-up, a conservation district supervisor can expect to contribute an average of ten (10) hours per month to the service of the district.

Benefits

Serving on a district board is a unique and rewarding experience. Conservation district supervisors are presented with several opportunities for personal and professional networking, growth, development, and training during their term of service. Supervisors are community leaders who achieve satisfaction by helping others and are committed to conserving natural resources for future generations. As locally elected public officials, supervisors are entrusted with the power to administer local programs, receive and spend public funds, implement conservation practices, educate the public on natural resource issues, and much more.

UNIFORM DISTRICT ELECTION LAW

Idaho Statutes
Title 34, Chapter 14



TITLE 34 ELECTIONS

CHAPTER 14 UNIFORM DISTRICT ELECTION LAW

34-1401 ELECTION ADMINISTRATION.

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TITLE 34
ELECTIONS
CHAPTER 14
UNIFORM DISTRICT ELECTION LAW

34-1401. ELECTION ADMINISTRATION.

Notwithstanding any provision to the contrary, the county clerk shall administer all elections on behalf of any political subdivision, subject to the provisions of this chapter, including all special district elections and elections of special questions submitted to the electors as provided in this chapter. Water districts governed by chapter 6, title 42, Idaho Code, recreational water and/or sewer districts as defined in section 42-3202A, Idaho Code, ground water recharge districts governed by chapter 42, title 42, Idaho Code, ground water management districts governed by chapter 51, title 42, Idaho Code, ground water districts governed by chapter 52, title 42, Idaho Code, and irrigation districts governed by title 43, Idaho Code, are exempt from the provisions of this chapter. All municipal, school district and highway district elections shall be conducted pursuant to the provisions of this chapter 14, title 34, Idaho Code. All highway district and school district elections shall be administered by the clerk of the county wherein the district lies. Elections in a joint school district or other political subdivisions that extend beyond the boundaries of a single county shall be conducted jointly by the clerks of the respective counties, and the clerk of the home county shall exercise such powers as are necessary to coordinate the election. "Home county" shall be defined as the county in which the business office for the district or political subdivision is located. For the purposes of achieving uniformity, the secretary of state shall, from time to time, provide directives and instructions to the various county clerks. 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.

The county clerk shall conduct the elections for political subdivisions and 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.

34-1402. REGISTRATION.

All electors must register with the county clerk before being able to vote in any primary, general, special or any other election conducted in this state. The county clerk shall determine, for each registered elector, the elections for which he is eligible to vote by a determination of the

applicable code areas. The determination of tax code area shall be made for all political subdivisions including those otherwise exempt from the provisions of this chapter.

The county clerk shall conform to the provisions of chapter 4, title 34, Idaho Code, in the administration of registration for all political subdivisions within the county. The county clerk shall appoint each city clerk for any city within the county and each election official designated by a political subdivision, as an at-large registrar as provided in section 34-406, Idaho Code, except that no compensation shall be paid by the county clerk for electors registered by these special registrars.

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.

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 clerk 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 third 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.

34-1405. NOTICE OF ELECTION FILING DEADLINE.

- (1) Not more than fourteen (14) nor less than seven (7) days preceding the candidate filing deadline for an election, the county clerk shall cause to be published a notice of the forthcoming candidate filing deadline for all taxing districts. 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 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. 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.

34-1406. NOTICE OF ELECTION.

The county clerk shall give notice for each political subdivision for any election by publishing such notice in the official newspaper of the county. 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. For each primary, general and special election, the county clerk shall cause to be published a facsimile, except as to size, of the sample ballot in at least two (2) newspapers published within the county, but if this is not possible, the sample ballot shall be published in one (1) newspaper published within the county or one (1) newspaper that has general circulation within the county. Such

publication shall be in conjunction with the second notice of election required by this section. The political subdivision shall notify the county clerk in writing of the county's newspaper.

34-1407. WRITE-IN CANDIDATES.

No write-in candidate for any nonpartisan 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 twenty-five (25) 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 twenty-five (25) days preceding the election. However, if no candidate has filed within that time, no election shall be held for that political subdivision. The provisions of this section shall not apply to candidates in the primary or general election covered by the provisions of section 34-702A, Idaho Code.

34-1408. ABSENTEE BALLOTS.

Any registered elector may vote at any election by absentee ballot as provided in chapter 10, title 34, Idaho Code. In the event of a written application to the county clerk for an absentee ballot, the application shall be deemed to be an application for all ballots to be voted in the election, and the county clerk shall provide the ballot of the political subdivision to the elector.

34-1409. CONDUCT OF ELECTION ON ELECTION DAY.

At all elections conducted by any political subdivision, 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. However, the election official may, at his option, open the polls in his jurisdiction at 7:00 a.m.

All political subdivisions conducting elections on the same date shall, whenever practicable, use the same polling places.

34-1410. CANVASSING OF ELECTION RESULTS.

The board of county commissioners shall conduct the canvass of the election results, in the manner provided in chapter 12, title 34, Idaho Code. The county clerk shall certify the election results to the clerk of each political subdivision for which an election was held. Each political subdivision shall issue the appropriate certificates of election.

34-1411. PAYMENT OF ELECTION EXPENSES BY COUNTY.

- (1) On and after January 1, 2011, no county shall charge any taxing district, as defined in section 63-201, Idaho Code, for expenses associated with conducting any election on behalf of any taxing district, with the exception of expenses associated with conducting municipal runoff elections, which shall be paid by the city adopting runoff elections pursuant to the provisions of section 50-612 or 50-707B, Idaho Code. Expenses associated with conducting taxing district elections shall include:

 - (a) Costs of ballot preparation, distribution, printing and counting, including absentee ballots.
 - (b) Costs of printing poll books and costs of tally books, stamps, signs and any other voting supplies, publications and equipment.
 - (c) Wages or other compensation for election judges and clerks or any county employees or officials performing duties associated with conducting taxing district elections.
 - (d) Costs paid for renting polling facilities.
 - (e) Acquisition, repair, maintenance or any other costs associated with voting machines or vote tally systems as defined in subsections (9) and (10) of section 34-2401, Idaho Code.
 - (f) Costs of publishing and printing election notices and ballots.
- (2) Counties shall not be responsible for any election expenses prior to the time any taxing district orders an election, such as notice and costs for public hearings and notice and costs for public hearings on ballot measures.
- (3) Notwithstanding the provisions of subsection (1) of this section, all ballot questions shall be limited to two hundred fifty (250) words or less. If a ballot question is in excess of two hundred fifty (250) words, the entity proposing a ballot question that is not a state constitutional amendment shall be required to pay the ballot printing costs associated with the ballot question.

RECALL ELECTIONS

Idaho Statutes

Title 34, Chapter 17



**TITLE 34
ELECTIONS
CHAPTER 17
RECALL ELECTIONS**

34-1701. OFFICERS SUBJECT TO RECALL.

The following public officers, whether holding their elective office by election or appointment, and none other, are subject to recall:

- (1) State officers:
 - (a) The governor, lieutenant-governor, secretary of state, state controller, state treasurer, attorney general, and superintendent of public instruction;
 - (b) Members of the state senate, and members of the state house of representatives.
- (2) County officers:
 - (a) The members of the board of county commissioners, sheriff, treasurer, assessor, prosecuting attorney, clerk of the district court, and coroner.
- (3) City officers:
 - (a) The mayor;
 - (b) Members of the city council.
- (4) Special district elected officers for whom recall procedure is not otherwise provided by law.

34-1702. REQUIRED SIGNATURES ON PETITION.

A petition for recall of an officer shall be instituted by filing with the appropriate official a verified written petition requesting such recall.

- (1) If the petition seeks recall of any of the officers named in subsection (1)(a) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held to elect a governor.
- (2) If the petition seeks recall of any of the officers named in subsection (1)(b) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors of the legislative district equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the legislative district at which the member was elected.

- (3) If the petition seeks recall of any of the officers named in subsection (2)(a) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk, and must be signed by registered electors of the county equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the county for the election of county officers at which the officer was elected.
- (4) If the petition seeks recall of any of the officers named in subsection (3) of section 34-1701, Idaho Code, the petition shall be filed with the city clerk, and must be signed by registered electors of the city equal in number to twenty percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers.
- (5) If the petition seeks recall of any of the officers named in subsection (4) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk of the county wherein the district is located. If the district is located in two (2) or more counties, the clerk in each county shall perform the functions within that county. The petition must be signed by registered electors of the district equal in number to fifty percent (50%) of the number of electors who cast votes in the last election of the district. If no district election has been held in the last six (6) years, the petition must be signed by twenty percent (20%) of the number of electors registered to vote in the district at the time the petition is filed.

34-1703. FORM OF PETITION.

- (1) The recall petition for state officers other than members of the state legislature shall be in substantially the following form:

RECALL PETITION

To the honorable, Secretary of State for the State of Idaho:

We, the undersigned citizens and registered electors of the State of Idaho respectfully demand that, holding the office of, be recalled by the registered electors of this state for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the State of Idaho; my residence, post office address, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence	City or	Date
		Street and	Post Office	
		Number		

(Here follow twenty numbered lines for signatures.)

- (2) The recall petition for members of the state legislature shall be in substantially the following form:

RECALL PETITION

To the honorable, Secretary of State for the State of Idaho:

We, the undersigned citizens and registered electors of Legislative District No., respectfully demand that, holding the office of, be recalled by the registered electors of Legislative District No. for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of Legislative District No., my residence, post office address, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City or Post Office	Date
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(Here follow twenty numbered lines for signatures.)

- (3) The recall petition for county officers shall be in substantially the following form:

RECALL PETITION

To the honorable, County Clerk for the County of

We, the undersigned citizens and registered electors of the County of, respectfully demand that, holding the office of, of the County of, be recalled by the registered electors of the County of for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the County of, my residence, post office address, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City or Post Office	Date
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(Here follow twenty numbered lines for signatures.)

- (4) The recall petition for city officers shall be in substantially the following form:

RECALL PETITION

To the honorable, City Clerk for the City of

We, the undersigned citizens and registered electors of the City of, respectfully demand that, holding the office of, of the City of, be recalled by the registered electors of the City of for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the City of, my residence, post office address, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City or Post Office	Date
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(Here follow twenty numbered lines for signatures.)

- (5) The recall petition for special district officers shall be in substantially the following form:

RECALL PETITION

To the honorable, County Clerk of the County of

We, the undersigned citizens and registered electors of (here insert the official name of the district), respectfully demand that, holding the office of ..., of the (district), be recalled by the registered electors of the (district) for the following reasons, to-wit: (insert the reasons for the recall in two hundred (200) words or less); that a special election therefor be called, that we, each for himself say: I am a registered elector of the (district), my residence, post office address, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City or Post Office	Date
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(Here follow twenty numbered lines for signatures.)

34-1704. PRINTING OF PETITION AND SHEETS FOR SIGNATURES -- TIME LIMITS FOR PERFECTING PETITION.

- (1) Before or at the time of beginning to circulate any petition for the recall of any officer subject to recall, the person or persons, organization or organizations under whose authority the recall petition is to be circulated, shall send or deliver to the secretary of state, county clerk, or city clerk, as the case may be, a copy of a prospective petition duly signed by at least twenty (20) electors eligible to sign such petition. The receiving officer shall immediately examine the petition and specify the form and kind and size of paper on which the petition shall be printed and circulated for further signatures. All petitions

and signature sheets for recall shall be printed on a good quality bond or ledger paper of standardized size in substantial conformance within the provisions of section 34-1703, Idaho Code. To every sheet of petitioners' signatures shall be attached a full and correct copy of the recall petition.

- (2) The secretary of state, county clerk, or city clerk, as the case may be, shall indicate in writing on the prospective recall petition that he has approved it as to form and the date of such approval. Upon approval as to form, the secretary of state, county clerk, or city clerk, shall inform the person or persons, organization or organizations under whose authority the recall petition is to be circulated, in writing, that the petition must be perfected with the required number of certified signatures within seventy-five (75) days following the date of approval as to form. Signatures on the prospective petition shall not be counted toward the required number of certified signatures. Any petition that has not been perfected with the required number of certified signatures within the seventy-five (75) days allowed shall be declared null and void ab initio in its entirety.

34-1705. VERIFICATION ON SHEETS FOR SIGNATURES.

Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof:

State of Idaho

ss.

County of

I,, swear, under penalty of perjury, that I am a resident of the State of Idaho and at least eighteen (18) years of age; and that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition.

(Signature)

Post office address

Subscribed and sworn to before me this day of,

(Notary Seal)

.....

Notary Public

Residing at

34-1706. EXAMINATION AND CERTIFICATION OF SIGNATURES.

All petitions with attached signature sheets shall be filed on the same day with the secretary of state, county clerk, or city clerk, as the case may be. The secretary of state or the city clerk shall promptly transmit the petitions and attached signature sheets to the county clerk. An examination to verify whether or not the petition signers are qualified electors shall be conducted by the county clerk as provided in section 34-1807, Idaho Code. This examination shall not exceed fifteen (15) business days from the date of receipt of the petitions.

34-1707. SUFFICIENCY OF PETITION -- NOTIFICATION -- EFFECT OF RESIGNATION -- SPECIAL ELECTION.

- (1) 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.
 - (a) If the officer being recalled resigns his office within five (5) business 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.
 - (b) If the officer being recalled does not resign his office within five (5) business 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 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) 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.
 - (a) If the officer being recalled resigns his office within five (5) business 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.

- (b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the county clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted countywide.
- (3) In the event that a petition filed with the county clerk concerning the recall of an official of a special district 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, and the governing board and election officials of the special district that the recall petition is in proper form.
- (a) If the officer being recalled resigns his office within five (5) business 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.
- (b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the governing board of the special district. The special election must be held on the date prescribed in section 34-106, Idaho Code. The election shall be conducted by the special district in the manner provided in section 34-1401, Idaho Code, and the special district may contract with the county clerk as provided in section 34-1401, Idaho Code.
- (4) 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.
- (a) If the officer being recalled resigns his office within five (5) business 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.
- (b) If the officer being recalled does not resign his office within five (5) business days after notice from the city clerk, a special election shall be ordered by the city clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted citywide.
- (5) In the event that a petition is found not to have the required number of signatures, the officer shall continue in office and no new recall petition may be circulated for a period of ninety (90) days against the same officer.

34-1708. FORM OF RECALL BALLOT.

The ballot at any recall election shall be headed "RECALL BALLOT" and on the ballot shall be printed in not more than two hundred (200) words the reason for demanding the recall of the officer named in the recall petition, and in not more than two hundred (200) words the officer's justification of his course in office. Then the question of whether the officer should be recalled shall be placed on the ballot in a form substantially similar to the following:

- FOR recalling who holds office of
- AGAINST recalling who holds office of

34-1709. OFFICER TO CONTINUE IN OFFICE.

The officer named in the recall petition shall continue to perform the duties of his office until the results of the special recall election are officially declared.

34-1710. CONDUCT OF SPECIAL RECALL ELECTION.

Special elections for the recall of an officer shall be conducted and the results thereof canvassed and certified in all respects as general elections, except as otherwise provided. Nothing in this chapter shall preclude the holding of a recall election with another election.

34-1711. CANVASS OF RETURNS.

- (1) The board of county commissioners shall act as the board of canvassers for all special recall elections involving state and county officers that involve elections held wholly or partly within their county.
 - (a) For all special recall elections involving state officers, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and shall immediately transmit to the secretary of state an abstract of the votes cast.
 - (b) Within fifteen (15) days following the special recall election held to recall a state officer, the state board of canvassers shall meet and canvass the votes cast at such election, and the secretary of state shall immediately after the completion thereof, proclaim the results.
 - (c) For all special recall elections involving county officers, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes

cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results.

- (d) For all special recall elections involving city officers, the mayor and council shall meet within six (6) days after said election to canvass the votes cast at such election, and the city clerk shall immediately after the completion thereof, proclaim the results.

34-1712. GENERAL ELECTION LAWS CONTROL.

- (1) The provisions relating to general elections, including the payment of expenses of conducting the recall election, shall govern special recall elections except where otherwise provided for.
- (2) Whenever a special recall election is ordered, notice must be issued and posted in the same manner as for a general election.
- (3) To recall any officer, a majority of the votes cast at the special recall election must be in favor of such recall, and additionally, the number of votes cast in favor of the recall must equal or exceed the votes cast at the last general election for that officer. If the officer was appointed or was not required to stand for election, then a majority of the votes cast in the recall election shall be the number necessary for recall.
- (4) If recalled, an officer shall be recalled as of the time when the results of the special recall election are proclaimed, and a vacancy in the office shall exist.
- (5) If an officer is recalled from his office the vacancy shall be filled in the manner provided by law for filling a vacancy in that office arising from any other cause.

34-1713. TIME WITHIN WHICH RECALL MAY BE FILED -- REMOVAL OF SIGNATURES.

- (1) No petition for a recall shall be circulated against any officer until he has actually held his office ninety (90) days.
- (2) After one (1) special recall election, no further recall petition shall be filed against the same officer during his current term of office, unless the petitioners first pay into the public treasury which has paid such special recall election expenses the whole amount of the expenses for the preceding recall election. The specific reason for recall in one (1) recall petition cannot be the basis for a second recall petition during that current term of office.

- (3) The signer of any recall petition may remove his own name from the petition by crossing out, obliterating, or otherwise defacing his own signature at any time prior to the time when the petition is filed.

34-1714. PROHIBITED ACTS -- PENALTIES.

- (1) A person is guilty of a felony, who:
- (a) Signs any name other than his own to any recall petition;
 - (b) Knowingly signs his name more than once on the same recall petition;
 - (c) Knowingly signs his name to any recall petition for the recall of any state, county or city officer if he is not a registered elector;
 - (d) Wilfully or knowingly circulates, publishes or exhibits any false statement or representation concerning the contents, purport or effect of any recall petition for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such recall petition;
 - (e) Presents to any officer for filing any recall petition to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent, or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto;
 - (f) Circulates or causes to circulate any recall petition, knowing the same to contain false, forged or fictitious names;
 - (g) Makes any false affidavit concerning any recall petition or the signatures appended thereto;
 - (h) Offers, proposes or threatens for any pecuniary reward or consideration:
 - (i) To offer, propose, threaten or attempt to sell, hinder or delay any recall petition or any part thereof or any signatures thereon;
 - (ii) To offer, propose or threaten to desist from beginning, promoting or circulating any recall petition;
 - (iii) To offer, propose, attempt or threaten in any manner or form to use any recall petition or any power of promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest.
- (2) A public officer is guilty of a felony, who:
- (a) Knowingly makes any false return, certification or affidavit concerning any recall petition, or the signatures appended thereto.

34-1715. REFUSAL TO ACCEPT PETITION -- MANDATE -- INJUNCTION.

If the secretary of state, county clerk, or city clerk, refuses to accept and file any petition for the recall of a public officer with the requisite number of eligible signatures, any citizen may apply within ten (10) business days after such refusal to the district court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state, county clerk, or city clerk shall then accept and file the recall petition, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office, except that the time limitations required by section 34-1704(2), Idaho Code, shall begin to run only as of the date of the court judgment, which shall be so stated in the judgment. On a showing that the petition is not legally sufficient, the court may enjoin the secretary of state, county clerk, or city clerk, and all other officers from certifying or printing any official ballot for a recall election. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the court of appeals within ten (10) business days after a decision is rendered. The district court of the state of Idaho in and for Ada County shall have jurisdiction in all cases involving the recall of state officers.

**Office of the
Attorney General**

**Idaho
Open Meeting Law
Manual**

Idaho Code §§ 67-2340 through 67-2347



JULY 2009

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State of Idaho Office of Attorney General Lawrence Wasden

INTRODUCTION

Open and honest government is fundamental to a free society. The Idaho Legislature formalized our state's commitment to open government by enacting the Idaho Open Meeting Law in 1974. The Open Meeting Law codifies a simple, but fundamental, Idaho value: The public's business ought to be done in public.

In 2009, the Legislature made important changes to the Open Meeting Law. Those changes are incorporated in this new edition of the Idaho Open Meeting Law Manual.

One of my duties as Attorney General is to ensure that state agencies and officials comply with the Idaho Open Meeting Law. The 44 elected county prosecuting attorneys have the same duty with regard to agencies and officials of local government.

My office is committed to assisting Idaho's state and local officials in complying with their obligation under this law. Toward that end, my office regularly conducts training sessions for state and local officials throughout Idaho.

My Intergovernmental and Fiscal Law Division has prepared this updated manual for your use and reference. This manual's purpose is to inform everyone of the government's obligation and the people's rights under Idaho's Open Meeting Law. If you have further questions, feel free to call your city or county prosecuting attorney or my office at (208) 334-2400.

Sincerely,

LAWRENCE G. WASDEN
Attorney General

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THE ACT

(Idaho Code §§ 67-2340 through 67-2347)

67-2340. Formation of public policy at open meetings. -- The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.

67-2341. Open public meetings -- Definitions. -- As used in this act:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with sections 67-2342 through 67-2346, Idaho Code.

(2) "Deliberation" means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.

(3) "Executive session" means any meeting or part of a meeting of a governing body which is closed to any persons for deliberation on certain matters.

(4) "Public agency" means:

(a) any state board, commission, department, authority, educational institution or other state agency which is created by or pursuant to statute, other than courts and their agencies and divisions, and the judicial council, and the district magistrates commission;

(b) any regional board, commission, department or authority created by or pursuant to statute;

- (c) any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho;
- (d) any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act.

(5) "Governing body" means the members of any public agency which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency regarding any matter.

(6) "Meeting" means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.

- (a) "regular meeting" means the convening of a governing body of a public agency on the date fixed by law or rule, to conduct the business of the agency.
- (b) "special meeting" is a convening of the governing body of a public agency pursuant to a special call for the conduct of business as specified in the call.

67-2342. Governing Bodies -- Requirement for open public meetings.

(1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.

(2) Deliberations of the board of tax appeals created in chapter 38, title 63, Idaho Code, the public utilities commission and the industrial commission in a fully submitted adjudicatory proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by this act to take place in a meeting open to the public. Such deliberations may, however, be made and/or conducted in a public meeting at the discretion of the agency.

(3) Meetings of the Idaho life and health insurance guaranty association established under chapter 43, title 41, Idaho Code, the Idaho insurance guaranty association established under chapter 36, title 41, Idaho Code, and the surplus line association approved by the director of the Idaho department of insurance as authorized under chapter 12, title 41, Idaho Code, are not required by this act to take place in a meeting open to the public.

(4) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.

(5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency, shall be physically present at the location designated in the meeting notice, as required under section 67-2343, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

67-2343. Notice of meetings - Agendas.

(1) Regular meetings. No less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given unless otherwise provided by statute. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.

(2) Special meetings. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is a situation involving injury or damage to persons or property, or immediate financial loss, or the

likelihood of such injury, damage or loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. The secretary or other designee of each public agency shall maintain a list of the news media requesting notification of meetings and shall make a good faith effort to provide advance notification to them of the time and place of each meeting.

(3) Executive sessions. If an executive session only will be held, a twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.

(4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion.

- (a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.
- (b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.
- (c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the

agenda item was not included in the original agenda posting.

67-2344. Written minutes of meetings.

(1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- (a) All members of the governing body present;
- (b) All motions, resolutions, orders, or ordinances proposed and their disposition;
- (c) The results of all votes, and upon the request of a member, the vote of each member, by name;

(2) Minutes pertaining to executive sessions. Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session.

67-2345. Executive sessions -- When authorized.

(1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

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- (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;
- (c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;
- (d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;
- (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;
- (g) By the commission of pardons and parole, as provided by law.
- (h) By the sexual offender classification board, as provided by chapter 83, title 18, Idaho Code.
- (i) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or
- (j) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

67-2346. Open legislative meetings required. -- All meetings of any standing, special or select committee of either house of the legislature of the state of Idaho shall be open to the public at all times, except in extraordinary circumstances as provided specifically in the rules of procedure in either house, and any person may attend any meeting of a standing, special or select committee, but may participate in the committee only with the approval of the committee itself.

67-2347. Violations.

(1) If an action, or any deliberation or decision making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void.

(2) Any member of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed fifty dollars (\$50).

(3) Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(5) The attorney general shall have the duty to enforce this act in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this act may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of sections 67-2342 through 67-2346, Idaho Code. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

- (7) (a) A violation may be cured by a public agency upon:
- (i) The agency's self-recognition of a violation;
or
 - (ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred

and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

(b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

(c) All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.

(d) A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

QUESTIONS AND ANSWERS

PUBLIC BODIES OR AGENCIES COVERED BY THE OPEN MEETING LAW

Question No. 1: What public bodies or agencies are subject to the Open Meeting Law?

Answer: Idaho Code § 67-2342(1) provides: "All meetings of a *governing body* of a *public agency* shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act" (Emphasis added.) "Governing body" is defined by section 67-2341(5) to mean the members of any public agency "with the authority to make decisions for or recommendations to a public agency regarding any matter." Section 67-2341(4) then defines "public agency" to encompass various categories of governmental entities and subdivisions at all levels of government. The governing bodies of public agencies which are created by or pursuant to statute as well as public agencies which are created by the Idaho Constitution are subject to the Open Meeting Law. Attorney General Opinion No. 77-30. The only public agencies which are statutorily exempt from the Open Meeting Law are the courts and their agencies and divisions, the judicial council and the district magistrates commission. Idaho Code § 67-2341(4)(a). Deliberations of the board of tax appeals, the public utilities commission and the industrial commission, in a fully submitted contested case proceeding, are also exempted from the requirement that they take place in open public meeting. Idaho Code § 67-2342.

Question No. 2: Does the Open Meeting Law apply to a public agency headed by a single individual as contrasted with a multimember body?

Answer: No. Section 67-2341(5) defines a governing body to mean "the members of any public agency *which consists of two (2) or more members*, with the authority to make decisions for or recommendations to a public agency regarding any matter." (Emphasis added.) By definition, the Open Meeting Law applies only to a governing body which consists of two or more members and thus does not apply to a public agency headed by a single individual.

Of course, it should be noted that under the Idaho Administrative Procedure Act (A.P.A.), Section 67-5201, *et seq.*, various state agencies must hold open public meetings when they adopt rules or when they determine certain contested cases. The open public meeting

requirements of the A.P.A. apply regardless of whether the public agency is headed by a single individual or by a multi-member body.

Question No. 3: When is a subagency of a public agency subject to the Open Meeting Law?

Answer: A subagency of a public agency is subject to the Open Meeting Law if the subagency itself "is created by or pursuant to statute, ordinance or other legislative act." Idaho Code 67-2341(4)(d); Cathcart v. Anderson, 85 Wash. 2d 102, 530 P.2d 313 (1975); Attorney General Opinion No. 7-75. In Cathcart, the Washington Supreme Court interpreted a Washington statute similar to section 67-2341(4)(d). The court held that, under the language "created by or pursuant to," it is not necessary that a statute, ordinance or other legislative act expressly create a subagency so long as there is an enabling provision which allows that subagency to come into existence at some future time.

Question No. 4: Are advisory committees, boards and commissions subject to the Open Meeting Law?

Answer: Section 67-2341(4) defines "public agency" to include "any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act," and section 67-2341(5) defines "governing body" to include any body "with the authority to make decisions for or *recommendations* to a public agency regarding any matter." (Emphasis added.) Thus, advisory committees, boards and commissions are subject to the Open Meeting Law if the body is created by or pursuant to statute, ordinance, or other legislative act and if the body has authority to make recommendations to a public agency.

In contrast, an administrative committee, board or commission is not subject to the Open Meeting Law if it is not entrusted with the formation of public policy, but merely carries out the public policy established by a governing body, and if its activities do not constitute the making of "decisions for or recommendations to" a public agency, Idaho Water Resources Board v. Kramer, 97 Idaho 535, 548 P.2d 45 (1976). Likewise, the Open Meeting Law does not apply to voluntary, internal staff meetings if the group is not created by or pursuant to statute, ordinance or other legislative act, even though the discussions may lead to recommendations to the governing body. See, People v. Carlson, 28 Ill.App.3d 569, 328 N.E.2d 675 (1975); Bennett v. Warden, 333 So.2d 97 (Fla. 1976). Generally, however, if you are ever unsure of whether a meeting should be open, it is this office's recommendation to err on the side of opening the meeting.

Question No. 5: Does the Open Meeting Law apply to the governor?

Answer: The Open Meeting Law has no application to the governor when he is acting in his official executive capacity, since the Open Meeting Law does not apply to a public agency headed by a single individual.

PUBLIC ACTIONS OR ACTIVITIES COVERED BY THE OPEN MEETING LAW

Question No. 6: What constitutes a meeting under the Open Meeting Law?

Answer: Section 67-2341(6) defines "meeting" to mean "the convening of a governing body of a public agency *to make a decision or to deliberate toward a decision* on any matter." (Emphasis added.) "Decision" is then defined by section 67-2341(1) to include:

. . . any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting *at which a quorum is present.* (Emphasis added.)

The term "deliberation" is defined by section 67-2341(2) and means "the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision." (Emphasis added.) Note that this does not require any discussion or preliminary decision making. Even the receipt of information relating to a "decision" — i.e., a measure on which the governing body will have to vote — amounts to deliberation, and therefore triggers the definition and requirements of a "meeting" under the Open Meeting Law.

Question No. 7: Does the term "meeting" include such things as informal gatherings, briefing sessions, informal discussions, attendance at social functions, etc.?

Answer: As noted above, a "meeting" is the convening of a governing body to make a decision or deliberate toward a decision. Additionally, a quorum must be present. Idaho Water Resources Board v. Kramer, 97 Idaho 535, 548 P.2d 45 (1976).

The California Court of Appeals in Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, 69 Cal.Rptr, discussed the dual facets of deliberation and action. 48 (Cal. App. 1968), wherein it was stated:

. . . It [California Open Meeting Law] declares the law's intent that deliberation as well as action occur openly and publicly. Recognition of deliberation and action as dual components of the collective decision-making process brings awareness that the meeting concept cannot be split off and confined to one component only, but rather comprehends both and either. To "deliberate" is to examine, weigh and reflect upon the reasons for or against the choice Deliberation thus connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision. 69 Cal. Rptr. at 485.

The California court then reasoned and ruled:

An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a non-public, pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry in discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in light of the Brown Act's objectives, the term "meeting" extends to informal sessions or conferences of board members designed for the discussion of public business. 69 Cal. Rptr. at 487.

A similar result was reached by the Florida Supreme Court in the case of City of Miami v. Berns, 245 So.2d 38 (Fla. 1971), wherein the Florida court ruled that public officials violate Florida's Open Meeting Law when they meet privately or secretly and transact or agree to transact public business at a future time in a certain manner. The

Florida court went on to state that, regardless of whether a meeting or gathering is formal or informal:

It is the law's intent that any meetings, relating to any matter on which foreseeable action will be taken, occur openly and publicly. 245 So.2d at 41. *See also, Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (Fla. 1973); Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969).*

The same considerations must be applied with respect to the Idaho Open Meeting Law. Therefore, it is the opinion of the Attorney General that the provisions of the Open Meeting Law must be complied with whenever a quorum of the members of the governing body of a public agency meet in order to decide or deliberate on matters which are within the ambit of official business. Those meetings can be formal, informal, or social. So long as a quorum is present and the intent is to deliberate or make a decision, then the meeting must be open.

The requirement that the Open Meeting Law be complied with whenever a quorum of a governing body meets to deliberate or to make a decision should not be evaded by holding smaller meetings with less than a quorum present or by having a go-between contact each of the governing body members to ascertain his/her sentiment.

Question No. 8: Since any meeting of two county commissioners constitutes a quorum under Idaho law, are county commissioners prohibited from having any contact with each other outside of a duly organized open meeting?

Answer: While it is the opinion of the Attorney General that the Open Meeting Law must be complied with whenever a quorum of the members of a governing body of a public agency meet to decide or deliberate on matters which are within the ambit of official business, this office does not believe that the legislature intended for the Open Meeting Law to act as a bar to all communications between individual county commissioners outside of open meetings.

Question No. 9: Are adjudicatory deliberations exempt from the Open Meeting Law?

Answer: Only for those agencies expressly so exempted. Section 67-2342 (2) excludes the deliberations of certain agencies (the

Board of Tax Appeals, the Public Utilities Commission and the Industrial Commission), in fully submitted adjudicatory proceedings, from the requirement of open public meeting. In creating this exemption for adjudicatory deliberations by only these three agencies, it appears the legislature intended that non-adjudicatory deliberations at these agencies, and all deliberations at all other agencies — i.e. except for the above-described informal or impromptu discussions of a general nature — must be conducted in a public meeting. Of course, the subject matter under adjudication may be separately identified under the Open Meeting Law as justifying a closed executive session.

Question No. 10: Can I still address questions and comments to a commissioner or board member individually related to a pending matter?

Answer: In other words, as representatives, can I still contact members of a governing body with unsolicited “information or opinion relating to a decision” that is pending before the public agency. I.C. 67-2341(2). This precise question was reviewed by the Idaho Supreme Court in Idaho Historic Preservation Council v. City Council of Boise, 134 Idaho 651, 8 P. 3d 646 (2000).

In the case cited above, a divided Court overturned a Boise City Council decision that allowed a corporation to demolish a building in Boise. In reviewing an appeal from the City’s Preservation Commission, members of the City Council stated at the public [open] meeting that they had received numerous telephone calls concerning the issue. Although the Court framed the issue in terms of Due Process, it may also raise open meeting questions.

In overturning the decision of the City, the Court stated:

When a governing body sits in a quasi-judicial capacity, it must confine its decision to the record produced at the public hearing, and that failing to do so violates procedural due process of law. This Court has also observed that when a governing body deviates from the public record, it essentially conducts a second fact-gathering session without proper notice, a clear violation of due process. See Chambers v. Kootenai County Board of Commissioners, 125 Idaho at 118, 867 P.2d at 992. Since the substance of the telephone calls received by the members of the City Council was not recorded or

disclosed at the public hearing, the Commission had no opportunity to rebut any evidence or arguments the City Council may have received from the callers.

Idaho Historic Preservation Council at 654, 8 P.3d at 649 (internal citations omitted).

The Court concluded

This decision does not hold the City Council to a standard of judicial disinterestedness. As explained above, members of the City Council are free to take phone calls from concerned citizens and listen to their opinions and arguments prior to a quasi-judicial proceeding. In order to satisfy due process, however, the identity of the callers must be disclosed, as well as a general description of what each caller said.

Id. at 656, 8 P.3d at 651.

Therefore, in the event that unsolicited information is received and considered by a governing board member, the appropriate action is to disclose the source of the information and the substance of the information so that it may be included within the public record. In sum, any information that you wish to use to form the basis of your decision must be made a part of the public record.

Question No. 11: May legal counsel meet privately with the governing body of a public agency to discuss threatened or pending litigation?

Answer: Yes. Section 67-2345(f) expressly provides that an executive session may be held “[t]o communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.”

PROCEDURAL REQUIREMENTS OF THE OPEN MEETING LAW

Question No. 12: What are the notice requirements of the Open Meeting Law?

Answer: The Open Meeting Law requires two types of notice; (1) meeting notice and (2) agenda notice. The notice requirements are satisfied by posting meeting notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held. The Open Meeting Law does not require publication of the notice in a newspaper or advertisement. However, other statutes governing particular entities may require publication of notice. There are also requirements that notice be posted at specific minimum times prior to the meeting. These times vary, depending on the type of meeting being held.

For “regular meetings,” Section 67-2343 requires no less than a five (5) calendar day meeting-notice and a forty-eight (48) hour agenda notice, unless otherwise provided by statute. Any public agency which holds meetings at regular intervals at least once per calendar month which are scheduled in advance over the course of the year may satisfy this notice requirement by posting meeting notices at least once each year of its regular meeting schedule. Agenda notice must still be posted at least 48 hours before the meeting.

For "special meetings" or when only an "executive session" will be held meeting and agenda notice must be posted at least twenty-four (24) hours before the meeting,, unless an emergency exists. An emergency is a situation which involves injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of the section would make such notice impractical, or increase the likelihood or severity of such injury, damage, or loss, and the reason for the emergency is stated at the outset of the meeting. This notice and an accompanying agenda must be given by the secretary or other designee of each public agency to any representative of the news media who has requested notification of such meeting and the secretary must make a good faith effort to provide such advance notification to them of the time and place of each meeting. Idaho Code § 67-2343(2) and (3).

The notice of an executive session must state the authorizing provision of law.

The notice requirement of section 67-2343 also includes the requirement of posting an agenda, in the same manner as the notice of the meeting. With respect to "regular meetings," a forty-eight (48) hour advance agenda notice is required. Idaho Code § 67-2343(1). The addition of additional agenda items is permissible prior to and during the meeting. However, care should be taken to ensure this practice does not

lead to abuse. If an amendment is posted prior to the start of the meeting, but less than forty-eight (48) hours prior to the start of a regular meeting or less than twenty-four (24) hours prior to the start of a special meeting, its effectiveness requires a motion and vote of the governing body at the meeting. New agenda items cannot be added unless it can be shown that a good faith effort has been made to include in the published notice all agenda items known at the time to be probable items of discussion. An amendment to a meeting's agenda after the start of the meeting requires that the motion to amend include the reason for the amendment and the good faith reason that the agenda item was not posted in the original agenda.

What constitutes an "agenda" to satisfy the posting requirement is not set forth in the Open Meeting Law. However, an "agenda" is defined in Black's Law Dictionary (6th ed.) as a "[m]emorandum of things to be done, as items of business or discussion to be brought up at a meeting; a program consisting of such items." The agenda notice requirement is not satisfied by merely posting a weekly schedule of the governing board which sets forth the time, place of the meetings, and who is participating. Rather, the notice must specifically set forth the purpose of the meeting and "items of business." Agenda items should be listed with specificity and not buried in catchall categories such as "director's report."

Question No. 13: May an agenda be amended after posting?

Answer: Yes. The procedure depends on when the agenda is amended.

More than 48 hours before the start of a meeting (or more than 24 hours before a special meeting), the agenda may be amended simply by posting a new agenda.

Less than 48 hours before the meeting (or less than 24 hours before a special meeting), but before the meeting has started, the agenda may be amended by: 1) posting the new agenda, and 2) making and passing a motion at the meeting to amend the original agenda and stating the good faith reason the new items were not included in the original agenda notice.

After commencement of the meeting, the agenda may be amended to accommodate unforeseen issues, provided that: 1) there is a motion made that states the good faith reason the new item was not on

the original agenda, and 2) the motion to amend is adopted by the governing body.

To sum up, amending an agenda during a meeting or less than 48 hours before the start of a meeting (24 hours for a special meeting) requires: 1) a motion, 2) a good faith reason why the item was not included in the original agenda, 3) a vote adopting the amended agenda, and 4) a record of the motion and vote in the minutes of the meeting.

Question No. 14: May qualifications or restrictions be placed on the public's attendance at an open meeting?

Answer: A public agency may adopt reasonable rules and regulations to ensure the orderly conduct of a public meeting and to ensure orderly behavior on the part of those persons attending the meeting. In Nevens v. City of Chino, 44 Cal. Rptr. 50 (Cal. App. 1965), the court nullified a city council measure which prohibited the use of any tape recorders at city council proceedings. While acknowledging that the city council had an absolute right to adopt and enforce rules and regulations necessary to protect its public meetings, the California court held that the rule prohibiting tape recorders was too arbitrary, capricious, restrictive and unreasonable. A similar holding might be reached if a governing body prohibits the use of cameras by news and television people, if their presence is not in fact disruptive of the conduct of the meeting.

In any event, the governing standard is the reasonableness of the rules and regulations. Use of a timed agenda, "heavy gavel" and/or compliance with Robert's Rules of Order or some other procedural guideline may serve to facilitate the orderly conduct of a public meeting.

Question No. 15: Does the Open Meeting Law require the governing body of a public agency to accept public comments and testimony during meetings?

Answer: No. While other statutes, such as the Local Planning Act, may require the solicitation of public comments, the Open Meeting Law does not expressly require the opportunity for public comment. See Coalition for Responsible Government v. Bonner County, First Judicial District, Bonner County Case No. CV-97-00107 (May 15, 1997) (on file with the Office of the Attorney General).

Question No. 16: May the members of a governing body vote by secret ballot at an open meeting?

Answer: No decision at any meeting of a governing body of a public agency may be made by secret ballot. Idaho Code § 67-2342(1).

Question No. 17: If a voice vote is used, must the minutes of the meeting reflect the vote of each member of a governing body by name?

Answer: If a voice vote is taken, the minutes of the meeting must reflect the results of all votes, but the minutes need not indicate how each member voted unless a member of the governing body requests such an indication. Idaho Code § 67-2344(1)(c).

Question No. 18: May a vote be conducted by written ballots?

Answer: A vote may be conducted by written ballot, but written ballots would not comply with the Open Meeting Law unless the ballots are made available to the public on request and unless the members casting the ballots are identifiable by signature or other discernible means. Attorney General Opinion No. 77-13. The reason identification of the vote of individual members is treated differently between voice votes and votes by written ballot is that, with respect to voice votes, members of the public in attendance can readily ascertain the vote of individual members of the governing body. In contrast, a vote by written ballot is tantamount to a secret vote, unless such ballot is signed or identifies the name of the voting member.

Question No. 19: What types of records must be maintained under the Open Meeting Law?

Answer: Section 67-2344(1) requires that the governing body of a public agency must provide for the taking of written minutes of all of its meetings, but it is not necessary to make a full transcript or recording of the meeting, except as otherwise provided by law. These minutes are public records and must be made available to the general public within a reasonable time after the meeting. The minutes must include, at a minimum, the following information:

- (a) All members of the governing body present;
- (b) All motions, resolutions, orders, or ordinances proposed and their disposition;

- (c) The results of all votes and, upon the request of a member of the governing body, the vote of each member by name.

Other statutes may provide more specific requirements for particular entities.

In addition, section 67-2344(2) provides that minutes of executive sessions must be kept, but they need contain only sufficient detail to identify the purpose and topic of the executive session and do not need to include the disclosure of material or matters that compromise the purpose of the executive session. The minutes pertaining to the executive session however, must include a reference to the specific statutory subsection authorizing the session.

Question No. 20: What procedure must be followed before an executive session, closed to the public, may be held?

Answer: It must be noted that executive sessions take place only at meetings. Before any executive session may be held, there must be a valid open meeting and a vote to hold an executive session. Every such “meeting” must satisfy the notice and agenda requirements of section 67-2343. If the governing body of a public agency then wishes to consider matters which may legally be considered in a closed meeting, an executive session may be held if two-thirds (2/3) of the members vote to hold an executive session. Prior to such vote, the presiding officer must identify the authorization under the Open Meeting Law for the holding of an executive session. Then, when the vote is taken, the individual vote of each member of the governing body must be recorded in the minutes. Idaho Code § 67-2345(1).

Question No. 21: Are there any prohibitions on where a public meeting may be held?

Answer: Yes. Section 67-2342(3) specifically provides: "A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced." Thus, for example, a public meeting may not be held at a private club if the private club excludes women from membership, even if women are allowed entrance for the purpose of attending the meeting.

Question No. 22: Does the Open Meeting Law permit holding a meeting by telephone conference call?

Answer: Yes. The Open Meeting Law specifically authorizes the holding of a meeting by telephone conference call. In order to comply with Idaho Code § 67-2342(5), at least one member of the governing body or the director or chief administrative officer must be physically present at the meeting location designated in the meeting notice as required under Idaho Code § 67-2343. Additionally, the communications among the members of the governing body must be audible to all persons attending the meeting. Care should also be taken to insure that votes are not made in such a way to permit an illegal secret ballot or vote.

SPECIFIC STATUTORY EXEMPTIONS: EXECUTIVE SESSIONS

Question No. 23: What types of meetings may be closed under the Open Meeting Law?

Answer: A closed meeting--that is, an executive session--may be held:

- (a) To consider hiring a public officer, employee, staff member or agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need, unless a vacancy in an elective office is being filled;
- (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, individual agent or public school student;
- (c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;
- (d) To consider records that are exempt by law from public inspection;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations. Idaho Code § 67-2345(1);

- (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.
- (g) By the commission of pardons and parole, as provided by law.
- (h) By the sexual offender classification board, as provided by chapter 83, title 18, Idaho Code.
- (i) By the custody review board of the Idaho department of juvenile corrections, as provided by law.
- (j) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

This provision enumerates *specific* and not general statutory exemptions to the requirement of conducting an open meeting. It is the Attorney General's opinion that a public agency *cannot* conduct an executive session to consider general personnel matters, but can only meet in executive session to consider those specifically enumerated personnel matters found at section 67-2345(1)(a) and (b); that is, "to consider hiring a public officer, staff member or agent" or "to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, individual agent or public school student." Additionally, Idaho Code § 67-2345(3) specifically directs that the exceptions be construed narrowly. No entity should try to "shoehorn" an issue into an executive session exception.

With respect to labor negotiations, section 67-2345(2) specifically provides that labor negotiations may be conducted in executive session if either side requests closed meetings. Further, any

subsequent negotiation sessions may continue without further public notice, notwithstanding the notice requirements of section 67-2343.

An executive session may be held to consider acquiring an interest in real property that is not owned by a public agency. However, an executive session cannot be held for the purpose of acquiring an interest in real property owned by a public agency. Attorney General Opinion No. 81-15.

It should be noted that the Open Meeting Law establishes circumstances where executive sessions are permissible. In other words, the act authorizes, but does not require, closed meetings. In addition, even though certain enumerated matters may be "considered" in an executive session, it must be emphasized that: **"[N]o executive session may be held for the purpose of taking any final action or making any final decision."** Idaho Code § 67-2345(4); Attorney General Opinion No. 77-44; Attorney General Opinion No. 81-15.

It is important to remember that section 67-2345(1) sets forth specific procedural steps to be followed in order to have a valid executive session. Failure to do so will invalidate any action taken as a result of the executive session. Additionally, it may subject the board members to liability for those actions. Procedurally, the presiding officer must identify the specific authorization under the Open Meeting Law for the holding of an executive session and at least a two-thirds (2/3) vote in favor of the executive session must be recorded in the minutes of the meeting by individual vote.

Question No. 24: Must the governing body's attorney be present during an executive session?

Answer: Generally, the governing body's attorney need not be present when the governing body meets in executive session. An exception is an executive session authorized under Idaho Code § 67-2345(1)(f): "To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement." (Of course, the attorney's "presence" may be facilitated via a telecommunications device.) An executive session under this subsection is solely for the purpose of communicating with legal counsel on pending or probable litigation.

Question No. 25: If a more specific statute requires open meetings and has no provision for executive sessions, is the executive session provision of the Open Meeting Law still applicable?

Answer: Yes. The executive session provision takes precedence over other statutes that may apply to a particular entity. Thus, even if a statute requires all meetings of a governing body to be open, executive sessions may still be held. Nelson v. Boundary County, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).

PENALTIES FOR NONCOMPLIANCE

Question No. 26: What is the validity of action taken in violation of the Open Meeting Law?

Answer: If an action, or any deliberation or decision-making that leads to an action, occurs at any meeting that fails to comply with the provisions of the Open Meeting Law, such an action will be null and void. Idaho Code § 67-2347(1).

Any member of the governing body taking such an action, who participates in any such deliberation, decision making, or meeting, will be subject to a civil penalty not to exceed fifty dollars (\$50). Idaho Code § 67-2347(2). The maximum civil penalty for a subsequent violation is five hundred dollars (\$500). Idaho Code § 67-2347(4).

Any governing body member who *knowingly* violates a provision of this act is subject to a civil penalty of not more than five hundred dollars (\$500). Idaho Code § 67-2347(3)

It is the opinion of the Attorney General that the Idaho Legislature intended that such fines be paid by the individual member of the governing body, not the governing body itself.

Question No. 27: Who enforces the Open Meeting Law?

Answer: Any citizen affected by a violation of the Open Meeting Law is entitled to bring a lawsuit in the magistrates' division of the county in which the public agency normally meets for the purpose of requiring compliance with the provisions of the Open Meeting Law. The lawsuit would ask the court to declare any improper actions void and to enjoin the governing body from violating the Open Meeting Law in the future. Such a lawsuit must be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a

meeting that failed to comply with the provisions of the Open Meeting Law. Any other lawsuit must be commenced within one hundred eighty (180) days of the time of the violation. Idaho Code § 67-2347(6).

Section 67-2347(5) obligates the Attorney General to enforce the Open Meeting Law in relation to the public agencies of state government, and the prosecuting attorneys of the various counties to enforce the Open Meeting Law in relation to the local public agencies within their respective jurisdictions.

Question No. 28: If there is a violation of the Open Meeting Law at an early stage in the process, will all subsequent actions be null and void?

Answer: Yes. Section 67-2347(1) clearly indicates that an action or any deliberation or decision-making that leads to an action, which occurs at any meeting not in compliance with the provisions of the Open Meeting Law, will be null and void. The 1992 legislature added the "deliberation or decision-making that leads to an action" language to the provisions of section 67-2347(1). This language clarifies the consequences of a violation under the previous requirement.

The Idaho Supreme Court has held that the procedure for voiding actions taken in violation of the Open Meeting Law must be read literally. Thus, any action may not be declared void if it is not challenged within the thirty-day time limit established by Idaho Code § 67-2347(6). Petersen v. Franklin County, 130 Idaho 176, 938 P.2d 1214 (1997).

Question No. 29: If a violation of the Open Meeting Law occurs, what can a governing body do to correct the error?

Answer: A governing body may, at any time, correct errors by repeating the process in compliance with the law. While the Open Meeting Law provides that noncompliance voids any action taken, it does not prohibit corrective action at any later date. A violation is cured by repealing any action taken at an illegal meeting or disregarding deliberations made in violation of the Open Meeting Law. Should it choose to, a governing body may, in a properly noticed meeting, repeat the deliberation or decision that occurred at the illegal meeting. This process of correction is known as a "cure".

Question No. 30: Are members of the governing body of a public agency criminally liable for violations of the Open Meeting Law in which they knowingly participate?

Answer: The Open Meeting Law specifically provides civil monetary penalties for violations. The Open Meeting Law does not expressly provide for criminal liability for knowing violations. Nonetheless, it is possible that a member of a governing body may be guilty of a misdemeanor for violations of the Open Meeting Law in which he or she knowingly participates.

Section 18-315 provides:

Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Section 18-317 states:

When an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

In Alder v. City Council of City of Culver City, 7 Cal. Rptr. 805 (Cal. App. 1960), the court considered the California Open Meeting Law (the Brown Act) which included no penalty provisions or provisions for enforcement when violations occur. Relying on two California statutes identical to Idaho Code sections 18-315 and 18-317, the California court ruled that violations of the Open Meeting Law were punishable as misdemeanors even though the Open Meeting Law did not expressly make violations punishable as misdemeanors.



IF IN DOUBT, OPEN THE MEETING.

TABLE OF OPEN MEETING LAW CASES

1. Petersen v. Franklin County, 130 Idaho 176, 938 P.2d 1214 (1997) (actions that violate Open Meeting Law that are not challenged within the time limit established by Idaho Code § 67-2347(4) are not void).
2. Student Loan Fund of Idaho, Inc. v. Payette County, 125 Idaho 824, 875 P.2d 236 (Ct. App. 1994) (merely alleging violation of Open Meeting Law, without additionally alleging a specific “palpable injury,” is insufficient to confer standing).
3. Gardner v. Evans, 110 Idaho 925, 719 P.2d 1185 (1986) (an aggrieved party will not prevail in a claim for improper notice under the Open Meeting Law when they cannot demonstrate any disadvantage stemming from the deficient notice).
4. Nelson v. Boundary County, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985) (Open Meeting Law’s provisions authorizing executive sessions preempt Idaho Code § 31-713’s requirement that all meetings of county commissioners must be public).
5. Gardner v. School Dist. No. 55, 108 Idaho 434, 700 P.2d 56 (1985).
6. Baker v. Ind. School Dist. of Emmett, 107 Idaho 608, 691 P.2d 1223 (1984).
7. State v. City of Hailey, 102 Idaho 511, 633 P.2d 576 (1981).
8. Idaho Water Resources Board v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976).
9. Coalition for Responsible Government v. Bonner County, First Judicial District, Bonner County Case No. CV-97-00107 (May 15, 1997) (insufficient notice in agenda may trigger Open Meeting Law violation) (on file with the Office of the Attorney General).
10. State v. Thorne, et al.; Idaho Fourth Judicial District No. 3L-97763 (1994).
11. Idaho Historic Preservation Council v. City Council of Boise, 134 Idaho 651, 8 P.3d 646 (2000)

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12. Farrell v. Lemhi County Board of Commissioners, 138 Idaho 378; 64 P.3d 304 (2002)
13. State v. Yzaguirre, 144 Idaho 471, 163 P.3d 1183 (2007)

**State of Idaho
Office of the Attorney General**

OPEN MEETING LAW CHECKLIST

Regular Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 67-2342(4) and (5)]

Before Meeting

- Meeting Notice posted 5 or more calendar days prior to the meeting date.
[Idaho Code § 67-2343(1)]
- Agenda Notice posted at least 48 hours prior to the meeting.
[Idaho Code § 67-2343(1)]
- Posting of Amended Agenda [Idaho Code § 67-2343(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- Secretary or other person appointed to take minutes.
[Idaho Code § 67-2344(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting.
[Idaho Code § 67-2344(1)]

**State of Idaho
Office of the Attorney General**

OPEN MEETING LAW CHECKLIST

Special Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 67-2342(4) and (5)]

Before Meeting

- Meeting and Agenda Notice posted **at least 24 hours** prior to the meeting. [Idaho Code § 67-2343(2)]
- Notification provided to the news media. [Idaho Code § 67-2343(2)]
- Posting of Amended Agenda [Idaho Code § 67-2343(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- Secretary or other person appointed to take minutes. [Idaho Code § 67-2344(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 67-2344(1)]

State of Idaho
Office of the Attorney General
OPEN MEETING LAW CHECKLIST

Executive Sessions

Session Date and Time: _____

Session Location: _____

[Idaho Code § 67-2342(4) and (5)]

Executive Session Only

- Meeting and Agenda Notice posted **at least 24 hours** prior to the session. [Idaho Code § 67-2343(3)]
- Posting of Amended Agenda [Idaho Code § 67-2343(4)]

Executive Session During Regular or Special Meeting

- Motion to enter Executive Session to discuss one of the exemptions listed in Idaho Code § 67-2345.
- $\frac{2}{3}$ vote to enter Executive Session reflected in regular/special meeting minutes. [Idaho Code § 67-2345(1)]

During Session

- First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- Secretary or other person appointed to take minutes. [Idaho Code § 67-2344(1)]

After Session

- Minutes must reference statutory subsection authorizing executive session and identify purpose and topic of session. [Idaho Code § 67-2344(2)]
- Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 67-2344(1)]

>> SAMPLE FORM <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

EXECUTIVE SESSION MOTION AND ORDER

_____ (print name), _____ (print title),
MOVES THAT THE BOARD, PURSUANT TO IDAHO CODE § 67-2345,
CONVENE IN EXECUTIVE SESSION TO: (identify one or more of the following)

- Consider personnel matters [Idaho Code § 67-2345(1)(a) & (b)]
- Deliberate regarding labor negotiations or acquisition of an interest in real property [Idaho Code § 67-2345(1)(c)]
- Consider records that are exempt from public disclosure [Idaho Code § 67-2345(1)(d)]
- Consider preliminary negotiations involving matters of trade or commerce in which this governing body is in competition with another governing body [Idaho Code § 67-2345(1)(e)]
- Communicate with legal counsel regarding pending/imminently-likely litigation [Idaho Code § 67-2345(1)(f)]
- Communicate with risk manager/insurer regarding pending/imminently-likely claims [Idaho Code § 67-2345(1)(j)]
- Conduct labor negotiations [Idaho Code § 67-2345(2)]

Purpose/Topic summary (required): _____
AND THE VOTE TO DO SO BY ROLL CALL.

CONVENE AT: _____ ADJOURN AT: _____

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

>> SAMPLE FORM <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

MOTION AND ORDER TO AMEND AGENDA

(less than 48 hours before regular meeting or 24 hours before special meeting)

(print name), _____
(print title),
MOVES THAT THIS GOVERNING BODY, PURSUANT TO IDAHO CODE
§ 67-2343, AMEND THE AGENDA FOR THIS MEETING AS FOLLOWS:

Good faith reason item not included in posted agenda (required):

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____ (print name), Chair	_____	_____	_____
_____ (print name), Member	_____	_____	_____
_____ (print name), Member	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

**Office of the
Attorney General**

**Idaho
Ethics In Government
Manual**



AUGUST 2008

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State of Idaho Office of Attorney General Lawrence Wasden

INTRODUCTION

Honest and open government is fundamental to a free society. The Idaho Legislature has formalized our state's commitment to honest and ethical government by enacting several statutes governing the ethical behavior of public officers. These laws are intended to ensure that public officials remain public servants.

Idaho has three primary statutes governing ethics in government: the Bribery and Corrupt Influence Act; the Prohibition Against Contracts with Officers Act; and the Ethics in Government Act. In addition, statutes that govern a particular state agency, state subdivision or municipal corporation often contain provisions regulating the ethical behavior of public officials.

Any complete analysis of an ethical question involving a public official must include the three acts named above as well as statutes dealing specifically with the governmental agency, office or subdivision involved. Specific statutes relating to the particular agency or subdivision will control over the more general statutes. When two or more general statutes apply to the same subject, an attempt should be made to reconcile the statutes.

All of us who accept public office, whether elected or appointed, also accept an ethical duty to serve honestly and in the public's interest. While the state and the people must demand compliance with Idaho's ethics laws, public officials should understand that these laws set a minimum standard of behavior. Crossing these lines can result in fines and incarceration. Responsible and ethical public officials hold themselves to an even higher standard than mere compliance.

My Intergovernmental and Fiscal Law Division has prepared this legal manual for your information. I hope it assists you when presented with applicable situations.

Sincerely,

LAWRENCE G. WASDEN
Attorney General

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RELEVANT STATUTES

Bribery and Corrupt Influence Act

18-1351. Bribery and corrupt practices — Definitions.

Unless a different meaning plainly is required in this chapter:

(1) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(2) "Confidential information" means knowledge gained through a public office, official duty or employment by a governmental entity which is not subject to disclosure to the general public and which, if utilized in financial transactions would provide the user with an advantage over those not having such information or result in harm to the governmental entity from which it was obtained.

(3) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it and other political subdivisions including, but not limited to, highway districts, planning and zoning commissions and cemetery districts, and all other governmental districts, commissions or governmental bodies not specifically mentioned in this chapter.

(4) "Harm" means loss, disadvantage or injury, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested.

(5) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

(6) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(7) "Pecuniary benefit" is any benefit to a public official or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain.

(8) "Public servant" means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses.

(9) "Administrative proceeding" means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

18-1352. Bribery in official and political matters.

A person is guilty of bribery, a felony, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) Any benefit as consideration for a violation of a known legal duty as public servant or party official. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

18-1353. Threats and other improper influence in official and political matters.

(1) Offenses defined. A person commits an offense if he:

(a) threatens unlawful harm to any person with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

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(b) threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant or party official with purpose to influence him to violate his known legal duty; or

(d) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication with purpose to influence the outcome on the basis of considerations other than those authorized by law.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(2) Grading. An offense under this section is a misdemeanor unless the actor threatened to commit a crime or made a threat with purpose to influence a judicial or administrative proceeding, in which cases the offense is a felony.

18-1353A. Threats against state officials of the executive, legislative or judicial branch.

Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier, any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon any state elected official of the executive or legislative branch, or any justice, judge or magistrate of the judicial branch, or person appointed to fill the vacancy of a state elected official of the executive or legislative branch of the state of Idaho, or knowingly and willfully otherwise makes any such threat against a state elected official of the executive or legislative branch, or any justice, judge or magistrate of the judicial branch, or person appointed to fill the vacancy of a state elected official of the executive or legislative branch of the state of Idaho is guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed one thousand dollars (\$1,000) and shall be sentenced to not to exceed one (1) year in the county jail. If such threat is made while the defendant exhibits a firearm or other dangerous or deadly weapon, the defendant shall be guilty of a felony. Upon a second or subsequent conviction of an offense under this section, the defendant

shall be guilty of a felony and shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.

18-1354. Compensation for past official behavior.

A person commits a misdemeanor if he solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits a misdemeanor if he offers, confers or agrees to confer, compensation, acceptance of which is prohibited by this section.

18-1355. Retaliation for past official action.

A person commits a misdemeanor if he harms another by any unlawful acts in retaliation for anything lawfully done by the latter in the capacity of public servant.

18-1356. Gifts to public servants by persons subject to their jurisdiction.

(1) Regulatory and law enforcement officials. No public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(2) Officials concerned with government contracts and pecuniary transactions. No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(3) Judicial and administrative officials. No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be

interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated.

(4) Legislative and executive officials. No legislator or public servant shall solicit, accept or agree to accept any pecuniary benefit in return for action on a bill, legislation, proceeding or official transaction from any person known to be interested in a bill, legislation, official transaction or proceeding.

(5) Exceptions. This section shall not apply to:

(a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled; or

(b) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or

(c) trivial benefits not to exceed a value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality; or

(d) benefits received as a result of lobbying activities that are disclosed in reports required by chapter 66, title 67, Idaho Code. This exception shall not apply to any activities prohibited by subsections (1) through (4) of this section.

(6) Offering benefits prohibited. No person shall knowingly confer, or offer or agree to confer, any benefit prohibited by the foregoing subsections.

(7) Grade of offense. An offense under this section is a misdemeanor and shall be punished as provided in this chapter.

18-1357. Compensating public servant for assisting private interests in relation to matters before him

(1) Receiving compensation. A public servant commits a misdemeanor if he solicits, accepts or agrees to accept compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise.

(2) Paying compensation. A person commits a misdemeanor if he pays or offers or agrees to pay compensation to a public servant with knowledge that acceptance by the public servant is unlawful.

18-1358. Selling political endorsement — Special influence.

(1) Selling political endorsement. A person commits a misdemeanor if he solicits, receives, agrees to receive, or agrees that any political party or other person shall receive any pecuniary benefit as consideration for approval or disapproval of an appointment or advancement in public service, or for approval or disapproval of any person or transaction for any benefit conferred by an official or agency of the government. "Approval" includes recommendations, failure to disapprove, or any other manifestation of favor or acquiescence. "Disapproval" includes failure to approve, or any other manifestation of disfavor or non-acquiescence

(2) Other trading in special influence. A person commits a misdemeanor if he solicits, receives or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant or procuring another to do so. "Special influence" means power to influence through kinship, friendship, or other relationship apart from the merits of the transaction.

(3) Paying for endorsement or special influence. A person commits a misdemeanor if he offers, confers or agrees to confer any pecuniary benefit, receipt of which is prohibited by this section.

18-1359. Using public position for personal gain.

(1) No public servant shall:

(a) Without the specific authorization of the governmental entity for which he serves, use public funds or property to obtain a pecuniary benefit for himself.

(b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

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(c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves.

(d) Be interested in any contract made by him in his official capacity, or by any body or board of which he is a member, except as provided in section 18-1361, Idaho Code.

(e) Appoint or vote for the appointment of any person related to him by blood or marriage within the second degree, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds or fees of office, or appoint or furnish employment to any person whose salary, wages, pay or compensation is to be paid out of public funds or fees of office, and who is related by either blood or marriage within the second degree to any other public servant when such appointment is made on the agreement or promise of such other public servant or any other public servant to appoint or furnish employment to anyone so related to the public servant making or voting for such appointment. Any public servant who pays out of any public funds under his control or who draws or authorizes the drawing of any warrant or authority for the payment out of any public fund of the salary, wages, pay, or compensation of any such ineligible person, knowing him to be ineligible, is guilty of a misdemeanor and shall be punished as provided in this chapter.

(f) Unless specifically authorized by another provision of law, commit any act prohibited of members of the legislature or any officer or employee of any branch of the state government by section 67-5726, Idaho Code, violations of which are subject to penalties as provided in section 67-5734, Idaho Code, which prohibition and penalties shall be deemed to extend to all public servants pursuant to the provisions of this section.

(2) No person related to any member of the legislature by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty within the legislative branch of government or otherwise be employed by the legislative branch of government when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

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(3) No person related to a mayor or member of a city council by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the mayor's or city council's city when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(4) No person related to a county commissioner by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the commissioner's county when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(5) (a) An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position and receive general pay increases, step increases, cost of living increases, and/or other across the board increases in salary or merit increases, benefits and bonuses or promotions.

(b) Nothing in this section shall be construed as creating any property rights in the position held by an employee subject to this section, and all authority in regard to disciplinary action, transfer, dismissal, demotion or termination shall continue to apply to the employee.

(6) The prohibitions contained within this section shall not include conduct defined by the provisions of section 59-703(4), Idaho Code.

(7) The prohibitions within this section and section 18-1356, Idaho Code, as it applies to part-time public servants, do not include those actions or conduct involving the public servant's business, profession or occupation and unrelated to the public servant's official conduct, and do not apply to a pecuniary benefit received in the normal course of a legislator's business, profession or occupation and unrelated to any bill, legislation, proceeding or official transaction.

18-1360. Penalties.

Any public servant who violates the provisions of this chapter, unless otherwise provided, shall be guilty of a misdemeanor and may be punished by a fine not exceeding one thousand dollars (\$1,000), or by incarceration in the county jail for a period not exceeding one (1) year, or by both such fine and incarceration. In addition to any penalty imposed

in this chapter, any person who violates the provisions of this chapter may be required to forfeit his office and may be ordered to make restitution of any benefit received by him to the governmental entity from which it was obtained.

18-1361. Self-interested contracts — Exception.

Where there are less than three (3) suppliers of a good or a service within a fifteen (15) mile radius of where the good or service is to be provided, it shall not constitute a violation of the provisions of subsection (1) (d) or (e) of section 18-1359, Idaho Code, for a public servant or for his relative to contract with the public body of which the public servant is a member if the contract is reasonably necessary to respond to a disaster as defined in chapter 10, title 46, Idaho Code, or if the procedures listed below are strictly observed. For purposes of this section, "relative" shall mean any person related to the public servant by blood or marriage within the second degree.

(1) The contract is competitively bid and the public servant or his relative submits the low bid; and

(2) Neither the public servant nor his relative takes any part in the preparation of the contract or bid specifications, and the public servant takes no part in voting on or approving the contract or bid specifications; and

(3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his interest or that of his relative and of his or his relative's intention to bid on the contract; and

(4) Neither the public servant nor his relative has violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

18-1361A. Non-compensated appointed public servant — Relatives of public servant — Exception.

When a person is a public servant by reason of his appointment to a governmental entity board for which the person receives no salary or fees for his service on said board, it shall not constitute a violation of the provisions of subsection (1)(d) or (e) of section 18-1359, Idaho Code, for a public servant or for his relative to contract with the public body of which the public servant is a member if the procedures listed below are

strictly observed. For purposes of this section, "relative" shall mean any person related to the public servant by blood or marriage within the second degree.

(1) The contract is competitively bid and the public servant or his relative submits the low bid; and

(2) Neither the public servant nor his relative takes any part in the preparation of the contract or bid specifications, and the public servant takes no part in voting on or approving the contract or bid specifications; and

(3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his interest or that of his relative and of his or his relative's intention to bid on the contract; and

(4) Neither the public servant nor his relative has violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

18-1362. Cause of action.

A prosecuting attorney or the attorney general may bring an action in the district court of the county in which a public servant resides to enjoin a violation of the provisions of this chapter and to require the public servant to make restitution to the government of any pecuniary gain obtained. The prevailing party shall be awarded his costs and reasonable attorney fees.

Prohibitions Against Contracts with Officers

59-201. Officers not to be interested in contracts.

Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are member.

59-201A. Remote interests.

(1) A public officer shall not be deemed to be interested in a contract, within the meaning of section 59-201, Idaho Code, if he has only a remote interest in the contract and if the fact and extent of such

interest is disclosed to the body of which he is an officer and noted in the official minutes or similar records prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section, "remote interest" means:

(a) That of a non-salaried officer of a nonprofit corporation; or

(b) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; or

(c) That of a landlord or tenant of a contracting party;
or

(d) That of a holder of less than one percent (1%) of the shares of a corporation or cooperative which is a contracting party.

(2) Although a public official's interest in a contract may be only remote, a public official shall not influence or attempt to influence any other officer of the board of which he is an officer to enter into the contract. Violation of the provisions of this subsection shall be a misdemeanor as provided in section 59-208, Idaho Code. Any contract created or entered into in violation of the provisions of this subsection shall be void.

59-202. Officers not to be interested in sales.

State, county, district, precinct and city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

59-203. Prohibited contracts voidable.

Every contract made in violation of any of the provisions of the two (2) preceding sections may be avoided at the instance of any party except the officer interested therein.

59-204. Dealing in warrants prohibited.

The state treasurer and state controller, the several county, city, district or precinct officers of this state, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use or benefit of any person or persons, whatever, any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy or clerk, and evidences of the funded indebtedness of such state, county, city, district or corporation.

59-205. Affidavit of non-violation a prerequisite to allowance of accounts.

Every officer whose duty it is to audit and allow the accounts of other state, county, district, city or precinct officers, must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this chapter.

59-206. Provisions of chapter violated — Disbursing officer not to pay warrants.

Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city or district, when the same has been purchased, sold, received or transferred contrary to any of the provisions of this chapter.

59-207. Suspension of settlement or payment — Prosecution of offenders.

Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is to be settled, audited, or paid by him, has violated any of the provisions of this chapter, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation.

59-208. Violation.

A violation of the provisions of this chapter, unless otherwise provided, is a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000), or incarceration in the county jail for a period not exceeding one (1) year, or by both such fine and incarceration.

59-209. Non-compensated public official —Exception.

When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedure set out in section 18-1361A, Idaho Code.

59-210. Violation relating to public contracts.

Officers shall not commit any act prohibited by section 67-5726, Idaho Code, violations of which are subject to penalties as provided in section 67-5734, Idaho Code, and which prohibitions and penalties shall be deemed to extend to all public officers governed by the provisions of this chapter.

Ethics in Government Act

59-701. Short title.

This act shall be known and may be cited as the "Ethics in Government Act of 1990."

59-702. Policy and purpose.

It is hereby declared that the position of a public official at all levels of government is a public trust and it is in the public interest to:

- (1) Protect the integrity of government throughout the state of Idaho while at the same time facilitating recruitment and retention of personnel needed within government;
- (2) Assure independence, impartiality and honesty of public officials in governmental functions;
- (3) Inform citizens of the existence of personal interests which may present a conflict of interest between an official's public trust and private concerns;
- (4) Prevent public office from being used for personal gain contrary to the public interest;

(5) Prevent special interests from unduly influencing governmental action; and

(6) Assure that governmental functions and policies reflect, to the maximum extent possible, the public interest.

59-703. Definitions. — For purposes of this chapter:

(1) "Official action" means any decision on, or proposal, consideration, enactment, defeat, or making of any rule, regulation, rate-making proceeding or policy action or non-action by a governmental body or any other policy matter which is within the official jurisdiction of the governmental body.

(2) "Business" means any undertaking operated for economic gain, including, but not limited to, a corporation, partnership, trust, proprietorship, firm, association or joint venture.

(3) "Business with which a public official is associated" means any business of which the public official or member of his household is a director, officer, owner, partner, employee or holder of stock over five thousand dollars (\$5,000) or more at fair market value.

(4) "Conflict of interest" means any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated, unless the pecuniary benefit arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or class required by law as a prerequisite to the holding by the person of the office or position;

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of an industry or occupation group in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged;

(c) Any interest which the person has by virtue of his profession, trade or occupation where his interest would be affected to the same degree as that of a substantial group or class of others similarly engaged in the profession, trade or occupation;

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- (d) Any action by a public official upon any revenue measure, any appropriation measure or any measure imposing a tax, when similarly situated members of the general public are affected by the outcome of the action in a substantially similar manner and degree.
- (5) "Economic gain" means increase in pecuniary value from sources other than lawful compensation as a public official.
- (6) "Governmental entity" means:
- (a) The state of Idaho and all agencies, commissions and other governmental bodies of the state; and
 - (b) Counties and municipalities of the state of Idaho, all other political subdivisions including, but not limited to, highway districts, planning and zoning commissions or governmental bodies not specifically mentioned in this chapter.
- (7) "Members of a household" mean the spouse and dependent children of the public official and/or persons whom the public official is legally obligated to support.
- (8) "Person" means an individual, proprietorship, partnership, association, trust, estate, business trust, group or corporation, whether operated for profit or not, and any other legal entity, or agent or servant thereof, or a governmental entity.
- (9) "Public office" means any position in which the normal and usual duties are conducted on behalf of a governmental entity.
- (10) "Public official" means any person holding public office in the following capacity:
- (a) As an elected public official meaning any person holding public office of a governmental entity by virtue of an elected process, including persons appointed to a vacant elected office of a governmental entity, excluding members of the judiciary; or
 - (b) As an elected legislative public official meaning any person holding public office as a legislator; or

(c) As an appointed public official meaning any person holding public office of a governmental entity by virtue of formal appointment as required by law; or

(d) As an employed public official meaning any person holding public office of a governmental entity by virtue of employment, or a person employed by a governmental entity on a consultative basis.

59-704. Required action in conflicts.

A public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose such conflict as provided in this section. Disclosure of a conflict does not affect an elected public official's authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the public official requests to be excused from debate and voting at his or her discretion. In order to determine whether a conflict of interest exists relative to any matter within the scope of the official functions of a public official, a public official may seek legal advice from the attorney representing that governmental entity or from the attorney general or from independent counsel. If the legal advice is that no real or potential conflict of interest exists, the public official may proceed and shall not be subject to the prohibitions of this chapter. If the legal advice is that a real or potential conflict may exist, the public official:

(1) If he is an elected legislative public official, he shall disclose the nature of the potential conflict of interest and/or be subject to the rules of the body of which he/she is a member and shall take all action required under such rules prior to acting on the matter. If a member requests to be excused from voting on an issue which involves a conflict or a potential conflict, and the body of which he is a member does not excuse him, such failure to excuse shall exempt that member from any civil or criminal liability related to that particular issue.

(2) If he is an elected state public official, he shall prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall file such statement with the secretary of state prior to acting on the matter. A public official may seek legal advice from the attorney representing that agency or from the attorney general or from independent counsel. The elected public official may then act on the advice of the agency's attorney, the attorney general or independent counsel.

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(3) If he is an appointed or employed state public official, he shall prepare a written statement describing the matter to be acted upon and the nature of the potential conflict, and shall deliver the statement to his appointing authority. The appointing authority may obtain an advisory opinion from the attorney general or from the attorney representing that agency. The public official may then act on the advice of the attorney general, the agency's attorney or independent counsel.

(4) If he is an elected public official of a county or municipality, he shall disclose the nature of a potential conflict of interest prior to acting on a matter and shall be subject to the rules of the body of which he/she is a member and take all action required by the rules prior to acting on the matter. If a member requests to be excused from voting on an issue, which involves a conflict or a potential conflict, and the body of which he is a member, does not excuse him, such failure to excuse shall exempt that member from any civil or criminal liability related to that particular issue. The public official may obtain an advisory opinion from the attorney general or the attorney for the county or municipality or from independent counsel. The public official may then act on the advice of the attorney general or attorney for the county or municipality or his independent counsel.

(5) If he is an appointed or employed public official of a county or municipality, he shall prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall deliver the statement to his appointing authority. The appointing authority may obtain an advisory opinion from the attorney for the appointing authority, or, if none, the attorney general. The public official may then act on the advice of the attorney general or attorney for the appointing authority or independent counsel.

(6) Nothing contained herein shall preclude the executive branch of state government or a political subdivision from establishing an ethics board or commission to perform the duties and responsibilities provided for in this chapter. Any ethics board or commission so established shall have specifically stated powers and duties including the power to:

(a) Issue advisory opinions upon the request of a public official within its jurisdiction;

(b) Investigate possible unethical conduct of public officials within its jurisdiction and conduct hearings, issue findings,

and make recommendations for disciplinary action to a public official's appointing authority;

(c) Accept complaints of unethical conduct from the public and take appropriate action.

59-704A. Non-compensated public official — Exception.

When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedure set out in section 18-1361A, Idaho Code.

59-705. Civil penalty.

(1) Any public official who intentionally fails to disclose a conflict of interest as provided for in section 59-704, Idaho Code, shall be guilty of a civil offense, the penalty for which may be a fine not to exceed five hundred dollars (\$500), provided that the provisions of this subsection shall not apply to any public official where the governmental entity on which said official serves has put into operation an ethics commission or board described in section 59-704(6), Idaho Code.

(2) The penalty prescribed in subsection (1) of this section does not limit the power of either house of the legislature to discipline its own members, nor limit the power of governmental entities, including occupational or professional licensing bodies, to discipline their members or personnel. A violation of the provisions of this chapter shall not preclude prosecution and conviction for any criminal violation that may have been committed.

Miscellaneous Statutes

31-2606. Prohibitions.

No prosecuting attorney must receive any fee or rewards for or on behalf of any prosecutor or other individual, for services in any prosecution, or business to which it is his official duty to attend or discharge; nor be concerned as attorney or counsel for either party other than for the state, people or county, in any civil action depending upon the same state of facts, upon which any criminal prosecution commenced but not determined depends, and no law partner of any county attorney must be

engaged in the defense of any suit, action or proceeding, in which said prosecuting attorney appears on behalf of the people, state or county.

33-507. Limitation upon authority of trustees.

It shall be unlawful for any trustee to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the school district, or to accept any reward or compensation for services rendered as a trustee except as may be otherwise provided in this section. The board of trustees of a school district may accept and award contracts involving the school district to businesses in which a trustee or a person related to him by blood or marriage within the second degree has a direct or indirect interest provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of a school district for deposit in any bank or trust company, or the lending of money by any bank or trust company to any school district, shall not be deemed to be a contract pertaining to the maintenance or conduct of a school district within the meaning of this section; nor shall the payment by any school district board of trustees of compensation to any bank or trust company for services rendered in the transaction of any banking business with such district board of trustees, be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

It shall be unlawful for the board of trustees of any class of school district to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract requires, or will require, the payment or delivery of any school district funds, money or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

When any relative of any trustee or relative of the spouse of a trustee related by affinity or consanguinity within the second degree is considered for employment in a school district, such trustee shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined.

59-102. Legislators disqualified from holding certain offices.

It shall be unlawful for any member of the legislature, during the term for which he was elected, to accept or receive, or for the governor, or other officials or board, to appoint such member of the legislature to, any

office of trust, profit, honor or emolument, created by any law passed by the legislature of which he is a member. Any appointment made in violation of this section shall be null and void and without force and effect, and any attempt to exercise the powers of such office by such appointee shall be a usurpation, and the appointee shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than \$500 nor more than \$5000.

67-5726. Prohibitions.

(1) No contract or order or any interest therein shall be transferred by the contractor or vendor to whom such contract or order is given to any other party, without the approval in writing of the administrator. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the state. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state. No member of the legislature or any officer or employee of any branch of the state government shall directly, himself, or by any other person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or part, any contract or agreement made or entered into by or on behalf of the state of Idaho, if made by, through, or on behalf of the department in which he is an officer or employee; or if made by, through or on behalf of any other department unless the same is made after competitive bids.

(2) Except as provided by section 67-5718, Idaho Code, no officer or employee shall influence or attempt to influence the award of a contract to a particular vendor, or to deprive or attempt to deprive any vendor of an acquisition contract.

(3) No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a vendor of an acquisition award.

(4) No officer or employee shall fail to utilize an open contract without justifiable cause for such action. No officer or employee shall accept property which he knows does not meet specifications or substantially meet the original performance test results.

(5) Deprivation, influence or attempt thereat shall not include written reports, based upon substantial evidence, sent to the administrator of the division of purchasing concerning matters relating to the responsibility of vendors.

(6) No vendor or related party, or subsidiary, or affiliate of a vendor may submit a bid to obtain a contract to provide property to the state, if the vendor or related party, or affiliate or subsidiary was paid for services utilized in preparing the bid specifications or if the services influenced the procurement process. [I.C., § 67-5726, as added by 1975, ch. 254, § 2, p. 686; am. 1991, ch. 158, § 5, p. 374; am. 1994, ch. 110 § 1, p. 243; am. 2001, ch. 36, § 7, p. 55.]

67-6506. Conflict of interest prohibited.

A governing board creating a planning, zoning, or planning and zoning commission, or joint commission shall provide that the area and interests within its jurisdiction are broadly represented on the commission. A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. For purposes of this section the term "participation" means engaging in activities which constitute deliberations pursuant to the open meeting act. No member of a governing board or a planning and zoning commission with a conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest. A member with a conflict of interest shall not be prohibited from testifying at, or presenting evidence to, a public hearing or similar public process after acknowledging nonparticipation in the matter due to a conflict of interest. A knowing violation of this section shall be a misdemeanor.

QUESTIONS AND ANSWERS

STATUTORY INTERPRETATION

Question No. 1: Is there overlap between the various ethical statutes pertaining to public employees and officials, and how should the statutes be analyzed?

Answer: Yes. The first step in analyzing which statute applies to a particular situation is to determine whether there is a specific statute dealing with the governmental entity or the public position in question. For example, Idaho Code § 33-507 contains a prohibition against school board trustees contracting with the school district. This statute controls the more general anti-contracting provisions found in chapter 13, title 18, or chapter 2, title 59, Idaho Code. See, Attorney General Opinion No. 93-10. In addition, when dealing with the more general ethics statutes, there may be some overlap. In the case where two or more general statutes apply to the same situation, an attempt should be made to reconcile the statutes.

Too often, conflict analysis begins and ends with an analysis of chapter 7 of title 59, the Ethics in Government Act. Chapter 7 covers acts by members of legislative or administrative bodies and does not necessarily prohibit any act, but merely requires disclosure. However, the action creating the conflict may be prohibited by other provisions contained within the Idaho Code.

PURPOSE OF ANALYSIS OF ETHICS STATUTES

Question No. 2: What is the purpose of the analysis of the ethical statutes with regard to the actions of public officials?

Answer: The purpose of the ethical statutes is to establish a ground floor for conduct by public officials. Proper analysis of ethical statutes should not be for “loopholes” or “technicalities” by which one can take advantage of government, the public, or other interested parties. If your analysis requires that you find a “loophole,” within Idaho’s ethical statutes, then your conduct is likely unethical. Ethics for public officials is also tricky for another reason. Within public service, there are often two courts: the traditional legal system, and the court of public opinion. A win in one does not guarantee a win in the other. When determining the proper answer to any ethics determination, a public official should be mindful of the impact his decision may have both

legally and publicly. Public officials, by the trusteeship given them by the electorate, are held to a higher ethical standard.

PUBLIC EMPLOYEES OR OFFICIALS COVERED BY ETHICS STATUTES

Question No. 3: Who is subject to Idaho Code §§ 18-1351 et seq., the Bribery and Corrupt Influence statutes?

Answer: Idaho Code §§ 18-1351, et seq., regulate the conduct of public servants in the areas of bribery and corrupt practices, including conflicts of interest and nepotism. Unless otherwise stated, these statutes apply to all “public servants,” which is defined to mean: “any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses.”

Question No. 4: Who is subject to chapter 7 of title 59, the Ethics in Government Act?

Answer: All “public officials” are subject to the Ethics in Government Act. “Public official” means any person holding public office in the following capacity:

(a) As an elected public official meaning any person holding public office of a governmental entity by virtue of an elected process, including persons appointed to a vacant elected office of a governmental entity, excluding members of the judiciary; or

(b) As an elected legislative public official meaning any person holding public office as a legislator; or

(c) As an appointed public official meaning any person holding public office of a governmental entity by virtue of formal appointment as required by law; or

(d) As an employed public official meaning any person holding public office of a governmental entity by virtue of employment, or a person employed by a governmental entity on a consultative basis.

Question No. 5: Who is subject to the prohibition against contracts with officers contained in chapter 2, title 59, Idaho Code?

Answer: All members of the legislature and state, county, city, district and precinct officers are subject to the prohibitions contained in chapter 2, title 59, Idaho Code. While “officer“ is not defined, the definition of “public official” contained in the Ethics in Government Act should be considered as a guide to those covered by the prohibitions in chapter 2, title 59, Idaho Code.

NEPOTISM

Question No. 6: Is the current employment of a public employee jeopardized by the subsequent election of a relative to a public office that has supervisory authority over that employee?

Answer: Idaho Code § 18-1359 sets forth the nepotism policy of the state of Idaho. The Attorney General’s Office has taken the position that existing public employment will not be jeopardized by the subsequent election of a relative of that employee to public office.

Question No. 7: How does the subsequent election of a relative affect promotion/advancement potential of a current employee?

Answer: Under Idaho Code § 18-1359(5), the employee may continue to work in the current job assignment and remain eligible to receive non-meritorious pay increases. Idaho Code § 18-1359(e) prohibits the public official from appointing or voting for the appointment of the relative to any position, employment or duty. Similarly, more specific sections relating to the mayor, city council, county commissioners and state legislators may prohibit any person, not just the related elected official, from appointing the current employee to any office, position, employment or duty.

Question No. 8: When a county employee’s spouse is elected to the county commission, is the employee’s position jeopardized?

Answer: As stated above, Idaho Code § 18-1359 states that existing public employment should not be jeopardized by the subsequent election of a relative to public office. The 2002 enactment of Idaho Code § 18-1359(5) is intended to permit the spouse of an elected official to continue in his/her present employment. However, Idaho Code § 59-201 may cast some doubt on whether Idaho Code § 18-1359(5) fully permits continued employment. Due to the enactment of Idaho Code § 18-1359(5) and the Statement of Purpose accompanying the bill, it appears that a court would likely permit the continued employment of a spouse of a subsequently elected official.

Idaho Code § 33-507 may prohibit the continued employment by a school district of an employee whose spouse is elected to the district's board of trustees where the contract must be renewed annually. Idaho Code § 33-2106 incorporates Idaho Code § 33-507 applying the prohibition to trustees of junior college districts.

Question No. 9: May a county enter into a contract for goods or services with the son/daughter-in-law of one of the commissioners?

Answer: Idaho Code §§ 18-1359(1)(F) and 67-5726 applies in this situation. The code section provides:

No person related to a county commissioner by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the commissioner's county when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

The commissioner's son/daughter-in-law is clearly related by marriage within the second degree, and will be compensated for the performance of his/her duties. The county would be prohibited from hiring the commissioner's son/daughter-in-law.

CONFLICTS OF INTEREST/PROHIBITED CONTRACTS

Question No. 10: What action is required under chapter 7 of title 59, Idaho Code, the Ethics in Government Act, if a conflict of interest exists?

Answer: The Ethics in Government Act requires certain action when a conflict of interest exists. A conflict of interest is generally defined as any "official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated."

When a conflict of interest exists, the public official must disclose the conflict. Under the Ethics in Government Act, disclosure does not affect an elected public official's authority to be counted for the purpose of determining a quorum and to debate and to vote on the matter.

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The public official may seek legal advice on whether a conflict of interest exists. If the legal advice is that a real or potential conflict may exist, generally, the public official must prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall file such statement with the entity set forth in the statute pertaining to the appropriate elected or appointed office.

Disclosure of the conflict or consultation with counsel satisfies the requirements of the Ethics in Government Act. It does not, however, permit the public official to engage in acts prohibited by other provisions of the Idaho Code.

Question No. 11: Are there exceptions to the definition of conflict of interest in chapter 7 of title 59, Idaho Code, the Ethics in Government Act?

Answer: Yes. Under the Act, there is no conflict of interest if the pecuniary benefit received arises out of:

(a) An interest or membership in a particular business, industry, occupation or class required by law as a prerequisite to the holding by the person of the office or position;

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of an industry or occupation group in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged;

(c) Any interest which the person has by virtue of his profession, trade or occupation where his interest would be affected to the same degree as that of a substantial group or class of others similarly engaged in the profession, trade or occupation;

(d) Any action by a public official upon any revenue measure, any appropriation measure or any measure imposing a tax, when similarly situated members of the general public are affected by the outcome of the action in a substantially similar manner and degree.

Question No. 12: What is the effect on a contract entered into in violation of the conflict of interest provisions of Idaho law?

Answer: The answer depends upon the specific statute and how the courts may have interpreted that statute. Violations of Idaho Code § 59-201 are voidable by any party, except the interested official, but not void from the beginning. Idaho Code § 59-203.

However, violations of other ethics statutes may cause the contract to be void. For instance, in *Independent School Dist. No. 5 v. Collins*, 15 Idaho 535, 98 P. 857 (1908), the court addressed violations of Idaho Code § 33-507, stating:

[S]uch contracts are absolutely void. If money is illegally paid on such void contract, the district may recover it back, and in case the district refuses to do so, any taxpayer of the district may, for and on behalf of the district, maintain an action for the recovery of the money so illegally paid. 15 Idaho at 541.

In any contract or transaction entered into which is ruled void, the public official would be required to refund any money he/she receives pursuant to a contract or transaction with the board. Such a challenge could be initiated by the board or by a taxpayer within the respective governmental entity.

Question No. 13: May the employer of a city council member contract with the city?

Answer: The answer is “yes,” under certain circumstances, such as when an interest is defined to be remote under Idaho Code § 59-201A and, therefore, not a conflict of interest. “Remote interest” means:

(a) That of a non-salaried officer of a nonprofit corporation; or

(b) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; or

(c) That of a landlord or tenant of a contracting party;
or

(d) That of a holder of less than one percent (1%) of the shares of a corporation or cooperative that is a contracting party.

However, even if the interest is remote, the public official must disclose the remote interest prior to the formation of the contract, and the governing body must approve the contract on a vote sufficient for that purpose without counting the vote of the officer having the remote interest. Furthermore, the public official cannot attempt to influence another officer of the board of which he is an officer to enter into the contract.

Question No. 14: Are there any circumstances where a public official can personally contract with a board of which he or she is a member?

Answer: In rare circumstances a public official can contract directly with the board of which he/she is a member whether or not he or she is an elected or appointed public official. Under Idaho Code § 18-1361, a public official or his/her relatives can contract with the board if:

(1) The contract is competitively bid and the public servant or his/her relative submits the low bid; and

(2) Neither the public servant nor his/her relative takes any part in the preparation of the contract or bid specifications, and the public servant takes no part in voting on or approving the contract or bid specifications; and

(3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his/her interest or that of his/her relative and of his or his relative's intention to bid on the contract; and

(4) Neither the public servant nor his/her relative has violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

Question No. 15: May a school district conduct business with a business establishment whose owner is a spouse of a school board trustee?

Answer: Idaho has a long-standing tradition of forbidding school board trustees from doing any business with or receiving any pecuniary benefit from the district they serve. Idaho Code § 33-507 states in relevant part:

It shall be unlawful for any trustee to have pecuniary interest, directly or indirectly, in any contract or other transaction pertaining to the maintenance or conduct of the school district, or to accept any reward or compensation for services rendered as a trustee except as may be otherwise provided in this section. (Emphasis added.)

Purchases by the district of material from an establishment owned by the spouse of a school board trustee provide a direct or indirect pecuniary benefit to the member of the school board. The school board trustee would certainly benefit from any transactions between the district and the business establishment. Even if there is not a written contract between the business establishment and the district, it does not take the situation outside the reach of Idaho Code § 33-507. There would still be a contractual relationship between the business and the district. Moreover, the contract would be void.

Idaho Code § 33-2106 incorporates Idaho Code § 33-507 and makes the limitations on the authority of school district trustees applicable to trustees of junior college districts.

Question No. 16: May a county employee purchase property that the county has for sale?

Answer: There is no express prohibition against a county employee purchasing county property, unless that individual is a county commissioner or other officer. See Idaho Code §§ 31-807A and 59-202. This rule applies to county employees generally. Sheriffs' deputies selling property at sheriffs' sales are prohibited from participating in the sale.

BRIBERY/CORRUPT INFLUENCE & GIFTS TO PUBLIC OFFICIALS

Question No. 17: Would a regional tour sponsored by a chamber of commerce to acquaint legislators with a region of the state, provided without charge to every member of the Idaho Legislature, violate the Bribery and Corrupt Influence Act?

Answer: Idaho Code § 18-1356 regulates gifts to public servants. Subsection (4) relates to legislative and executive officials:

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No legislator or public servant shall solicit, accept or agree to accept any pecuniary benefit in return for action on a bill, legislation, proceeding or official transaction from any person known to be interested in a bill, legislation, official transaction or proceeding.

There have been no allegations, nor has it ever been suggested, that the efforts of the members of the chamber of commerce are made in return for legislative action on their behalf. Therefore, the tour in general does not violate Idaho Code § 18-1356(4).

Consideration must also be given to Idaho Code § 18-1359(1)(a), which provides:

No public servant shall:

(a) Without the specific authorization of the governmental entity for which he serves, use public funds or property to obtain a pecuniary benefit for himself.

It is the opinion of the Attorney General's Office that the legislature, by enacting Idaho Code § 18-1359(1)(a), did not intend to prohibit and criminalize participation in activities such as this tour. The combination of official business with conferences and social activities is a fact of modern life, and it is the opinion of this office that the legislature did not intend to eliminate that reality. This tour is a legitimate function of the legislature, and the expenses associated with the tour, if submitted on a voucher, could be financed by the state. As such, they are clearly not pecuniary benefits inuring to the legislators' personal or private benefit.

Question No. 18: Would a business trip by legislators for the purpose of viewing demonstrations of a product purchased by the state, in which airfare, food and lodging were paid for by the vendor, but not entertainment events, violate either the Ethics in Government Act or the Bribery and Corrupt Influences Act?

Answer: Idaho Code § 59-703, the Ethics in Government Act, is "directed primarily towards improper activities of public officials in the course of their official duties." In this case it is apparent that the public officials would derive some pecuniary benefit from the trip. However, the pecuniary benefit does not appear "personal" in nature because the trip is for business purposes only, without any entertainment or personal activities on the agenda. The facts do not reveal that any "official action or any decision or recommendation" has been made by

the public officials to the benefit of the company sponsoring the trip. The trip does not relate to any upcoming bidding or contracting process in which the company stands to gain or lose. The trip does not seem to violate the Ethics in Government Act.

Idaho Code § 18-1359(1)(a) is also not an issue in this case. The officials are acting strictly in their official capacity, there will be no private or personal gain in the form of entertainment or other purely personal activities, and the business trip appears to be directed solely at a legitimate legislative function--gathering technical information relevant to the state's interest in a product. This type of informational business trip does not call into question the type of private pecuniary gain or official action in return for such gain which Idaho's ethics laws clearly and strongly outlaw. The trip would not violate either the Ethics in Government Act or the Bribery and Corrupt Influences Act.

Question No. 19: Can members of the Idaho Legislature accept gift packs from a marketing association in the state of Idaho in which the products are intended to promote the variety and quality of merchandise produced in Idaho?

Answer: According to Idaho Code § 59-703(4), a conflict of interest occurs when a legislative official takes official action or makes an official decision or recommendation, the effect being to the "private pecuniary benefit" of such person, the person's household or business. Based on the facts in this case, it is difficult to foresee any legislator having a conflict of interest resulting from the acceptance of one of the complimentary gift packs. A conflict of interest requires some official action by the legislator. From the facts presented in this case, there is no indication the receipt of the gift pack was the result of any official action, decision or recommendation taken or proposed by any legislator. Mere acceptance of the gift pack does not violate the provisions of Idaho Code § 18-1359(1)(b). In addition, under Idaho Code § 18-1359(1)(b), trivial gifts or benefits, which do not exceed \$50.00 in value, are not prohibited if they are incidental to personal, professional or business contacts and do not affect official impartiality.

Question No. 20: If a major corporate officer of a firm which performs a great deal of work for one of the state departments should become a member of the Idaho Legislature, would there be any possibility of a "conflict of interest" arising out of his holding public office and voting on appropriations while continuing to be a corporate officer of a private firm?

Answer: Yes. Idaho Code § 59-201, provides:

Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

In addition to constitutional and statutory provisions, the rules of the senate or house of representatives may require that members declare their interest or abstain from voting in cases involving conflicting personal and public interests.

Similarly, Idaho Constitution art. 3, § 9, provides in pertinent part:

Each house when assembled shall choose its own officers; judges of the election, qualifications and returns of its own members, determine its own rules of proceeding, and sit upon its own adjournments; . . .

INCOMPATIBILITY OF OFFICE

Question No. 21: May an individual serve in the Idaho Legislature and as the mayor of a municipality at the same time?

Answer: Idaho has no constitutional or statutory provisions prohibiting a state legislator from concurrently holding another public office. However, the common law doctrine of incompatibility of office should be examined.

The common law doctrine of incompatibility as it relates to one person holding two public offices is based upon the public policy that public service requires the discharge of official duties with undivided loyalty. In the question presented, the two positions are not incompatible. The office of mayor is wholly independent from the state legislature and cannot in any sense be viewed as subordinate. The duties of the mayor do not conflict or clash with the duties of a state legislator.

Finally, it has been suggested that holding dual offices violates the distribution of powers clause of Idaho Constitution art. 2, § 1. This section provides:

The powers of the government of this state are divided into three distinct departments, the

legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

In relation to the separation of powers between state and local governments (prohibiting a person from serving in an executive capacity on the local level and as a legislator in the state government), this office has been unable to find any authority indicating that the doctrine has any application.

The fact that a state legislator is also a municipal executive officer does not in any sense impinge or intrude upon the authority of the state judicial or executive branches. Similarly, the fact that a city mayor is also a state legislator does not intrude upon the authority of the respective city council. Thus, holding dual public offices, one municipal and one state, does not violate art. 2, § 1 of the Idaho Constitution. This office can find no statutory or common law prohibition preventing a city mayor from serving in the Idaho Legislature.

Question No. 22: May a member of a county planning and zoning commission serve as a city councilman without creating a conflict of interest?

Answer: The Local Planning Act contains a conflict of interest provision:

A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business(,) associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action.

Idaho Code § 67-6506.

Because a city council member is an agent of the city he/she represents, this section would probably prevent him/her from participating in any county zoning decisions that may affect the city's economic interests. However, there is no provision requiring the council member to resign his/her position.

There is also present a question of incompatibility of office. The common law doctrine applies if there is a potential conflict between the two offices such that one individual could not give absolute allegiance to both offices. Incompatibility is most often found where one office supervises the other or when the interests of the two offices are antagonistic to each other. 3 *McQuillin on Municipal Corporations*, §§ 12.66 *et seq.*

In the area of zoning, the interests of the county and the city may frequently be at odds, and it is not uncommon for cities and counties to sue one another over zoning disputes. Under such circumstances one person could not fill both offices without a conflict of loyalty. If two offices are incompatible, one office should be vacated. The Attorney General's Office recommends that one office be vacated to eliminate the incompatibility problem.

Question No. 23: May a person serve as a chairman of a county political party and as a member of the Idaho State board of Correction?

Answer: It appears that a person cannot serve as chairman of a county political party and retain a position on the board of correction. Idaho Code § 20-204 provides:

The members of the board of correction and its officers and employees shall not, at any time of appointment nor during their incumbency of office, serve as the representative, officer, or employee of any political party.

The language of this code section is clear and unambiguous. An individual cannot serve as a representative, officer or employee of a political party and also serve on the state board of correction.

CONSANGUINITY CHART

			4 Great Great Grandparent
		4 Great Grand Uncle/Aunt	3 Great Grandparent
	3 Child of Great Uncle/Aunt	3 Great Uncle/ Aunt	2 Grandparent
3 Second Cousin	2 Cousin	2 Uncle/Aunt	1 Parent
3 Cousin's Child	2 Nephew/Niece	1 Sibling	1 Person 'A'
3 Grand Nephew/Niece			1 Child
			2 Grandchild
			3 Great Grandchild

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**Office of the
Attorney General**

**Idaho
Public Records Law
Manual**

Idaho Code §§ 9-337 through 9-350



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INTRODUCTION

Open government is the cornerstone of a free society. The Idaho Legislature affirmed Idaho's commitment to open government by enacting the Idaho Public Records Law in 1990. The Public Records Law protects each citizen's right to monitor the actions of state and local government entities by providing access to government records. Through the Public Records Law, the Legislature continuously seeks to balance the competing interests of public access and an individual's right to privacy by exempting (from the disclosure requirement) certain records, or portions thereof.

In 2010 and 2011, the Legislature made changes to the Public Records Law. Those changes are incorporated in this new edition of the Idaho Public Records Law Manual.

One of my duties as Attorney General is to encourage compliance with the Idaho Public Records Law by agencies and officials of state government. The 44 elected county prosecuting attorneys have the same duty with regard to agencies and officials of local government. I am committed to ensuring that public documents are accessible to the public. Toward that end, my office regularly conducts training sessions for state and local officials throughout Idaho.

The Idaho Public Records Law provides for private enforcement. Where an individual or organization is improperly denied access to public records, it is up to the individual to challenge the government agency's refusal to provide access to the record.

Effective private enforcement can occur only when citizens understand their rights. My Office has prepared this manual to educate citizens, the news media and government employees about the Public Records Law. I hope that this manual helps in avoiding

misunderstandings and protecting the public's legitimate access to government records.

If you have further questions, feel free to call your city or county prosecuting attorney or my office at (208) 334-2400.

Sincerely,

LAWRENCE G. WASDEN
Attorney General

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IDAHO PUBLIC RECORDS LAW

QUESTIONS AND ANSWERS

PURPOSE

Question No. 1: What is the Purpose of the Idaho Public Records Law?

Answer: The intent of the law is that all records maintained by state and local government entities be available for public access and copying. At the same time, the Legislature recognized the need to balance this policy of openness against the equally important need for privacy of certain information provided by citizens and businesses that is necessary for the conduct of the government's business. This balance is contained in Idaho Code § 9-338, which states that "all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute."

THE STRUCTURE OF THE IDAHO PUBLIC RECORDS LAW

Question No. 2: What does the Idaho Public Records Law provide?

Answer: The law includes definitions and a simple, uniform procedure for inspection and copying of records. Sections 9-340A through 9-340H list the records that are exempt from disclosure. Finally, more than one hundred sections of existing Idaho Code relating to confidentiality of records are cross-referenced to the law.

PUBLIC BODIES OR AGENCIES COVERED BY THE PUBLIC RECORDS LAW

Question No. 3: What government entities are subject to the Public Records Law?

Answer: The law applies to all "public agencies." Section 9-337(11) defines a public agency as any state or local agency.

"Local agency," defined in section 9-337(8), includes "a county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof."

“State agency,” defined in section 9-337(15), includes “every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia and the Idaho state historical society library and archives.”

Thus, essentially every entity of state and local government is expected to comply with the Idaho Public Records Law.

Question No. 4: Does the Public Records Law apply to the Governor, the Legislature, and the Judiciary?

Answer: Yes. The definition of “state agency” includes all of the above. The only state entity omitted from coverage of the law is the military division of the governor’s office.

Question No. 5: Are law enforcement entities treated differently by the Public Records Law?

Answer: Yes, to some extent. Section 9-335, relating to the investigatory records of law enforcement agencies, has been in effect since 1986 and is incorporated into the Public Records Law by section 9-340B(1). It contains the standards under which certain information may be released to the public. Sections 9-335(1) through 9-335(3) provide:

9-335. Exemptions from disclosure - Confidentiality.

(1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records would:

- (a) Interfere with enforcement proceedings;
- (b) Deprive a person of a right to a fair trial or an impartial adjudication;
- (c) Constitute an unwarranted invasion of personal privacy;

(d) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement agency in the course of a criminal investigation, confidential information furnished only by the confidential source;

(e) Disclose investigative techniques and procedures; or

(f) Endanger the life or physical safety of law enforcement personnel.

(2) Notwithstanding subsection (1) of this section, any person involved in a motor vehicle collision which is investigated by a law enforcement agency, that person's authorized legal representative and the insurer shall have a right to a complete, unaltered copy of the impact report, or its successors, and the final report prepared by the agency.

(3) An inactive investigatory record shall be disclosed unless the disclosure would violate the provisions of subsection (1)(a) through (f) of this section. Investigatory record as used herein means information with respect to an identifiable person or group of persons compiled by a law enforcement agency in the course of conducting an investigation of a specific act or omission and shall not include the following information:

(a) The time, date, location, and nature and description of a reported crime, accident or incident;

(b) The name, sex, age, and address of a person arrested, except as otherwise provided by law;

(c) The time, date, and location of the incident and of the arrest;

(d) The crime charged;

(e) Documents given or required by law to be given to the person arrested;

(f) Informations and indictments except as otherwise provided by law; and

(g) Criminal history reports.

As used herein, the term “law enforcement agency” means the office of the attorney general, the office of the state controller, the Idaho state police, the office of any prosecuting attorney, sheriff or municipal police department.

(4) Whenever it is made to appear by verified petition to the district court of the county where the records or some part thereof are situated that certain investigative records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the investigative record or show cause why he should not do so. The court shall decide the case after examining the record in camera, papers filed by the parties, and such oral argument and additional evidence as the court may allow.

If the court finds that the public official’s decision to refuse disclosure is not justified, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court may, in its discretion, award costs and fees to the prevailing party.

Section 9-340B(1) provides that other entities with law enforcement responsibilities, such as the department of fish and game, have the same confidentiality standards. Section 9-337(7) defines “law enforcement agency” as any state or local agency that is “given law enforcement powers or which has authority to investigate, enforce, prosecute or punish violations of state or federal criminal statutes, ordinances or regulations.” For further discussion of this topic, see Attorney General Opinion No. 86-7.

RECORDS COVERED BY THE LAW

Question No. 6: What are public records?

Answer: “Public record,” as defined in section 9-337(13), is an extremely broad concept. It “includes, but is not limited to, any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency, independent public body corporate and

politic or local agency regardless of physical form or characteristics.”

“Writing” in section 9-337(16) means information maintained in many forms, including typewritten or hand written documents as well as pictures, maps, tapes, magnetic or punched cards, and computer media.

In *Fox v. Estep*, 118 Idaho 454 (1990), the Idaho Supreme Court held that the Boundary County Clerk’s handwritten notes taken during commission meetings were not “a personal notation for random observations or memoranda concerning events undertaken at a meeting” but were part of her statutory duty to record all proceedings of the commissioners. “Working papers,” “raw notes,” “preliminary drafts” and the like are not necessarily exempt from disclosure.

To date, e-mail (electronic mail) has not been separately addressed by the Legislature. E-mail is considered a public record and is subject to the same laws as any other public record.

Question No. 7: Who are the custodians of public records?

Answer: “Custodian” is defined in section 9-337(3) as the “person having personal custody and control of the public records in question. If no such designation is made by the public agency or independent public body corporate and politic, then custodian means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives.”

Question No. 8: What responsibility does the public agency have for providing access to records?

Answer: Section 9-338(1) provides that the right to inspect and to receive a copy of public records at all reasonable times is absolute unless the record is exempt from disclosure by law. In addition, section 9-338(5) requires the public agency to extend reasonable comfort and facility to the individual requesting public records.

The concept of a “copy” of a public record in section 9-337(2) is comprehensive, including “transcribing by handwriting, photocopying, duplicating machine and reproducing by any other means so long as the public record is not altered or damaged.”

Additionally, a certified copy, if feasible to produce, must be provided upon request. Idaho Code § 9-338(3).

A public agency may not refuse access to records “by contracting with a non-governmental body to perform any of its duties or functions.” Idaho Code § 9-338(13). Furthermore, public agencies are required, without exception, to separate exempt information from records when a request is made, and to provide access to the non exempt material. Agencies are prohibited by section 9-341 from denying requests because a record contains both exempt and non exempt information.

The law does not require the agency to provide copies of records in a format not used by the agency in the normal course of business. For example, the agency need not alphabetize information upon request, or engage the services of a computer programmer to provide the information in a format desired by the requesting party.

Question No. 9: Does the public agency have a responsibility to protect the integrity of records?

Answer: Yes. In *Adams County Abstract Co. v. Fisk*, 117 Idaho 513 (Ct.App. 1990), a title company wanted to set up its own copier in the county offices in order to make its own records of title documents. There was also a dispute about allowing the title company to copy original documents with its own equipment prior to the microfilming of the records. The Idaho Court of Appeals held that the county recorder could not be compelled to allow private photocopying of public records in the courthouse, that he could reasonably restrict the physical handling of original documents, and he could require that the county’s copying equipment be used.

The concepts of the *Adams County* case were preserved in the public records law. Sections 9-338(1) and (2) provide the right to examine public records “at all reasonable times,” and the right to receive photographs or other copies “using equipment provided by the public agency or independent public body corporate and politic or using equipment designated by the custodian.” By this language, the Legislature determined that the public agency may decide, for example, what degree of access would be allowed to its computer system. Section 9-338(7) provides that, “Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.”

Question No. 10: For how long must a public record be retained?

Answer: Idaho's cities and counties are governed by statutes that define how records should be classified and retained, as well as the procedure for destruction of public records. Idaho Code § 31-871 (Counties) and Idaho Code § 50-907 (Municipal Corporations). State agencies should adopt policies that are consistent with best business practices and generally accepted principles of accounting to classify and retain records. Record retention policies and procedures shall remain consistent with the principles of the Idaho Public Records Law.

Question No. 11: What fees may be charged for the cost of copying public records?

Answer: The concept of the law is that examination and copying of public records is part of the public business, already funded by taxpayers. Under section 9-338(10)(c) of the public records statute, an agency may establish a copying fee schedule, which "may not exceed the actual cost to the agency of copying the record . . ." The section contains an exception to preserve fees already established by other laws, such as recorders' fees and fees for court records.

Some state and local agencies provide information in the form of computer tapes and disks. Section 9-338(10)(d)(i) permits charging for the "direct cost of copying the information in that form." The language of the law regarding the cost of providing computer or similar records is rendered somewhat unclear, however, by language, which also allows the agency to collect "the standard cost, if any, for selling the same information in the form of a publication." It is the belief of the attorney general's office that this language permits a public agency to offer the requested information in an already-printed publication, and to charge the standard cost of selling the publication.

Question No. 12: May the agency recover the cost of mailing or faxing copies of public records?

Answer: The law requires an agency to provide public records to members of the public; the agency is not required to send the records to the person making the request. The law does not prevent the recovery of actual mailing or telecommunications costs if there is a request to mail or FAX information to someone.

Question No. 13: What fees may be charged for any labor costs incurred in locating, redacting, copying, and providing access to public records?

Answer: Agencies may establish a fee to recover such labor costs for voluminous or complex requests, or requests that involve locating archival information. Idaho Code § 9-338(10).

In addition, if an agency must incur additional expense to provide access to records during other than normal working hours, or requires the services of outside contract copying companies, or overtime on the part of its own employees, the agency may require advance payment to compensate for this additional expense. Idaho Code § 9-338(8).

Question No. 14: Are all members of the public required to pay copying fees and labor costs?

Answer: Section 9-338(10)(f) allows an agency to waive any cost or fee for copies or labor when the requester demonstrates an inability to pay, when the request “[i]s not primarily in the individual interest of the requester including, but not limited to, the requester’s interest in litigation in which the requester is or may become a party,” or “demonstrates that the requester’s examination and/or copying of public records [i]s likely to contribute significantly to the public’s understanding of the operations or activities of the government.”

Question No. 15: May the agency require advance payment of fees?

Answer: Section 9-338(8) allows the agency to require advance payment of the costs of copying and labor costs.

RECORDS EXEMPT FROM DISCLOSURE

Question No. 16: What information is exempt from disclosure under the law?

Answer: With the exception of section 9-335, relating to law enforcement records, most exemptions from disclosure in the public records law are contained in Idaho Code sections 9-340A through 9-340H. Even if an exemption applies to a record, according to section 9-338(14), the law does not prevent the disclosure of statistical

information that identifies a particular person, unless such disclosure is otherwise prohibited by law.

It must be noted that nothing in the law limits the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings. Idaho Code § 9-343(3).

Question No. 17: What are the law's requirements relating to employee or personnel records?

Answer: There is one standard for disclosure of personnel information for all public employers. Section 9-340C(1) *requires* disclosure of a current or former employee's or public official's "employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency." The Legislature acknowledges that there is some loss of privacy when one accepts a position supported by public money.

All other information in an employee's or applicant's personnel file is not available to the public without the written consent of the individual to whom the file pertains. Thus, information of a more personal nature, including home addresses and phone numbers, grievance information and the like is not normally disclosed.

All information in an employee's file is accessible to the employee or a designated representative, except for "material used to screen and test for employment." Idaho Code 39-340(c)(i). A similar exemption relating to test questions in licensing, employment, academic or other examination situations is contained in section 9-340E(5).

In addition, Idaho Code Section 33-518 pertains only to school district employees. Section 33-518 contradicts, to some extent, the provisions of the Public Records Law on employee records, and provides, in part:

personnel files are declared to be confidential and excepted from public access under any provision of the Idaho Code, including, but not limited to, sections 9-301 and 59-1009, Idaho Code, provided that each employee or designated representative shall be given access to his own personnel file upon request and shall

be provided copies of materials contained therein, with the exception of recommendation letters, in a timely manner upon request.

Question No. 18: Does the exemption restricting disclosure of most information in a public employee’s personnel file apply to applicants for public employment?

Answer: It depends. Section 9-340C(1) states that the exemption covers “[a]ll other personnel information relating to a public employee or applicant”

In *Federated Publications v. Boise City*, 128 Idaho 459 (1996), the Idaho Supreme Court distinguished the terms “public official” and “public employee,” holding that applications and resumes submitted by applicants for a vacant city council seat are subject to disclosure. However, in *Federated Publications, Inc. v. City of Meridian*, Case No. CV OC 97-06708D, the Fourth District ruled that the resumes of applicants for an appointed public office do not need to be disclosed under the public records law. Thus, résumés for a vacant elected office are likely subject to disclosure while those for an unelected employee may not be.

Question No. 19: What are the law’s requirements regarding distributing, selling or using lists of persons for mailing or telephone number lists?

Answer: Section 9-348 prohibits an agency from distributing or selling, for use as a mailing or telephone number list, any list of persons without first securing the permission of those on the list. Idaho Code § 9-348(1)(a). Moreover, no list of persons prepared by an agency can be used as a mailing or telephone number list except by the agency or another agency, without first securing permission of those on the list. Idaho Code § 9-348(1)(b).

However, section 9-348 does not prevent individuals from compiling a mailing or telephone number list through their own research by copying public records, original documents or applications, which are otherwise open to public inspection.

Certain agencies and types of records do not fall within the general prohibition contained in section 9-348(1). Section 9-348 does not apply to: (1) lists of registered electors and lists of names of employees who are within the State of Idaho personnel systems;

(2) agencies that issue occupational or professional licenses; (3) public records dealing with motor vehicle registration; (4) certain corporate information lists developed by the secretary of state, business information lists developed by the department of agriculture used to promote food and agricultural products produced in Idaho; (5) lists used for ordinary utility purposes which are requested by a supplier of utility services in the state; (6) lists to be used to give notice required by any statute, ordinance, rule, law or by any governing agency; (7) student directory information used for military recruiting purposes.

Section 9-348 provides for civil penalties in an amount not in excess of one thousand dollars (\$1,000) to be awarded against a person or public official who has deliberately and in bad faith violated the provisions of section 9-348(1)(b).

Question No. 20: May a governmental entity refuse to disclose administrative investigative reports prepared in anticipation of litigation at the direction of its attorney?

Answer: Yes. The Idaho Supreme Court, however, recognized that if the report is merely summarized information that is available in other disclosed public records, it may not be protected from disclosure. If, on the other hand, the record contains information regarding personnel information exempt under Idaho law, or is compiled at the direction of the agency's attorney in anticipation of litigation, the entire record may be exempt from disclosure.

PROCEDURE FOR REQUESTING PUBLIC RECORDS

Question No. 21: Must an individual fill out a written request for inspection or copying of public records?

Answer: Section 9-338(4) permits an agency to require requests for access to public documents be made in writing. If a written request is required by the public agency, the individual may be required to provide a mailing address and telephone number. This information may assist the public agency to clarify a request and provide a document as soon as possible.

Question No. 22: May the agency ask the purpose of the request?

Answer: Public agencies generally are not allowed to ask why a person wants public records. Idaho Code § 9-338(5). Likewise,

section 9-338(6) provides that, “The custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of any such person. . . .”

Nevertheless, legislators did expect that requests for documents could be discussed. For example, without inquiring why an individual is making a request, a custodian could explain exactly what information is available and allow the person to examine nonexempt documents, so that the person would be better able to describe the requested records. Further, section 9-338(5)(b) allows an inquiry by the agency to make sure its information is not to be used as a mailing or phone list, and the agency can demand a letter promising no commercial use.

Question No. 23: What are the time limits for a public agency to respond to a request for information?

Answer: The intent of the law is that documents be provided upon request whenever possible. Section 9-339(1) provides three (3) working days from the date of the receipt of the request for the public agency to grant or deny the information. However, public agencies should not delay three days to provide information that is readily available.

Section 9-339 allows the employees of the public agency to determine that a longer period of time is needed to locate or retrieve information, notify the individual in writing that more time is needed, and then grant or deny the request in whole or in part within ten (10) working days following the request. The Legislature believed that these time periods would be adequate in the vast majority of cases, and that individuals would understand that agencies might occasionally need additional time to respond.

Question No. 24: What happens if the agency does not respond?

Answer: If there is no response to the request, it shall be deemed to be denied within ten (10) working days following the request, according to section 9-339(2). The 180-day period to seek court relief provided in section 9-343(1) begins at that point.

DENIAL OF A REQUEST FOR PUBLIC RECORDS

Question No. 25: Who determines if a request for records must be denied?

Answer: “[T]he person legally responsible for administering the public agency or independent public body corporate and politic or that person’s designee” will determine if a request is to be denied in whole or in part. Idaho Code § 9-339(3). Section 9-339(4) also encourages the public agency to have an attorney review the request if the information appears to be exempt from disclosure.

Question No. 26: Must a public agency provide a written denial?

Answer: Yes. Section 9-339(3) requires that a written denial be provided to the individual requesting the information. However, failure to respond in writing does not extend the time period for response. It is deemed denied after 10 days.

Question No. 27: What information must a public agency provide if a request is denied?

Answer: The written denial for all or part of a request for information must state the statutory authority for the denial, and include a clear statement of the right to appeal and the time for doing so.

In addition, section 9-339(4) also requires that the public agency state “that the attorney for the public agency or independent public body corporate and politic has reviewed the request or shall state that the public agency or independent public body corporate and politic has had an opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so.”

It is the opinion of the attorney general’s office that the only legitimate reason for the agency not to consult with an attorney is that the exemption from disclosure is clear. If that is the case, the letter of denial should so state. Above all, if there is *any* doubt about whether the information is exempt from disclosure, it is imperative that the public agency seek legal advice.

Question No. 28: What happens to the requested records if access has been denied?

Answer: The public agency must retain the documents in question until the end of the 180-day period, until a decision has been issued by the court on an appeal, or for a longer period if required by any other law.

Question No. 29: When a public agency or public official is a party to a proceeding governed by the rules of discovery, may another party to the litigation use the Public Records Law to obtain records instead of complying with the discovery process?

Answer: No. Section 9-343(3) specifically states that the Public Records Law is not “available to supplement, augment, substitute or supplant discovery procedures” in any criminal appeal, post-conviction civil action, federal or state civil action, or other administrative process governed by the rules of discovery.

PROTEST OF A DENIAL OF A REQUEST FOR PUBLIC RECORDS

Question No. 30: What recourse does an individual have if a request for public records is denied?

Answer: Section 9-343 authorizes a person aggrieved by the denial of a request for records to file a petition in the district court of the county where the records or some part of them are located. The petition to compel disclosure of the records must be filed within 180 days from the date of mailing of the denial notice.

Question No. 31: Must public agency appeal processes also be followed?

Answer: No. Some public agencies have internal administrative appeal processes that must normally be followed before an appeal can be taken to court. However, the Legislature determined that there should be one uniform appeal procedure regarding public records. As provided in section 9-343(1), the “sole remedy” for denial of a request is the court process described in the Public Records Law.

Question No. 32: What happens once a petition is filed?

Answer: Section 9-343 directs the court to set a time for the public agency to file a response and for a hearing at the earliest possible time, not later than twenty-eight (28) calendar days after the petition is filed.

The court then has the discretion to examine the documents in chambers, and shall consider the written and oral presentations from the individual requesting the record, as well as those from the public agency.

If the court finds that the records are not exempt from disclosure, the public agency will be required to make them available. If the court finds in favor of the public agency, the records will be returned to the public agency without being disclosed to the individual requesting them.

Question No. 33: May attorney fees and costs be awarded by the court?

Answer: Yes, under certain circumstances. Section 9-344(2) provides for the award of reasonable costs and attorney fees to whichever party prevails, if the court “finds that the request or refusal to provide records was frivolously pursued.”

INSPECTION AND AMENDMENT OF RECORDS PERTAINING TO AN INDIVIDUAL

Question No. 34: Do individuals have a right to inspect records that pertain to themselves?

Answer: Yes, with some exceptions. Subsection (1) of section 9-342 permits inspection and copying of records pertaining to oneself “even if the record is otherwise exempt from public disclosure.” However, subsections (3)(a) through (e) of that section provide some limitations on that access: otherwise exempt investigatory records of a public agency or independent public body corporate and politic if the investigation is ongoing; information that is compiled in reasonable anticipation of a civil action or proceeding, which is not otherwise discoverable; the information relates to adoption records; information which is otherwise exempt from disclosure by statute or court rule; and records of a prisoner maintained by the state or local

agency having custody of the prisoner or formerly having custody of the prisoner or by the commission of pardons and parole.

Question No. 35: What right does an individual involved in a motor vehicle collision have to an unaltered copy of the accident report prepared by a law enforcement agency?

Answer: Section 9-335(2) authorizes the individuals involved, as well as their attorney, or insurance company, the right to a complete, unaltered copy of the impact report and any subsequent final report prepared.

Question No. 36: May individuals request correction of records that pertain to themselves?

Answer: Yes. Section 9-342(2) permits an individual to make a written request to correct or amend any record maintained by a public agency about that person. Within ten (10) days of the request, the public agency must make the correction, or explain in writing why the request is not granted.

Question No. 37: What happens if a request for correction of a record is denied?

Answer: An individual has the right to protest the denial by using the same appeal procedure as for denial of access to a record, which is to file a petition in district court as described in Questions 30-33.

PENALTIES FOR BAD FAITH NONCOMPLIANCE; IMMUNITY

Question No. 38: Is there any penalty for a public official who refuses to provide a public record?

Answer: Section 9-345 provides for a civil penalty of up to \$1,000 to be assessed against a public official who the court finds has deliberately and in bad faith improperly refused a legitimate request for inspection or copying of a public record.

Question No. 39: Is there any protection for a public official who attempts to comply in good faith with the Public Records Law?

Answer: Yes. Section 9-346 provides immunity for any public agency, public official or custodian from liability for any loss or

damage based upon the release of a public record if the individual acted in good faith in attempting to comply with the law. Good faith compliance is best demonstrated by consulting with an attorney whenever there is any doubt whether the information can be disclosed.

THE STATUTE

(Idaho Code §§ 9-337 through 9-350)

9-337. Definitions. As used in sections 9-337 through 9-347, Idaho Code:

(1) “Applicant” means any person formally seeking a paid or volunteer position with a public agency. “Applicant” does not include any person seeking appointment to a position normally filled by election.

(2) “Copy” means transcribing by handwriting, photocopying, duplicating machine and reproducing by any other means so long as the public record is not altered or damaged.

(3) “Custodian” means the person having personal custody and control of the public records in question. If no such designation is made by the public agency or independent public body corporate and politic, then custodian means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives.

(4) “Independent public body corporate and politic” means the Idaho housing and finance association as created in chapter 62, title 67, Idaho Code.

(5) “Inspect” means the right to listen, view and make notes of public records as long as the public record is not altered or damaged.

(6) “Investigatory record” means information with respect to an identifiable person, group of persons or entities compiled by a public agency or independent public body corporate and politic pursuant to its statutory authority in the course of investigating a specific act, omission, failure to act, or other conduct over which the public agency or independent public body corporate and politic has regulatory authority or law enforcement authority.

(7) “Law enforcement agency” means any state or local agency given law enforcement powers or which has authority to investigate, enforce, prosecute or punish violations of state or federal criminal statutes, ordinances or regulations.

(8) “Local agency” means a county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof.

(9) “Person” means any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity.

(10) “Prisoner” means a person who has been convicted of a crime and is either incarcerated or on parole for that crime or who is being held in custody for trial or sentencing.

(11) “Public agency” means any state or local agency as defined in this section.

(12) “Public official” means any state, county, local district, independent public body corporate and politic or governmental official or employee, whether elected, appointed or hired.

(13) “Public record” includes, but is not limited to, any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.

(14) “Requester” means the person requesting examination and/or copying of public records pursuant to section 9-338, Idaho Code.

(15) “State agency” means every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia and the Idaho state historical society library and archives.

(16) “Writing” includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

9-338. Public records -- Right to examine.

(1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or independent public body corporate and politic or using equipment designated by the custodian.

(3) Additionally, the custodian of any public record shall give the person, on demand, a certified copy of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record.

(4) A public agency or independent public body corporate and politic may require that a request for public records be submitted to it in a writing that provides the requester's name, mailing address, e-mail address and telephone number. A request for public records and delivery of the public records may be made by electronic mail.

(5) The custodian shall make no inquiry of any person who requests a public record, except:

(a) To verify the identity of the requester in accordance with section 9-342, Idaho Code; or

(b) To ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 9-348, Idaho Code, or as otherwise provided by law; or

(c) As required for purposes of protecting personal information from disclosure under chapter 2, title 49, Idaho Code, and federal law.

(6) The custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of any such person and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted under this act.

(7) Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

(8) Examination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours. In this event, the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public agency or independent public body corporate and politic having custody of such records, out of funds provided in advance by the person examining such records, at other than regular office or working hours.

(9) The public agency or independent public body corporate and politic may provide the requester information to help the requester narrow the scope of the request or to help the requester make the request more specific when the response to the request is likely to be voluminous or require payment as provided in section 9-338(10), Idaho Code.

(10) (a) Except for fees that are authorized or prescribed under other provisions of Idaho law, no fee shall be charged for the first two (2) hours of labor in responding to a request for public records, or for copying the first one hundred (100) pages of paper records that are requested.

(b) A public agency or independent public body corporate and politic or public official may establish fees to recover the actual labor and copying costs associated with locating and copying documents if:

(i) The request is for more than one hundred (100) pages of paper records; or

(ii) The request includes records from which nonpublic information must be deleted; or

(iii) The actual labor associated with responding to requests for public records in compliance with the provisions of this chapter exceeds two (2) person hours.

(c) A public agency or independent public body corporate and politic or public official may establish a copying fee

schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law.

(d) For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or independent public body corporate and politic or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:

(i) The agency's direct cost of copying the information in that form;

(ii) The standard cost, if any, for selling the same information in the form of a publication;

(iii) The agency's cost of conversion, or the cost of conversion charged by a third party, if the existing electronic record is converted to another electronic form.

(e) Fees shall not exceed reasonable labor costs necessarily incurred in responding to a public records request. Fees, if charged, shall reflect the personnel and quantity of time that are reasonably necessary to process a request. Fees for labor costs shall be charged at the per hour pay rate of the lowest paid administrative staff employee or public official of the public agency or independent public body corporate and politic who is necessary and qualified to process the request. If a request requires redactions to be made by an attorney who is employed by the public agency or independent public body corporate and politic, the rate charged shall be no more than the per hour rate of the lowest paid attorney within the public agency or independent public body corporate and politic who is necessary and qualified to process the public records request. If a request is submitted to a public agency or independent public body corporate and politic that does not have an attorney on staff, and requires redactions by an attorney, the rate shall be no more than the usual and customary rate of the attorney who is retained by the public agency or independent public body corporate and politic for that purpose.

(f) The public agency or independent public body corporate and politic shall not charge any cost or fee for copies or labor when the requester demonstrates that the requester's examination and/or copying of public records:

(i) Is likely to contribute significantly to the public's understanding of the operations or activities of the government;

(ii) Is not primarily in the individual interest of the requester including, but not limited to, the requester's interest in litigation in which the requester is or may become a party; and

(iii) Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.

(g) Statements of fees by a public agency or independent public body corporate and politic shall be itemized to show the per page costs for copies, and hourly rates of employees and attorneys involved in responding to the request, and the actual time spent on the public records request. No lump sum costs shall be assigned to any public records request.

(11) A requester may not file multiple requests for public records solely to avoid payment of fees. When a public agency or independent public body corporate and politic reasonably believes that one (1) or more requesters is segregating a request into a series of requests to avoid payment of fees authorized pursuant to this section, the public agency or independent public body corporate and politic may aggregate such requests and charge the appropriate fees. The public agency or independent public body corporate and politic may consider the time period in which the requests have been made in its determination to aggregate the related requests. A public agency or independent public body corporate and politic shall not aggregate multiple requests on unrelated subjects from one (1) requester.

(12) The custodian may require advance payment of fees authorized by this section. Any money received by the public agency or independent public body corporate and politic shall be credited to the account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund. Any portion of an advance payment in

excess of the actual costs of labor and copying incurred by the agency in responding to the request shall be returned to the requester.

(13) A public agency or independent public body corporate and politic shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.

(14) Nothing contained herein shall prevent a public agency or independent public body corporate and politic from disclosing statistical information that is descriptive of an identifiable person or persons, unless prohibited by law.

(15) Nothing contained herein shall prevent a public agency or independent public body corporate and politic from providing a copy of a public record in electronic form if the record is available in electronic form and if the person specifically requests an electronic copy.

9-339. Response to request for examination of public records.

(1) A public agency or independent public body corporate and politic shall either grant or deny a person's request to examine or copy public records within three (3) working days of the date of the receipt of the request for examination or copying. If it is determined by employees of the public agency or independent public body corporate and politic that a longer period of time is needed to locate or retrieve the public records, the public agency or independent public body corporate and politic shall so notify in writing the person requesting to examine or copy the records and shall provide the public records to the person no later than ten (10) working days following the person's request. Provided however, if it is determined the existing electronic record requested will first have to be converted to another electronic format by the agency or by a third party and that such conversion cannot be completed within ten (10) working days, the agency shall so notify in writing the person requesting to examine or copy the records. The agency shall provide the converted public record at a time mutually agreed upon between the agency and the requester, with due consideration given to any limitations that may exist due to the process of conversion or due to the use of a third party to make the conversion.

(2) If the public agency or independent public body corporate and politic fails to respond, the request shall be deemed to be denied within ten (10) working days following the request.

(3) If the public agency or independent public body corporate and politic denies the person's request for examination or copying the public records or denies in part and grants in part the person's request for examination and copying of the public records, the person legally responsible for administering the public agency or independent public body corporate and politic or that person's designee shall notify the person in writing of the denial or partial denial of the request for the public record.

(4) The notice of denial or partial denial shall state that the attorney for the public agency or independent public body corporate and politic has reviewed the request or shall state that the public agency or independent public body corporate and politic has had an opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so. The notice of denial or partial denial also shall indicate the statutory authority for the denial and indicate clearly the person's right to appeal the denial or partial denial and the time periods for doing so.

9-340A. Records exempt from disclosure -- Exemptions in federal or state law -- Court files of judicial proceedings. 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) 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, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

9-340B. Records exempt from disclosure -- Law enforcement records, investigatory records of agencies, evacuation and emergency response plans, worker's compensation. The following records are exempt from disclosure:

(1) Investigatory records of a law enforcement agency, as defined in section 9-337(7), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(2) Juvenile records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile who is thirteen (13) years of age or younger. If the juvenile is petitioned or charged with an offense which would be a criminal offense if committed by an adult, the name, offense of which the juvenile was petitioned or charged and disposition of the court shall be subject to disclosure as provided in section 20-525, Idaho Code. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(3) Records of the custody review board of the Idaho department of juvenile corrections, including records containing the names, addresses and written statements of victims and family members of juveniles, shall be exempt from public disclosure pursuant to section 20-533A, Idaho Code.

(4) (a) The following records of the department of correction:

(i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code;

(ii) Records that contain any identifying information, or any information that would lead to the identification of any victims or witnesses;

(iii) Records that reflect future transportation or movement of a prisoner;

(iv) Records gathered during the course of the presentence investigation;

(v) Records of a prisoner, as defined in section 9-337(10), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

(b) Records of buildings, facilities, infrastructures and systems held by or in the custody of any public agency only when the disclosure of such information would jeopardize the safety of persons or the public safety. Such records may include emergency evacuation, escape or other emergency response plans, vulnerability assessments, operation and security manuals, plans, blueprints or security codes. For purposes of this section “system” shall mean electrical, heating, ventilation, air conditioning and telecommunication systems.

(c) Records of the commission of pardons and parole shall be exempt from public disclosure pursuant to section 20-213A, Idaho Code, and section 20-223, Idaho Code. Records exempt from disclosure shall also include those containing the names, addresses and written statements of victims.

(5) Voting records of the sexual offender classification board. The written record of the vote to classify an offender as a violent sexual predator by each board member in each case reviewed by that board member shall be exempt from disclosure to the public and shall be made available upon request only to the governor, the chairman of the senate judiciary and rules committee, and the chairman of the house of representatives judiciary, rules and administration committee, for all lawful purposes.

(6) Records of the sheriff or Idaho state police received or maintained pursuant to sections 18-3302 and 18-3302H, Idaho Code, relating to an applicant or licensee.

(7) 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.

(8) 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.

(9) 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.

(10) 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; or

(e) Although a claimant's records maintained by the industrial commission, including medical and rehabilitation records, are otherwise exempt from public disclosure, the quoting or discussing of medical or rehabilitation records

contained in the industrial commission's records during a hearing for compensation or in a written decision issued by the industrial commission shall be permitted; provided further, the true identification of the parties shall not be exempt from public disclosure in any written decision issued and released to the public by the industrial commission.

(11) Records of investigations compiled by the commission on aging involving vulnerable adults, as defined in section 18-1505, Idaho Code, alleged to be abused, neglected or exploited.

(12) Criminal history records and fingerprints, as defined by section 67-3001, Idaho Code, and compiled by the Idaho state police. Such records shall be released only in accordance with chapter 30, title 67, Idaho Code.

(13) Records furnished or obtained pursuant to section 41-1019, Idaho Code, regarding termination of an appointment, employment, contract or other insurance business relationship between an insurer and a producer.

(14) Records of a prisoner or former prisoner in the custody of any state or local correctional facility, when the request is made by another prisoner in the custody of any state or local correctional facility.

(15) Except as provided in section 72-1007, Idaho Code, records of the Idaho industrial commission relating to compensation for crime victims under chapter 10, title 72, Idaho Code.

(16) Records or information identifying a complainant maintained by the department of health and welfare pursuant to section 39-3556, Idaho Code, relating to certified family homes, unless the complainant consents in writing to the disclosure or the disclosure of the complainant's identity is required in any administrative or judicial proceeding.

9-340C. Records exempt from disclosure -- Personnel records, personal information, health records, professional discipline. The following records are exempt from disclosure:

(1) 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. Names of applicants to classified or merit system positions shall not be disclosed to the public without the applicant's written consent. Disclosure of names as part of a background check is permitted. Names of the five (5) final applicants to all other positions shall be available to the public. If such group is less than five (5) finalists, then the entire list of applicants shall be available to the public. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) 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.

(3) 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.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency or independent public body corporate and politic 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 or independent public body corporate and politic, such as bonds, compiled by the public agency or independent public body corporate and politic pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records; and

(f) Military records as described in and pursuant to section 65-301, Idaho Code.

(5) 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, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) 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, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information, except that a person may agree, through written, informed consent, to waive the exemption so that a third party may obtain information pertaining to the person, unless access to the information by the person is restricted by subsection (3)(a), (3)(b) or (3)(d) of section 9-342, Idaho Code. Notwithstanding the provisions of section 9-342, Idaho Code, a person may not review identifying information concerning an informant who reported to the department of labor a suspected violation by the person of the employment security law, chapter 13, title 72, Idaho Code, under an assurance of confidentiality. As used in this section and in chapter 13, title 72, Idaho Code, "employment security information" means any information descriptive of an identifiable person or persons that is received by, recorded by, prepared by, furnished to or collected by the

department of labor or the industrial commission in the administration of the employment security law.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) 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.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Complaints received by the board of medicine and investigations and informal proceedings, including informal proceedings of any committee of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and rules adopted thereunder.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, prescription records maintained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho Code, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the Idaho state police or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(19) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

(20) Records of the Idaho housing and finance association (IHFA) relating to the following:

(a) Records containing personal financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;

(b) Records submitted to or otherwise obtained by the IHFA with regard to obtaining and servicing mortgage loans and all records relating to the review, approval or rejection by the IHFA of said loans;

(c) Mortgage portfolio loan documents;

(d) Records of a current or former employee other than the employee's duration of employment with the association, position held and location of employment. This exemption from disclosure does not include the contracts of employment or any remuneration, including reimbursement of expenses, of the executive director, executive officers or commissioners of the association. All other personnel information relating to an association 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, retirement plan information and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. An employee or authorized representative may inspect and copy that employee's personnel records, except for material used to screen and test for employment or material not subject to disclosure elsewhere in the Idaho public records act.

(21) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a court order.

(22) Records of the Idaho state bar lawyer assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-4901, Idaho Code.

(23) Records and information contained in the trauma registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records.

(24) Records contained in the court files, or other records prepared as part of proceedings for judicial authorization of sterilization procedures pursuant to chapter 39, title 39, Idaho Code.

(25) The physical voter registration card on file in the county clerk's office; however, a redacted copy of said card shall be made available consistent with the requirements of this section. Information from the voter registration card maintained in the statewide voter registration database, including age, will be made available except for the voter's driver's license number, date of birth and, upon a showing that the voter comes within the provisions of subsection (30) of this section or

upon showing of good cause by the voter to the county clerk in consultation with the county prosecuting attorney, the physical residence address of the voter. For the purposes of this subsection good cause shall include the protection of life and property and protection of victims of domestic violence and similar crimes.

(26) File numbers, passwords and information in the files of the health care directive registry maintained by the secretary of state under section 39-4515, Idaho Code, are confidential and shall not be disclosed to any person other than to the person who executed the health care directive or the revocation thereof and that person's legal representatives, to the person who registered the health care directive or revocation thereof, and to physicians, hospitals, medical personnel, nursing homes, and other persons who have been granted file number and password access to the documents within that specific file.

(27) Records in an address confidentiality program participant's file as provided for in chapter 57, title 19, Idaho Code, other than the address designated by the secretary of state, except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; or

(b) If directed by a court order, to a person identified in the order.

(28) Except as otherwise provided by law relating to the release of information to a governmental entity or law enforcement agency, any personal information including, but not limited to, names, personal and business addresses and phone numbers, sex, height, weight, date of birth, social security and driver's license numbers, or any other identifying numbers and/or information related to any Idaho fish and game licenses, permits and tags unless written consent is obtained from the affected person.

(29) Documents and records related to continuing education and recordkeeping violations that are maintained by the Idaho board of veterinary medicine under the provisions of section 54-2118(1)(b), Idaho Code, provided the requirements set forth therein are met.

(30) The Idaho residential street address and telephone number of an eligible law enforcement officer and such officer's residing household

member(s) as provided for in chapter 58, title 19, Idaho Code, except under the following circumstances:

(a) If directed by a court order, to a person identified in the court order;

(b) If requested by a law enforcement agency, to the law enforcement agency;

(c) If requested by a financial institution or title company for business purposes, to the requesting financial institution or title company; or

(d) If the law enforcement officer provides written permission for disclosure of such information.

(31) Nothing in this section shall prohibit the release of information to the state controller as the state social security administrator as provided in section 59-1101A, Idaho Code.

9-340D. Records exempt from disclosure -- Trade secrets, production records, appraisals, bids, proprietary information. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research 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.

(2) Production records, housing production, rental and financing 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 or

submitted to or otherwise obtained by an independent public body corporate and politic. 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.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic 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.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic 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.

(6) 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.

(7) 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.

(8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(9) 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, nor shall this exemption apply to information regarding specific property locations subject to an open burning of crop residue pursuant to section 39-114, Idaho Code, names of persons responsible for the open burn, acreage and crop type to be burned, and time frames for burning.

(10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed commission and pertaining to the individual production records of oilseed growers.

(11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency or independent public body corporate and politic.

(12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic 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.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 9-335, Idaho Code. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.

(18) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Code, or rules promulgated thereunder.

(19) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, Idaho Code.

(20) Records, data, information and materials collected, developed, generated, ascertained or discovered during the course of academic research at public institutions of higher education if the disclosure of such could reasonably affect the conduct or outcome of the research, or the ability of the public institution of higher education to patent or copyright the research or protect intellectual property.

(21) Records, data, information and materials collected or utilized during the course of academic research at public institutions of higher education provided by any person or entity other than the public institution of higher education or a public agency.

(22) The exemptions from disclosure provided in subsection (20) and (21) of this section shall apply only until the academic research is publicly released, copyrighted or patented, or until the academic research is completed or terminated. At such time, the records, data, information, and materials shall be subject to public disclosure unless: (a) another exemption in this chapter applies; (b) such information was provided to the institution subject to a written agreement of confidentiality; or (c) public disclosure would pose a danger to persons or property.

(23) The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research project that is otherwise subject to public disclosure, such as the nature of the academic research, the name of the researcher, and the amount and source of the funding provided for the project.

(24) Records of a county assessor, the state tax commission, a county board of equalization or the state board of tax appeals containing the following information: (i) lists of personal property required to be filed pursuant to section 63-302, Idaho Code, and operating statements required to be filed pursuant to section 63-404, Idaho Code, and (ii)

confidential commercial or financial information including trade secrets. Except with respect to lists of personal property required to be filed pursuant to section 63-302, Idaho Code, and the operator statements required to be filed pursuant to section 63-404, Idaho Code, it shall be the responsibility of the taxpayer to give notice of its claim to exemption by stamping or marking each page or the first page of each portion of documents so claimed. No records that are exempt pursuant to this subsection shall be disclosed without the consent of the taxpayer except as follows:

(a) To any officer, employee or authorized representative of the state or the United States, under a continuing claim of confidentiality, as necessary to carry out the provisions of state or federal law or when relevant to any proceeding thereunder.

(b) In the publication of statistics or reports as long as the statistics or reports do not reasonably lead to the identification of the specific taxpayer or information submitted by taxpayers exempt pursuant to this subsection.

(c) To the board of tax appeals or the district court as evidence or otherwise in connection with an appeal of the taxpayer's property tax assessment, but only if the board or the court, as applicable, has entered a protective order specifying that the taxpayer information may not be disclosed by any person conducting or participating in the action or proceeding, except as authorized by the board or the court in accordance with applicable law.

(d) Nothing in this subsection shall prevent disclosure of the following information:

- (i) Name and mailing address of the property owner;
- (ii) A parcel number;
- (iii) A legal description of real property;
- (iv) The square footage and acreage of real property;
- (v) The assessed value of taxable property;
- (vi) The tax district and the tax rate; and

(vii) The total property tax assessed.

(25) Results of laboratory tests which have no known adverse impacts to human health conducted by the Idaho state department of agriculture animal health laboratory, related to diagnosis on animal diseases of individual animals or herds, on samples submitted by veterinarians or animal owners unless:

(a) The laboratory test results indicate the presence of a state or federally reportable or regulated disease in animals;

(b) The release of the test results is required by state or federal law; or

(c) The test result is identified as representing a threat to animal or human health or to the livestock industry by the Idaho state department of agriculture or the United States department of agriculture. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding, or the duty of any person to report contagious or infectious diseases as required by state or federal law.

(26) Results of laboratory tests conducted by the Idaho state department of agriculture seed laboratory on samples submitted by seed producers or seed companies. Nothing in this subsection shall limit the use which can be made, or availability of such information pursuant to the provisions of subsections (9) and (10) of section 22-418, Idaho Code.

(27) For policies that are owned by private persons, and not by a public agency of the state of Idaho, records of policies, endorsements, affidavits and any records that discuss policies, endorsements and affidavits that may be required to be filed with or by a surplus line association pursuant to chapter 12, title 41, Idaho Code.

(28) Individual financial statements of a postsecondary educational institution or a proprietary school submitted to the state board of education, its director or a representative thereof, for the purpose of registering the postsecondary educational institution or proprietary school pursuant to section 33-2402 or 33-2403, Idaho Code, or provided pursuant to an administrative rule of the board adopted pursuant to such sections.

9-340E. Exemptions from disclosure -- Archaeological, endangered species, libraries, licensing exams. The following records are exempt from disclosure:

(1) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

9-340F. Records exempt from disclosure -- Draft legislation and supporting materials, tax commission, petroleum clean water trust fund. The following records are exempt from disclosure:

(1) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative services office 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.

(2) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of

legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(3) Records consisting of draft congressional and legislative redistricting plans and documents specifically related to such draft redistricting plans or research requests submitted to the commission staff by a member of the commission for reapportionment for the purpose of placing such draft redistricting plan into form suitable for presentation to the full membership of the commission, unless the individual commission member having submitted or requested such plans or research agrees to waive the provisions of confidentiality provided by this subsection.

(4) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(5) Underwriting and claims records of the Idaho petroleum clean water trust fund obtained pursuant to section 41-4905, 41-4909, 41-4911A, 41-4912 or 41-4912A, Idaho Code. Provided however, that this subsection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department of environmental quality, or other regulatory agencies of information necessary to satisfy an insured's corrective action requirement under applicable federal or state standards in the event of a release into the environment from a petroleum storage tank; and provided further that nothing in this subsection shall prevent the Idaho petroleum clean water trust fund from providing auditing, reporting, or actuarial information as otherwise required of it pursuant to section 41-4919, 41-4925A, 41-4928, 41-4930, 41-4932, 41-4937 or 41-4938, Idaho Code.

9-340G. Exemption from disclosure -- Records of court proceedings regarding judicial authorization of abortion procedures for minors.

In accordance with section 18-609A, Idaho Code, the following records are exempt from public disclosure: all records contained in court files of judicial proceedings arising under section 18-609A, Idaho Code, are exempt from disclosure.

9-340H. Exemption from disclosure – Records related to the uniform Securities act.

Except as otherwise determined by the director of the department of finance pursuant to section 30-14-607(c), Idaho Code, the following records are exempt from disclosure:

(1) A record obtained or created by the director of the department of finance or a representative of the director in connection with an audit or inspection under section 30-14-411(d), Idaho Code, or an investigation under section 30-14-602, Idaho Code;

(2) A part of a record filed in connection with a registration statement under section 30-14-301, Idaho Code, and sections 30-14-303 through 30-14-305, Idaho Code, or a record under section 30-14-411(d), Idaho Code, that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) A record that is not required to be provided to the director of the department of finance or filed under chapter 14, title 30, Idaho Code, and is provided to the director only on the condition that the record will not be subject to public examination or disclosure;

(4) A nonpublic record received from a person specified in section 30-14-608(a), Idaho Code; and

(5) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed pursuant to chapter 14, title 30, Idaho Code.

9-341. Exempt and nonexempt public records to be separated. If any public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public agency or independent public body corporate and politic shall, upon receipt of a request for disclosure, separate the exempt and nonexempt material and make the nonexempt material available for examination, provided that a denial of a request to copy nonexempt material in a public record shall not be based upon the fact that such nonexempt material is contained in the same public record as the exempt material.

9-342. Access to records about a person by a person.

(1) A person may inspect and copy the records of a public agency or independent public body corporate and politic pertaining to that person, even if the record is otherwise exempt from public disclosure.

(2) A person may request in writing an amendment of any record pertaining to that person. Within ten (10) days of the receipt of the

request, the public agency or independent public body corporate and politic shall either:

(a) Make any correction of any portion of the record which the person establishes is not accurate, relevant, or complete; or

(b) Inform the person in writing of the refusal to amend in accordance with the request and the reasons for the refusal, and indicate clearly the person's right to appeal the refusal and the time period for doing so. The procedures for appealing a refusal to amend shall be the same as those set forth in sections 9-343 and 9-344, Idaho Code, and the court may award reasonable costs and attorney's fees to the prevailing party or parties, if it finds that the request for amendment or refusal to amend was frivolously pursued.

(3) The right to inspect and amend records pertaining to oneself does not include the right to review:

(a) Otherwise exempt investigatory records of a public agency or independent public body corporate and politic if the investigation is ongoing;

(b) Information that is compiled in reasonable anticipation of a civil action or proceeding which is not otherwise discoverable;

(c) The information relates to adoption records;

(d) Information which is otherwise exempt from disclosure by statute or court rule;

(e) Records of a prisoner maintained by the state or local agency having custody of the prisoner or formerly having custody of the prisoner or by the commission of pardons and parole.

9-342A. Access to air quality and hazardous waste records -- Protection of trade secrets.

(1) To the extent required by the federal clean air act and the resource conservation and recovery act for state primacy over any delegated or authorized programs, even if the record is otherwise exempt

from disclosure under chapter 3, title 9, Idaho Code, any person may inspect and copy:

- (a) Air pollution emission data;
- (b) The content of any title V operating permit;
- (c) The name and address of any applicant or permittee for a hazardous waste treatment, storage, or disposal facility permit pursuant to chapter 44, title 39, Idaho Code; and
- (d) Any other record required to be provided to or obtained by the department of environmental quality pursuant to the federal clean air act and the resource conservation and recovery act, and the implementing state statutes, federal regulations and state rules, unless the record is a trade secret.

(2) For purposes of this section, a record, or a portion of the record, is a “trade secret” if the information contained in the record is a trade secret within the meaning of the Idaho trade secrets act, sections 48-801, et seq., Idaho Code, including commercial or financial information which, if disclosed, could cause substantial competitive harm to the person from whom the record was obtained.

(3) Any record, or portion of a record, provided to or obtained by the department of environmental quality and identified by the person providing the record as a trade secret shall not be disclosed to the public and shall be kept confidential according to the procedures established in this section.

(4) Nothing in this section shall be construed as limiting the disclosure of a trade secret by the department of environmental quality:

- (a) To any officer, employee, or authorized representative of the state or the United States, under a continuing claim of confidentiality, as necessary to carry out the provisions of state or federal law, or when relevant to any proceeding thereunder;
- (b) As determined necessary by the director of the department of environmental quality (under a continuing confidentiality claim) to protect the public health and safety from imminent and substantial endangerment;

(c) As required by state or federal law, including section 9-343(3), Idaho Code, under a continuing claim of confidentiality and subsection (1), of this section; or

(d) With the consent of the person from whom the record is obtained.

(5) It shall be the responsibility of any person providing a record to the department of environmental quality to give notice of the existence of a trade secret on each page or other portion of information at the time of submittal and such person shall have the burden of demonstrating that the information is a trade secret.

(6) Notwithstanding the time frames set forth in section 9-339(1), Idaho Code, when a request is made to the department of environmental quality pursuant to the provisions of this chapter for the disclosure of information for which a trade secret claim has been made, and the information has not been demonstrated to be a trade secret to the satisfaction of the director of the department of environmental quality, within three (3) working days of receipt of the request for the disclosure of the information the department of environmental quality shall provide a written request for substantiation to the person making the confidentiality claim. A response shall be submitted to the department of environmental quality by the person claiming the trade secret protection within ten (10) working days after receipt of the request for substantiation or the information subject to the claim shall be disclosed without further notice. Upon receipt of a timely response to the request for substantiation, the director of the department of environmental quality shall determine whether the information is a trade secret subject to protection.

(a) If it is determined that the information, or any portion of the information, is a trade secret, within three (3) working days after receipt of the response, the director of the department of environmental quality shall notify the person requesting the information that the request is denied pursuant to sections 9-339(3) and (4), Idaho Code.

(b) If it is determined that the information, or any portion of the information, is not a trade secret and is, therefore, subject to disclosure, within three (3) working days after receipt of the response, the director of the department of environmental quality shall inform the person making the confidentiality claim of the determination. The decision shall be a final agency action

directly appealable, de novo, to the district court of the county where the records or some part thereof are located. An appeal contesting the decision of the director of the department of environmental quality to release information claimed to be a trade secret shall be filed within ten (10) working days from the date of receipt of the written notice of decision. The information claimed to be a trade secret shall not be disclosed until the period for appeal has expired with no appeal being taken, or a court order has been issued finding that the information is not a trade secret and all appeals of that order have been exhausted.

(7) In any appeal taken pursuant to this section, the court may award reasonable costs and attorney's fees to the prevailing party if it finds the claim of confidentiality or the decision of the director of the department of environmental quality to provide records was frivolously pursued.

(8) The department of environmental quality shall adopt rules which include:

(a) Appropriate measures to safeguard and protect against improper disclosure of trade secrets, including procedures to train all employees on the proper handling of trade secrets; and

(b) Any other provisions necessary to carry out this section.

(9) As it relates to the department of environmental quality, or to agents, contractors, or other representatives of the department, the immunity created in section 9-346, Idaho Code, shall apply only when disclosure of a trade secret is made consistent with this section.

9-343. Proceedings to enforce right to examine or to receive a copy of records -- Retention of disputed records.

(1) The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency or independent public body corporate and politic to make the information available for public inspection in accordance with the provisions of sections 9-337 through 9-348, Idaho Code. The petition contesting the public agency's or independent public body corporate and politic's decision shall be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by

the public agency or independent public body corporate and politic. In cases in which the records requested are claimed as exempt pursuant to section 9-340D (1) or (24), Idaho Code, the petitioner shall be required to name as a party and serve the person or entity that filed or provided such documents to the agency, and such person or entity shall have standing to oppose the request for disclosure and to support the decision of the agency to deny the request. The time for responsive pleadings and for hearings in such proceedings shall be set by the court at the earliest possible time, or in no event beyond twenty-eight (28) calendar days from the date of filing.

(2) The public agency or independent public body corporate and politic shall keep all documents or records in question until the end of the appeal period, until a decision has been rendered on the petition, or as otherwise statutorily provided, whichever is longer.

(3) Nothing contained in sections 9-337 through 9-348, Idaho Code, shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings. Additionally, in any criminal appeal or post-conviction civil action, sections 9-335 through 9-348, Idaho Code, shall not make available the contents of prosecution case files where such material has previously been provided to the defendant nor shall sections 9-335 through 9-348, Idaho Code, be available to supplement, augment, substitute or supplant discovery procedures in any other federal, civil or administrative proceeding.

9-344. Order of the court -- Court costs and attorney fees.

(1) Whenever it appears that certain public records are being improperly withheld from a member of the public, the court shall order the public official charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the pleadings filed by the parties and such oral arguments and additional evidence as the court may allow. The court may examine the record in camera in its discretion.

(2) If the court finds that the public official's decision to refuse disclosure is not justified, it shall order the public official to make the requested disclosure. If the court determines that the public official was justified in refusing to make the requested record available, he shall return the item to the public official without disclosing its content and shall enter an order supporting the decision refusing disclosure. In any

such action, the court shall award reasonable costs and attorney fees to the prevailing party or parties, if it finds that the request or refusal to provide records was frivolously pursued.

9-345. Additional penalty. If the court finds that a public official has deliberately and in bad faith improperly refused a legitimate request for inspection or copying, a civil penalty shall be assessed against the public official in an amount not to exceed one thousand dollars (\$1,000), which shall be paid into the general account.

9-346. Immunity. No public agency or independent public body corporate and politic, public official, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record governed by the provisions of this chapter if the public agency or independent public body corporate and politic, public official or custodian acted in good faith in attempting to comply with the provisions of this chapter.

9-347. Agency guidelines. By January 1, 1991, every state agency or independent public body corporate and politic shall adopt guidelines that identify the general subject matter of all public records kept or maintained by the state agency or independent public body corporate and politic, the custodian, and the physical location of such documents.

9-348. Prohibition on distribution or sale of mailing or telephone number lists -- Penalty.

(1) Except as provided in subsections (2), (3), (4), (5), (6), (7), (8) and (9) of this section, in order to protect the privacy of those who deal with public agencies or an independent public body corporate and politic:

(a) No agency or independent public body corporate and politic may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list; and

(b) No list of persons prepared by the agency or independent public body corporate and politic may be used as a mailing list or a telephone number list except by the agency or independent public body corporate and politic or another agency without first securing the permission of those on the list.

(2) Except as may be otherwise provided in this chapter, this section does not prevent an individual from compiling a mailing list or a

telephone number list by examination or copying of public records, original documents or applications which are otherwise open to public inspection.

(3) The provisions of this section do not apply to the lists of registered electors compiled pursuant to title 34, Idaho Code, or to lists of the names of employees governed by chapter 53, title 67, Idaho Code.

(4) The provisions of this section shall not apply to agencies which issue occupational or professional licenses.

(5) This section does not apply to the right of access either by Idaho law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(6) This section does not apply to a corporate information list developed by the office of the secretary of state containing the name, address, registered agent, officers and directors of corporations authorized to do business in this state or to a business information list developed by the department of commerce containing the name, address, telephone number or other relevant information of Idaho businesses or individuals requesting information regarding the state of Idaho or to business lists developed by the department of agriculture, division of marketing and development, used to promote food and agricultural products produced in Idaho.

(7) This section does not apply to lists to be used for ordinary utility purposes which are requested by a person who supplies utility services in this state. Ordinary utility purposes, as used in this chapter only, do not include marketing or marketing research.

(8) This section does not apply to lists to be used to give notice required by any statute, ordinance, rule, law or by any governing agency.

(9) This section does not apply to student directory information provided by colleges, universities, secondary schools and school districts to military recruiters for military recruiting purposes pursuant to the requirements of federal laws.

(10) Nothing in this section shall prohibit the release of information to the state controller as the state social security administrator as provided in section 59-1101A, Idaho Code.

(11) If a court finds that a person or public official has deliberately and in bad faith violated the provisions of subsection (1)(a) or (1)(b) of this section, the person or public official shall be liable for a civil penalty assessed by the court in an amount not in excess of one thousand dollars (\$1,000) which shall be paid into the general account.

9-349. Replevin -- public records -- improper or unlawful transfer or removal.

(1) Public records of the state and/or territory of Idaho are the property of the citizens of the state in perpetuity and they may not be improperly or unlawfully transferred or removed from their proper custodian. For purposes of this section, the terms “public record” and “record,” or plurals thereof, shall have the same meaning as “public record” as provided in section 9-337, Idaho Code.

(2) For the purpose of this section, where public records of a county, local district, or independent public body corporate and politic thereof are involved, all references to the state archivist also refer to any responsible public official or records custodian and all references to the attorney general also refer to county prosecutors.

(3) Whenever the state archivist or their designee has reasonable grounds to believe that records belonging to the state, county, local district, or independent public body corporate and politic thereof, are in the possession of a person or entity not authorized by law to possess those records, and such possession was acquired on or after July 1, 2011, he or she may issue a written notice demanding that person or entity to do either of the following within ten (10) calendar days of receiving the notice:

(a) Return the records to the office of origin or the Idaho state archives; or

(b) Respond in writing and declare why the records do not belong to the state or a local agency.

(4) The notice and demand shall identify the records claimed to belong to the state or local agency with reasonable specificity, and shall specify that the state archivist may undertake legal action to recover the records if the person or entity fails to respond in writing within the required time or does not adequately demonstrate that the records do not belong to the state or a local agency.

(5) If a person or entity that receives a written notice and demand from the state archivist pursuant to this chapter fails to deliver the described records, fails to respond to the notice and demand within the required time, or does not adequately demonstrate that the records do not belong to the state or a local agency, the state archivist may ask the attorney general to petition a court of competent jurisdiction for an order requiring the return of the records.

(6) The court may issue any order necessary to protect the records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the records, and may order that the records be surrendered into the custody of the state archivist pending the court's decision on the petition.

(7) After a hearing, and upon a finding that the specified records are in the possession of a person or entity not authorized by law to possess the records, the court shall order the records to be delivered to the state archivist or other official designated by the court.

(8) If the attorney general recovers a record under this section, the court may award attorney's fees and court costs.

(9) Notwithstanding any other provision of this section, any public record that is in the custody of an organization or institution shall not be subject to the provisions of this section provided:

(a) That professional standards recognized by the society of American archivists for the management and preservation of historical records are maintained; and

(b) Such records are accessible to the public in a manner consistent with sections 9-337 through 9-352, inclusive, Idaho Code.

(10) When a record is returned pursuant to subsection (3)(a) of this section, upon the request of the person, organization or institution that returned the record, the record custodian that receives the record shall issue to that person, organization or institution a copy or digital image of the record which shall be certified as a true copy of the record that was returned to the state or local agency, and dated on the same day the record was returned.

9-350. Confidentiality language required in this chapter. On and after January 1, 1996, any statute which is added to the Idaho Code and

provides for the confidentiality or closure of any public record or class of public records shall be placed in this chapter. Any statute which is added to the Idaho Code on and after January 1, 1996, and which provides for confidentiality or closure of a public record or class of public records and is located at a place other than this chapter shall be null, void and of no force and effect regarding the confidentiality or closure of the public record and such public record shall be open and available to the public for inspection as provided in this chapter.

9-351. Severability. 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.

9-352. 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.

**SUMMARY OF DECISIONS INTERPRETING THE IDAHO
PUBLIC RECORDS STATUTE**

IDAHO ATTORNEY GENERAL'S OFFICE

Reported Decisions

1. *Bolger v. Alan G. Lance, Idaho State Attorney General*, 137 Idaho 792, 53 P.3d 1211 (2002). Under the Public Records Law, the office of the Attorney General is considered a law enforcement agency. An individual does not have the right to examine investigatory records about himself during an ongoing investigation.

2. *Federated Publications, Inc. v. Boise City*, 128 Idaho 459, 915 P.2d 21 (1996) (under Idaho Code § 9-340(3)(a) [now Idaho Code § 9-340C(1)], the names and resumes of applicants for appointment to a vacancy in city council, and an internal review of a police shooting incident, may be subject to disclosure).

3. *Dalton v. Idaho Dairy Products Comm'n*, 107 Idaho 6, 684 P.2d 983 (1994) (list of names of state farmers was a public record subject to disclosure).

4. *Fox v. Estep*, 118 Idaho 454, 797 P.2d 854 (1990) (county clerk's "raw notes" of meeting of county commissioners could be public records within the scope of the law).

5. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990) (title company did not have the right to make photocopies with its own private equipment in the courthouse).

6. *Cowles Publishing Co. v. Kootenai County Board of Commissioners*, 144 Idaho 259, 159 P.3d 896 (2007) (e-mail correspondence, even though of a personal nature, may constitute a public record if it relates to the conduct or administration of public business and provides an explanation for a public official's actions, provided that the document is owned, used, or retained by a public agency).

Unreported Decisions

(On File with the Office of Attorney General)

1. *Boise State University v. Smith*, Case No. 97785 (4th Dist. 1995) (sweeping public records request, subsequently made more specific by

the requester, but still “extremely broad,” must nonetheless be filled under the public records statute).

2. *Lepin v. Hall*, Case No. 92780 (4th Dist.-Schwartzman 1990) (requested criminal file exempt under Idaho Code § 9-335(1)(c) because public disclosure would not shed “light on a governmental agency’s performance of its statutory obligations,” and would constitute an unwarranted invasion of personal privacy).

3. *Federated Publications, Inc. v. Schroeder*, Case No. 98036 (4th Dist.-Carey 1994) (assessor’s list subject to disclosure so long as requester complied with Idaho Code § 9-348(1); assessor was required to provide public records only in a reasonable format, not necessarily in the particular format requested).

4. *Eugene Television, Inc. v. Montgomery*, Case No. 90556 (4th Dist.-Schwartzman 1988) (under Idaho Code § 9-335(1)(e), tape recordings made by police dispatch center were exempt from public records disclosure because disclosure would divulge police investigative techniques used during bank robberies).

5. *In re: Petition of Elaine Maybury*, Case No. 95412 (4th Dist.-Newhouse 1992) (initial police report was exempt under Idaho Code § 9-335(2)(a), but affidavits received by police after initial investigation were subject to disclosure).

6. *Federated Publications, Inc. v. Carvino*, Case No. 96459 (4th Dist.-Carey 1994) (where state had decided not to prosecute, police reports were subject to disclosure except identifying information relating to witnesses was exempt under Idaho Code § 9-335(1)(c) and all references to mental commitment of the potential defendant were exempt under Idaho Code § 66-348) (internal report of investigation of police shooting exempt as personnel records under Idaho Code § 9-340(3) [now Idaho Code § 9-340C]).

7. *Doe v. Garcia*, Case No. 95805 (4th Dist.-McKee 1993) (court grants motion to quash subpoena for taking deposition duces tecum, and “does not wish to encourage the practice of using the Prosecutor’s files as a source of preparation for civil lawsuits”).

8. *Benson v. Industrial Comm’n*, Case No. 94600 (4th Dist.-Carey 1993) (workers compensation files were medical records exempt under Idaho Code § 9-340(26)); *Benson v. Industrial Comm’n*, Case No. 94600 (4th Dist.-Carey 1992) (statistical compilations are public records and

may be subject to disclosure even though they may be used to blacklist prospective employees).

9. *Howe v. City of Boise*, Case No. 98224 (4th Dist.-Carey 1995) (city could designate county as its public records custodian under Idaho Code § 9-338(9)) (county could ask the identity of the person making the request) (under Idaho Code § 9-335, county properly deleted identifying information from accident reports disclosed, except for certain names, sex, ages, and addresses of persons who were arrested, which should have been disclosed).

10. *Federated Publications, Inc. v. City of Meridian*, Case No. 06708 (4th Dist.-McKee 1998) (documents submitted in connection with applications for employment, including application forms or resumes for the position of director of parks and recreation, are exempt under Idaho Code § 9-340(3)(a)[1997] because director does not serve a fixed term, is not elected, is not required to take an oath of office, has no responsibility or authority to set policy and is, therefore, an “employee” as opposed to a “public official”).

11. *Cowles Publishing Company v. The Kootenai County Board of Commissioners*, Case No. 32195 (Idaho Supreme Court 2007 Opinion No. 74) (e-mails are public records and not exempt from disclosure).

12. *Sylvia Hampel v. The City of Boise*, Case No. 08148 (4th Dist.-Neville 2011) (examining the law enforcement exemption to the Public Records Act).

Attorney General’s Office Analyses

1. Attorney General Opinion No. 95-06, October 26, 1995 (under Idaho Code § 9-343(3) an exemption from disclosure under public records law does not limit the requirement to comply with a subpoena issued in an administrative adjudicatory proceeding and compelling the production of public records).

2. Attorney General’s Legal Guideline, March 7, 1996 (draft minutes and tape recordings of the meetings of state regulatory boards are “public records” under public records statute, whether or not the board has approved or reviewed the records).

3. Attorney General’s Legal Guideline, October 5, 1995 (membership list of Idaho Historical Society was public record but excluded from disclosure in this case under Idaho Code § 9-348).

4. Attorney General's Legal Guideline, August 9, 1995 (draft administrative rules in the possession of administrative rules coordinator are "public records" under public records statute and, under Idaho Code § 9-338(8), access to the record may not be restricted by charging a fee beyond the copying cost).

5. Attorney General's Legal Guideline, January 25, 1993 (city may not pass ordinance to allow it to charge a fee in excess of actual cost of reproducing requested public records despite the "otherwise provided by law" language of Idaho Code § 9-338(8)).